

**Duncan Hunter National Defense Authorization Act for
Fiscal Year 2009**

[Public Law 110–417]

[As Amended Through P.L. 118–31, Enacted December 22, 2023]

[Currency: This publication is a compilation of the text of Public Law 110–417. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>**]**

[Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).**]**

AN ACT To authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

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**TITLE III—OPERATION AND
MAINTENANCE**

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Subtitle D—Energy Security

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**SEC. 332. [10 U.S.C. 2911 note] CONSIDERATION OF FUEL LOGISTICS
SUPPORT REQUIREMENTS IN PLANNING, REQUIREMENTS
DEVELOPMENT, AND ACQUISITION PROCESSES**

(a) **PLANNING.**—In the case of analyses and force planning processes that are used to establish capability requirements and inform acquisition decisions, the Secretary of Defense shall require that analyses and force planning processes consider the requirements for, and vulnerability of, fuel logistics.

(b) **CAPABILITY REQUIREMENTS DEVELOPMENT PROCESS.**—

(1) **IN GENERAL.**—The Secretary of Defense shall develop and implement a methodology to enable the implementation of a fuel efficiency key performance parameter in the require-

ments development process for the modification of existing or development of new fuel consuming systems.

(2) WAIVER OF FUEL EFFICIENCY KEY PERFORMANCE PARAMETER.—

(A) IN GENERAL.—The fuel efficiency key performance parameter implemented pursuant to paragraph (1) may be waived with respect to a system only if—

(i) such waiver is approved by the Under Secretary of Defense for Acquisition and Sustainment; and

(ii) the system is a fuel consuming system that the Under Secretary of Defense for Acquisition and Sustainment determines requires, or is likely to require, sustainment on at least an occasional basis.

(B) NONDELEGATION.—The authority to approve a waiver under subparagraph (A) may not be delegated.

(c) ACQUISITION PROCESS.—The Secretary of Defense shall require that the life-cycle cost analysis for new capabilities include the fully burdened cost of fuel during analysis of alternatives and evaluation of alternatives and acquisition program design trades.

(d) IMPLEMENTATION PLAN.—The Secretary of Defense shall prepare a plan for implementing the requirements of this section. The plan shall be completed not later than 180 days after the date of the enactment of this Act and provide for the implementation of the requirements by not later than three years after the date of the enactment of this Act.

(e) PROGRESS REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report describing progress made to implement the requirements of this section, including an assessment of whether the implementation plan required by subsection (d) is being carried out on schedule.

(f) NOTIFICATION OF COMPLIANCE.—As soon as practicable during the three-year period beginning on the date of the enactment of this Act, the Secretary of Defense shall notify the congressional defense committees that the Secretary has complied with the requirements of this section. If the Secretary is unable to provide the notification, the Secretary shall submit to the congressional defense committees at the end of the three-year period a report containing—

(1) an explanation of the reasons why the requirements, or portions of the requirements, have not been implemented; and

(2) a revised plan under subsection (d) to complete implementation or a rationale regarding why portions of the requirements cannot or should not be implemented.

(g) FULLY BURDENED COST OF FUEL DEFINED.—In this section, the term “fully burdened cost of fuel” means the commodity price for fuel plus the total cost of all personnel and assets required to move and, when necessary, protect the fuel from the point at which the fuel is received from the commercial supplier to the point of use.

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TITLE IX

DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

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SUBTITLE E—OTHER MATTERS

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SEC. 943. AUTHORIZATION OF NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.

(a) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—

(1) IN GENERAL.—Upon a determination by a commander of a combatant command that an action is necessary in connection with a non-conventional assisted recovery effort, and with the concurrence of the relevant Chief of Mission or Chiefs of Mission, amounts appropriated or otherwise made available for the Department of Defense for operation and maintenance may be used to establish, develop, and maintain non-conventional assisted recovery capabilities.

(2) ANNUAL LIMIT.—The total amount made available for support of non-conventional assisted recovery activities under this subsection in any fiscal year may not exceed \$25,000,000.

(b) PROCEDURES AND OVERSIGHT.—

(1) PROCEDURES.—The Secretary of Defense shall establish procedures for the exercise of the authority under subsection (a). The Secretary shall notify the congressional defense committees of those procedures before any exercise of that authority.

(2) PROGRAMMATIC AND POLICY OVERSIGHT.—The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict shall have primary programmatic and policy oversight of non-conventional assisted recovery activities authorized by this section.

(c) AUTHORIZED ACTIVITIES.—Non-conventional assisted recovery capabilities authorized under subsection (a) may, in limited and special circumstances, include the provision of support to entities conducting activities relating to operational preparation of the environment, including foreign forces, irregular forces, groups, or individuals, in order to facilitate the recovery of Department of Defense or Coast Guard military or civilian personnel, or other individuals who, while conducting activities in support of United States military operations, become separated or isolated and cannot rejoin their units without the assistance authorized in subsection (a), or other individuals, as determined by the Secretary of Defense, with respect to already established non-conventional assisted recovery capabilities. Such support may include the provision of limited amounts of equipment, supplies, training, transportation, or other logistical support or funding.

(d) NOTICE TO CONGRESS ON USE OF AUTHORITY.—

(1) NOTICE.—The Secretary of Defense shall notify the congressional defense committees not later than 30 days prior to using the authority in subsection (a) to make funds available

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for support of non-conventional assisted recovery activities. Any such notice shall be in writing.

(2) **CONTENT.**—Each notification required under paragraph (1) shall include the following information:

(A) The amount of funds made available for support of non-conventional assisted recovery activities.

(B) A description of the non-conventional assisted recovery activities.

(C) An identification of the type of recipients to receive support for non-conventional assisted recovery activities, including foreign forces, irregular forces, groups, or individuals, as appropriate.

(e) **LIMITATION ON INTELLIGENCE ACTIVITIES.**—This section does not constitute authority to conduct or support a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).

(f) **LIMITATION ON FOREIGN ASSISTANCE ACTIVITIES.**—This section does not constitute authority—

(1) to build the capacity of foreign military forces or provide security and stabilization assistance, as described in sections 1206 and 1207 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3456 and 3458), respectively; and

(2) to provide assistance that is otherwise prohibited by any other provision in law, including any provision of law relating to the control of exports of defense articles, defense services, or defense technologies.

(g) **PERIOD OF AUTHORITY.**—The authority under this section is in effect during each of the fiscal years 2009 through 2023.

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