

112TH CONGRESS }
1st Session

COMMITTEE PRINT

{ No. 2C

**TITLE 10, UNITED STATES CODE
ARMED FORCES**

(As Amended Through January 7, 2011)

VOLUME III

Subtitle B, Army (§§ 3001–5000)

Subtitle C, Navy & Marine Corps (§§ 5001–8000)

Subtitle D, Air Force (§§ 8001–10000)

Subtitle E, Reserve Components (§§ 10001–end)

PREPARED FOR THE USE OF THE

COMMITTEE ON ARMED SERVICES

OF THE

HOUSE OF REPRESENTATIVES



JULY 2011

Printed for the use of the Committee on
Armed Services of the House of Representatives

TITLE 10, UNITED STATES CODE—ARMED FORCES
(As Amended Through January 7, 2011)
Vol. III—Subtitles B–E (§§ 3001–end)

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- Part I—Organization
- Part II—Personnel
- Part III—Training
- Part IV—Service, Supply, and Procurement

SUBTITLE C—NAVY AND MARINE CORPS

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- Part IV—Training & Ed. Assistance
- Part V—Service, Supply, and Procurement

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12319.	Ready Reserve: muster duty.
12320.	Reserve officers: grade in which ordered to active duty.
12321.	Reserve Officer Training Corps units: limitation on number of Reserves assigned.
12322.	Active duty for health care.

CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

Sec.	
12401.	Army and Air National Guard of the United States: status.
12402.	Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau.
12403.	Army and Air National Guard of the United States: members; status in which ordered into Federal service.

12404. Army and Air National Guard of the United States: mobilization; maintenance of organization.
12405. National Guard in Federal service: status.
12406. National Guard in Federal service: call.
12407. National Guard in Federal service: period of service; apportionment.
12408. National Guard in Federal service: physical examination.

CHAPTER 1213—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

- Sec.
12501. Reserve components: detail of members of regular and reserve components to assist.
12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail.
12503. Ready Reserve: funeral honors duty.
- [12505. Repealed.]

CHAPTER 1214—READY RESERVE MOBILIZATION INCOME INSURANCE

- Sec.
12521. Definitions.
12522. Establishment of insurance program.
12523. Risk insured.
12524. Enrollment and election of benefits.
12525. Benefit amounts.
12526. Premiums.
12527. Payment of premiums.
12528. Reserve Mobilization Income Insurance Fund.
12529. Board of Actuaries.
12530. Payment of benefits.
12531. Purchase of insurance.
12532. Termination for nonpayment of premiums; forfeiture.
12533. Termination of program.

CHAPTER 1215—MISCELLANEOUS PROHIBITIONS AND PENALTIES

- Sec.
- [12551. Repealed.]
12552. Funeral honors functions at funerals for veterans.

CHAPTER 1217—MISCELLANEOUS RIGHTS AND BENEFITS

- Sec.
12601. Compensation: Reserve on active duty accepting from any person.
12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard.
12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates.
12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training.
12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay.

CHAPTER 1219—STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

- Sec.
12641. Standards and procedures: Secretary to prescribe.
12642. Standards and qualifications: result of failure to comply with.
12643. Boards for appointment, promotion, and certain other purposes: composition.
12644. Members physically not qualified for active duty: discharge or transfer to retired status.
12645. Commissioned officers: retention until completion of required service.
12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service.
12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

CHAPTER 1221—SEPARATION

- Sec.
12681. Reserves: discharge authority.
12682. Reserves: discharge upon becoming ordained minister of religion.
12683. Reserve officers: limitation on involuntary separation.
12684. Reserves: separation for absence without authority or sentence to imprisonment.
12685. Reserves separated for cause: character of discharge.
12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty.
12687. Reserves under confinement by sentence of court-martial: separation after six months confinement.

CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

- Sec.
12731. Age and service requirements.
12731a. Temporary special retirement qualification authority.
12731b. Special rule for members with physical disabilities not incurred in line of duty.
12732. Entitlement to retired pay: computation of years of service.
12733. Computation of retired pay: computation of years of service.
12734. Time not creditable toward years of service.
12735. Inactive status list.
12736. Service credited for retired pay benefits not excluded for other benefits.
12737. Limitation on active duty.
12738. Limitations on revocation of retired pay.
12739. Computation of retired pay.
12740. Eligibility: denial upon certain punitive discharges or dismissals.
12741. Retirement for service in an active status performed in the Selected Reserve of the Ready Reserve after eligibility for regular retirement.

CHAPTER 1225—RETIRED GRADE

- Sec.
12771. Reserve officers: grade on transfer to Retired Reserve.
12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve.
12773. Limitation on accrual of increased pay or benefits.
12774. Retired lists.

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

CHAPTER 1401—APPLICABILITY AND RESERVE ACTIVE-STATUS LISTS

- Sec.
14001. Applicability of this part.
14002. Reserve active-status lists: requirement for each armed force.
14003. Reserve active-status lists: position of officers on the list.
14004. Reserve active-status lists: eligibility for Reserve promotion.
14005. Competitive categories.
14006. Determination of years in grade.

CHAPTER 1403—SELECTION BOARDS

- Sec.
14101. Convening of selection boards.
14102. Selection boards: appointment and composition.
14103. Oath of members.
14104. Nondisclosure of board proceedings.
14105. Notice of convening of promotion board.
14106. Communication with board by officers under consideration.
14107. Information furnished by the Secretary concerned to promotion boards.
14108. Recommendations by promotion boards.
14109. Reports of promotion boards: in general.
14110. Reports of promotion boards: review by Secretary.
14111. Reports of selection boards: transmittal to President.
14112. Dissemination of names of officers selected.

CHAPTER 1405—PROMOTIONS

Sec.	
14301.	Eligibility for consideration for promotion: general rules.
14302.	Promotion zones.
14303.	Eligibility for consideration for promotion: minimum years of service in grade.
14304.	Eligibility for consideration for promotion: maximum years of service in grade.
14305.	Establishment of promotion zones: mandatory consideration for promotion.
14306.	Establishment of promotion zones: Navy Reserve and Marine Corps Reserve running mate system.
14307.	Number of officers to be recommended for promotion.
14308.	Promotions: how made.
14309.	Acceptance of promotion; oath of office.
14310.	Removal of officers from a list of officers recommended for promotion.
14311.	Delay of promotion: involuntary.
14312.	Delay of promotion: voluntary.
14313.	Authority to vacate promotions to grade of brigadier general or rear admiral (lower half).
14314.	Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general.
14315.	Position vacancy promotions: Army and Air Force officers.
14316.	Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion.
14317.	Officers in transition to and from the active-status list or active-duty list.

CHAPTER 1407—FAILURE OF SELECTION FOR PROMOTION AND INVOLUNTARY SEPARATION

Sec.	
14501.	Failure of selection for promotion.
14502.	Special selection boards: correction of errors.
14503.	Discharge of officers with less than six years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade).
14504.	Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy.
14505.	Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy.
14506.	Effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps reserve and lieutenant commanders of the Navy.
14507.	Removal from the reserve active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy.
14508.	Removal from the reserve active-status list for years of service: reserve general and flag officers.
14509.	Separation at age 62: reserve officers in grades below brigadier general or rear admiral (lower half).
14510.	Separation at age 62: brigadier generals and rear admirals (lower half).
14511.	Separation at age 64: officers in grade of major general or rear admiral and above.
14512.	Separation at age 66: officers holding certain offices.
14513.	Failure of selection for promotion: transfer, retirement, or discharge.
14514.	Discharge or retirement for years of service or after selection for early removal.
14515.	Discharge or retirement for age.
14516.	Separation to be considered involuntary.
14517.	Entitlement of officers discharged under this chapter to separation pay.
14518.	Continuation of officers to complete disciplinary action.
14519.	Deferment of retirement or separation for medical reasons.

CHAPTER 1409—CONTINUATION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST AND SELECTIVE EARLY REMOVAL

- Sec.
14701. Selection of officers for continuation on the reserve active-status list.
14702. Retention on reserve active-status list of certain officers in the grade of major, lieutenant colonel, colonel, or brigadier general.
14703. Authority to retain chaplains and officers in medical specialties until specified age.
14704. Selective early removal from the reserve active-status list.
14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps.
14706. Computation of total years of service.

CHAPTER 1411—ADDITIONAL PROVISIONS RELATING TO INVOLUNTARY SEPARATION

- Sec.
14901. Separation of chaplains for loss of professional qualifications.
14902. Separation for substandard performance and for certain other reasons.
14903. Boards of inquiry.
14904. Rights and procedures.
14905. Officer considered for removal: retirement or discharge.
14906. Officers eligible to serve on boards.
14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave.

PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

CHAPTER 1601—TRAINING GENERALLY

[No present sections]

CHAPTER 1606—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

- Sec.
16131. Educational assistance program: establishment; amount.
16131a. Accelerated payment of educational assistance.
16132. Eligibility for educational assistance.
16132a. Authority to transfer unused education benefits to family members.
16133. Time limitation for use of entitlement.
16134. Termination of assistance.
16135. Failure to participate satisfactorily; penalties.
16136. Administration of program.
16137. Biennial report to Congress.

CHAPTER 1607—EDUCATIONAL ASSISTANCE FOR RESERVE COMPONENT MEMBERS SUPPORTING CONTINGENCY OPERATIONS AND CERTAIN OTHER OPERATIONS

- Sec.
16161. Purpose.
16162a. Accelerated payment of educational assistance.
16162. Educational assistance program.
16163. Eligibility for educational assistance.
16163a. Authority to transfer unused education benefits to family members.
16164. Time limitation for use of entitlement.
16165. Termination of assistance.
16166. Administration of program.

CHAPTER 1608—HEALTH PROFESSIONS STIPEND PROGRAM

- Sec.
16201. Financial assistance: health-care professionals in reserve components.
16202. Reserve service: required active duty for training.
16203. Penalties and limitations.
16204. Regulations.

CHAPTER 1609—EDUCATION LOAN REPAYMENT PROGRAMS

- Sec.
16301. Education loan repayment program: members of Selected Reserve.
16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages.
16303. Loan repayment program: chaplains serving in the Selected Reserve.

CHAPTER 1611—OTHER EDUCATIONAL ASSISTANCE PROGRAMS

- Sec.
16401. Marine Corps Platoon Leaders Class: college tuition assistance program.

PART V—SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 1801—ISSUE OF SERVICEABLE MATERIAL TO RESERVE COMPONENTS

[No present sections]

CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

- Sec.
18231. Purpose.
18232. Definitions.
18233. Acquisition.
18233a. Notice and wait requirements for certain projects.
18233b. Authority to carry out small projects with operation and maintenance funds.
18234. Location and use.
18235. Administration; other use permitted by Secretary.
18236. Contributions to States; other use permitted by States.
18237. Supervision of construction: compliance with State law.
18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units.
18239. Waiver of certain restrictions.
18240. Acquisition of facilities by exchange.

CHAPTER 1805—MISCELLANEOUS PROVISIONS

- Sec.
18501. Reserve components: personnel and logistic support by military departments.
18502. Reserve components: supplies, services, and facilities.
18505. Reserves traveling for inactive-duty training: space-required travel on military aircraft.
[18506. Repealed.]

The Reserve Officer Personnel Management Act (ROPMA) (title XVI of Public Law 103-337, enacted October 5, 1994) consolidated in a new subtitle E at the end of title 10, United States Code, the provisions of title 10 relating to Reserve Components.

The following two tables show (1) by previous title 10 section number, the disposition into subtitle E of those sections of title 10 that were consolidated into the new subtitle, and (2) by subtitle E section number, the source of each section of the new subtitle from the previous sections of title 10.

**Dispositions of Title 10 Sections Made by ROPMA
Reorganization**

Table #1 shows the disposition made by ROPMA of previous sections of title 10, United States Code, that were (A) repealed, (B) repealed and reenacted in subtitle E without substantive revision, or (C) transferred to subtitle E.

**ROPMA Cross-Reference Table #1
(DISPOSITIONS)**

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
[Subtitle A sections]		
CH. 2:		
115b	10541	TR
CH. 7:		
175	10301	RR
CH. 11:		
261(a)	10101	RR
261(b)	10213	RR
262	10102	RR
263	10103	RR
264(a)	10203	RR
264(b)	18501	RR
265	10211	RR
266	12643	TR
267	10141(a), (b)	RR
268(a)	10142	RR
268(b), (c)	10143	RR
269(a)-(d)	10145	RR
269(e)-(g)	10146	RR
270(a)	10147	RR
270(b), (c)	10148	RR

**ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)**

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
271	10149	RR
272	10150	RR
273(a)	10151	RR
273(b)	10152	RR
273(c)	10153	RR
274	10154	RR
275	10204	RR
276	10207	RR
277	10209	RR
278	10210	RR
279	10212	RR
280	10202	RR
281	10214	RR
CH. 31:		
510	12102	TR
511	12103	TR
512	12104	TR
517(b), (c) [part] ...	12012	RR
CH. 32:		
524	12011	TR
CH. 34:		
591	12201	TR
592	12202	TR
593	12203	TR
594	12204	TR
595	12208	TR
596	12205	TR
597	12241	TR
598	12242	TR
599	12243	TR
600	12209	TR
600a	12210	TR
CH. 36:		
644	123	RR
CH. 37:		
652	10205	RR
CH. 39:		
672	12301	TR
673	12302	TR
673a	12303	TR
673b	12304	TR
673c	12305	TR
674	12306	TR
675	12307	TR
676	12308	TR
677	12309	TR
678	12310	TR
679	12311	TR

**ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)**

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
680	12312	TR
681	12313	TR
682	12314	TR
683	12315	TR
684	12316	TR
685	12317	TR
686	12318	TR
687	12319	TR
689	12320	TR
690	12321	TR
CH. 41:		
715	12501	RR
CH. 51:		
1001	12641	TR
1002	12642	TR
1003	[none]	R
1004(a), (b)	10206	RR
1004(c)	12644	TR
1005	12645	TR
1006	12646	TR
1007	12647	TR
CH. 53:		
1033	12601	RR
CH. 59:		
1162(a)	12681	RR
1162(b)	12682	RR
1163(a)	12683	RR
1163(b)	12684	RR
1163(c)	12685	RR
1163(d)	12686	RR
CH. 67:		
1331	12731	TR
1331a	12731a	TR
1332	12732	TR
1333	12733	TR
1334	12734	TR
1335	12735	TR
1336	12736	TR
1337	12737	TR
1338	12738	TR
CH. 69:		
1374(a), (c)	[none]	R
1374(b), (f)	12771	RR
1374(e)	12772	RR
1374(d)	12773	RR
1376(a)	12774(a)	RR
CH. 71:		
1401	12739	[amended]

**ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)**

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
CH. 101:		
2001	10141(c)	RR
CH. 105:		
2128(a)–(e)	16201	TR
2129	16202	TR
2130(a), (b)	16203	TR
2130(c)	16204	RR
CH. 106:		
2131	16131	TR
2132	16132	TR
2133	16133	TR
2134	16134	TR
2135	16135	TR
2136	16136	TR
2137	16137	TR
CH. 109:		
2171	16301	[amended]
2172	16302	TR
CH. 133:		
2231	18231	TR
2232	18232	TR
2233	18233	TR
2233a	18233a	TR
2234	18234	TR
2235	18235	TR
2236	18236	TR
2237	18237	TR
2238	18238	TR
2239	18239	TR
CH. 152:		
2540	18502	RR
[Subtitle B sections]		
CH. 303:		
3021	10302	TR
CH. 307:		
3076	10104	RR
3077	10105	RR
3078	10106	RR
3079	10107	RR
3080	10215	RR
3082	10542	TR
CH. 331:		
3212	12009	RR
3217	12003	RR
3218	12004	RR
3219	12005	RR
3220	12007	RR

**ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)**

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
3221	12001	RR
3222	12002	RR
3223	12008	RR
3224	12001	RR
3225	12002	RR
CH. 333:		
3259	12105	RR
3260	12106	RR
3261	12107	RR
CH. 337:		
3351	12211	TR
3352	12213	TR
3353	12207	R
3354-70	CH. 1401-1411	R
3371	[none]	RR
3375	14314(a)	RR
3378	[none]	R
3380	14311(e)	RR
3382	[none]	R
3383	[none]	R
3384	14315	RR
3385	14308(f)	RR
3386	[none]	R
3388	[none]	R
3389	[none]	R
3390	[none]	R
3392	12215	RR
3393	[none]	R
3394	[none]	R
3395	[none]	R
3396	[none]	R
CH. 341:		
3495	12401	RR
3496	12402	RR
3497	12403	RR
3498	12404	RR
3499	12405	RR
3500	12406	RR
3501	12407	RR
3502	12408	RR
CH. 343:		
3541	10507	RR
3542	12502	RR
CH. 353:		
3686	12602	RR
CH. 361:		
3819(a)	[none]	R
3819(b)	14403(a)(2)	RR

**ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)**

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
3820(a), (b)	14907	RR
3820(c)	[none]	R
CH. 363:		
3843(a)	14510	RR
3843(b)	[none]	R
3844	14511	RR
3845	14512	RR
3846	[none]	R
3848	[none]	R
3850	[none]	R
3851	14508(a)	RR
3852	14508(b)	RR
3853	14706	RR
3854	[none]	R
3855	14703	RR
[Subtitle C sections]		
CH. 519:		
5251(a), (b)	10108	RR
5251(c)	10303	RR
5252(a), (b)	10109	RR
5252(c)	10304	RR
CH. 531:		
5413	12001	RR
5414	12003	RR
CH. 533:		
5454	12010	[nc]
5456	12001	RR
5457(a)	12004	RR
5457(b)–(d)	12005	RR
5458(a)	12004	RR
5458(b)–(d)	12005	RR
CH. 535:		
5506	[none]	R
CH. 541:		
5665	14306	R
CH. 549:		
5891–5912	CH. 1401–1411	R
CH. 555:		
6017	12774(b)	RR
6034	[none]	R
CH. 573:		
6389(a)–(c)	[amended].	
6389(d)	14706	RR
6389(e)	[none]	R
6389(f)(1), (2)	14508	RR
6389(f)(3)	14705	RR
6389(g)	[none]	R

**ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)**

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
6391(a)	[none]	R
6391(b)	14512(b)	RR
6391(c)	[none]	R
6392	14703	RR
6397	[none]	R
6403	[none]	R
6410	14705	RR
[Subtitle D sections]		
CH. 803:		
8021	10305	TR
CH. 807:		
8076	10110	RR
8077	10111	RR
8078	10112	RR
8079	10113	RR
8080	10215	RR
CH. 831:		
8212	12009	RR
8217	12003	RR
8218	12004	RR
8219	12005	RR
8221	12001	RR
8222	12002	RR
8223	12008	RR
8224	12001	RR
8225	12002	RR
CH. 833:		
8259	12105	RR
8260	12106	RR
8261	12107	RR
CH. 837:		
8351	12212	TR
8352	12214	TR
8353	12207	R
8354-72	[Ch. 1401-1407]	R
8373	14301(e), 14315	RR
8374	14308(f)	RR
8375	14314(a)	RR
8376	[none]	R
8377	[none]	R
8378	[none]	R
8379	[none]	R
8380	14311(e)	RR
8381	14314(b)	RR
8392	12215	RR
8393	[none]	R
8394	[none]	R

**ROPMA Cross-Reference Table #1—Continued
(DISPOSITIONS)**

PREVIOUS SECTION	SUBTITLE E SECTION	Transfer (TR), Repeal (R), or Repeal & Reenact (RR)
8395	[none]	R
8396	[none]	R
CH. 841:		
8495	12401	RR
8496	12402	RR
8497	12403	RR
8498	12404	RR
8499	12405	RR
8500	12406	RR
8501	12407	RR
8502	12408	RR
CH. 843:		
8541	10507	RR
8542	12502	RR
CH. 853:		
8686	12602	RR
CH. 861:		
8819	[none]	R
8820	14907	RR
CH. 863:		
8843	14510	RR
8844	14511	RR
8845	14512	RR
8846	[none]	R
8848	[none]	R
8850	[none]	R
8851	14508(a)	RR
8852	14508(b)	RR
8853	14706	RR
8855	14703	RR

**Source of Sections of Subtitle E Resulting From ROPMA
Reorganization**

Table #2 shows the source of each section of subtitle E of title 10, United States Code (added by ROPMA), that (A) was transferred to that subtitle from a previous provision of title 10, or (B) is a restatement (without substantive revision) in that subtitle of a previously existing provision of title 10.

**ROPMA Cross-Reference Table #2
(SOURCES)**

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
PART I—ORGANIZATION AND ADMINISTRATION		
CH. 1001:		
10001	[none]	
CH. 1003:		
10101	261(a)	RR
10102	262	RR
10103	263	RR
10104	3076	RR
10105	3077	RR
10106	3078	RR
10107	3079	RR
10108	5251(a), (b)	RR
10109	5252(a), (b)	RR
10110	8076	RR
10111	8077	RR
10112	8078	RR
10113	8079	RR
10114	[none]	
CH. 1005:		
10141(a), (b)	267	RR
10141(c)	2001	RR
10142	268(a)	RR
10143	268(b), (c)	RR
10144	[none]	
10145	269(a)–(d)	RR
10146	269(e)–(g)	RR
10147	270(a)	RR
10148	270(b), (c)	RR
10149	271	RR
10150	272	RR
10151	273(a)	RR
10152	273(b)	RR
10153	273(c)	RR
10154	274	RR
CH. 1007:		
10201	[none]	
10202	280	RR

**ROPMA Cross-Reference Table #2—Continued
(SOURCES)**

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
10203	264(a)	RR
10204	275	RR
10205	652	RR
10206	1004(a), (b)	RR
10207	276	RR
10208	552(e) of P.L. 98-525 ..	RR
10209	277	RR
10210	278	RR
10211	265	RR
10212	279	RR
10213	261(b)	RR
10214	281	RR
10215	3080, 8080	RR
CH. 1009:		
10301	175	RR
10302	3021	TR
10303	5251(c)	RR
10304	5252(c)	RR
10305	8021	TR
CH. 1011:		
10501	3040(a)	RR
10502	3040(b),(c)	RR
10503	[new]	
10504	[new]	
10505	[new]	
10506	[new]	
10507	3541, 8541	RR
10508	[new],	
CH. 1013:		
10541	115b	TR
10542	3082	TR
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CH. 1201:		
12001	3221, 3224, 5413, 5456, 8221, 8224.	RR
12002	3222, 3225, 8222, 8225	RR
12003	3217, 5414, 8217	RR
12004	3218, 5457(a), 5458(a), 8218.	RR
12005	3219, 5457(b)-(d), 5458(b)-(d), 8219.	RR
12006	[none]	
12007	3220	RR
12008	3223, 8223	RR
12009	3212, 8212	RR
12010	5454	
12011	524	TR
12012	517(b), (c) [part]	RR

**ROPMA Cross-Reference Table #2—Continued
(SOURCES)**

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
CH. 1203:		
12101	501	
12102	510	TR
12103	511	TR
12104	512	TR
12105	3259, 8259	RR
12106	3260, 8260	RR
12107	3261, 8261	RR
CH. 1205:		
12201	591	TR
12202	592	TR
12203	593	TR
12204	594	TR
12205	596	TR
12206	[none]	
12207	3353, 5600, 8353	RR
12208	595	TR
12209	600	TR
12210	600a	TR
12211	3351	TR
12212	8351	TR
12213	3352	TR
12214	8352	TR
12215	3392, 8392	RR
CH. 1207:		
12241	597	TR
11242	598	TR
11243	599	TR
CH. 1209:		
12301	672	TR
12302	673	TR
12303	673a	TR
12304	673b	TR
12305	673c	TR
12306	674	TR
12307	675	TR
12308	676	TR
12309	677	TR
12310	678	TR
12311	679	TR
12312	680	TR
12313	681	TR
12314	682	TR
12315	683	TR
12316	684	TR
12317	685	TR
12318	686	TR
12319	687	TR

**ROPMA Cross-Reference Table #2—Continued
(SOURCES)**

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
12320	689	TR
12321	690	TR
CH. 1211:		
12401	3495, 8495	RR
12402	3496, 8496	RR
12403	3497, 8497	RR
12404	3498, 8498	RR
12405	3499, 8499	RR
12406	3500, 8500	RR
12407	3501, 8501	RR
12408	3502, 8502	RR
CH. 1213:		
12501	715	RR
12502	3542, 8542	RR
CH. 1215:		
	[No present sections].	
CH. 1217:		
12601	1033	RR
12602	3686, 8686	RR
CH. 1219:		
12641	1001	TR
12642	1002	TR
12643	266	TR
12644	1004(c)	TR
12645	1005	TR
12646	1006	TR
12467	1007	TR
CH. 1221:		
12681	1162(a)	RR
12682	1162(b)	RR
12683	1163(a)	RR
12684	1163(b)	RR
12685	1163(c)	RR
12686	1163(d)	RR
CH. 1223:		
12731	1331	TR
12731a	1331a	TR
12732	1332	TR
12733	1333	TR
12734	1334	TR
12735	1335	TR
12736	1336	TR
12737	1337	TR
12738	1338	TR
12739	1401	Amended
CH. 1225:		
12771	1374(b), (f)	RR
12772	1374(e)	RR

**ROPMA Cross-Reference Table #2—Continued
(SOURCES)**

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
12773	1374(d)	RR
12774	1376(a), 6017	RR

**PART III—PROMOTION AND RETENTION OF OFFICERS ON THE
RESERVE ACTIVE-STATUS LIST**

[The provisions of part III (chapters 1401-1411) set out the revised
officer personnel policies of ROPMA]

CH. 1401:	
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CH. 1403:	
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CH. 1407:	
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SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
14504		
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CH. 1409:		
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14702		
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14704		
14705		
14706		
CH. 1411:		
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14902		
14903		
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14907		
PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS		
CH. 1601:		
	[No present sections].	
CH. 1606:		
16131	2131	TR
16132	2132	TR
16133	2133	TR
16134	2134	TR
16135	2135	TR
16136	2136	TR
16137	2137	TR
CH. 1608:		
16201	2128(a)–(e)	TR
16202	2129	TR
16203	2130(a), (b)	TR
16204	2130(c)	RR

**ROPMA Cross-Reference Table #2—Continued
(SOURCES)**

SUBTITLE E SECTION	SOURCE SECTION	Transfer (TR) or Repeal & Reenact (RR)
CH. 1609:		
16301	2171	Amended
16302	2172	TR
PART V—SERVICE, SUPPLY, AND PROCUREMENT		
CH. 1801:		
	[No present sections].	
CH. 1803:		
18231	2231	TR
18232	2232	TR
18233	2233	TR
18233a	2233a	TR
18234	2234	TR
18235	2235	TR
18236	2236	TR
18237	2237	TR
18238	2238	TR
18239	2239	TR
CH. 1805:		
18501	264(b)	RR
18502	2540	RR

Subtitle B—Army

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[360.	Repealed.]	
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CHAPTER 301—DEFINITIONS

Sec.
3001. Definitions.

§ 3001. Definitions

In this title, the term “Army” means the Army or Armies referred to in the Constitution of the United States, less that part established by law as the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 157; Pub. L. 100-26, Sec. 7(k)(8), Apr. 21, 1987, 101 Stat. 284.)

CHAPTER 303—DEPARTMENT OF THE ARMY

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3011.	Organization.
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[§ 3010. Renumbered 3011]

§ 3011. Organization

The Department of the Army is separately organized under the Secretary of the Army. It operates under the authority, direction, and control of the Secretary of Defense.

(Added Pub. L. 87-651, title II, Sec. 210(a), Sept. 7, 1962, 76 Stat. 524, Sec. 3010; renumbered Sec. 3011, Pub. L. 99-433, title V, Sec. 501(a)(2), Oct. 1, 1986, 100 Stat. 1034.)

§ 3012. Department of the Army: seal

The Secretary of the Army shall have a seal for the Department of the Army. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 157, Sec. 3011; renumbered Sec. 3012, Pub. L. 99-433, title V, Sec. 501(a)(2), Oct. 1, 1986, 100 Stat. 1034.)

§ 3013. Secretary of the Army

(a)(1) There is a Secretary of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Army.

(2) A person may not be appointed as Secretary of the Army within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Army is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Army, including the following functions:

- (1) Recruiting.
- (2) Organizing.
- (3) Supplying.
- (4) Equipping (including research and development).
- (5) Training.
- (6) Servicing.

- (7) Mobilizing.
 - (8) Demobilizing.
 - (9) Administering (including the morale and welfare of personnel).
 - (10) Maintaining.
 - (11) The construction, outfitting, and repair of military equipment.
 - (12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.
- (c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Army is also responsible to the Secretary of Defense for—
- (1) the functioning and efficiency of the Department of the Army;
 - (2) the formulation of policies and programs by the Department of the Army that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;
 - (3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Army;
 - (4) carrying out the functions of the Department of the Army so as to fulfill the current and future operational requirements of the unified and specified combatant commands;
 - (5) effective cooperation and coordination between the Department of the Army and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;
 - (6) the presentation and justification of the positions of the Department of the Army on the plans, programs, and policies of the Department of Defense; and
 - (7) the effective supervision and control of the intelligence activities of the Department of the Army.
- (d) The Secretary of the Army is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.
- (e) After first informing the Secretary of Defense, the Secretary of the Army may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.
- (f) The Secretary of the Army may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Army and to the Assistant Secretaries of the Army. Officers of the Army shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.
- (g) The Secretary of the Army may—
- (1) assign, detail, and prescribe the duties of members of the Army and civilian personnel of the Department of the Army;

(2) change the title of any officer or activity of the Department of the Army not prescribed by law; and

(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Added Pub. L. 99-433, title V, Sec. 501(a)(5), Oct. 1, 1986, 100 Stat. 1035; amended Pub. L. 99-661, div. A, title V, Sec. 534, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 108-136, div. A, title IX, Sec. 901, Nov. 24, 2003, 117 Stat. 1558.)

§ 3014. Office of the Secretary of the Army

(a) There is in the Department of the Army an Office of the Secretary of the Army. The function of the Office is to assist the Secretary of the Army in carrying out his responsibilities.

(b) The Office of the Secretary of the Army is composed of the following:

- (1) The Under Secretary of the Army.
- (2) The Assistant Secretaries of the Army.
- (3) The Administrative Assistant to the Secretary of the Army.

(4) The General Counsel of the Department of the Army.

(5) The Inspector General of the Army.

(6) The Chief of Legislative Liaison.

(7) The Army Reserve Forces Policy Committee.

(8) Such other offices and officials as may be established by law or as the Secretary of the Army may establish or designate.

(c)(1) The Office of the Secretary of the Army shall have sole responsibility within the Office of the Secretary and the Army Staff for the following functions:

- (A) Acquisition.
- (B) Auditing.
- (C) Comptroller (including financial management).
- (D) Information management.
- (E) Inspector General.
- (F) Legislative affairs.
- (G) Public affairs.

(2) The Secretary of the Army shall establish or designate a single office or other entity within the Office of the Secretary of the Army to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Army Staff to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall prescribe the relationship of each office or other entity established or designated under paragraph (2) to the Chief of Staff and to the Army Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Army of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Army (including the Army Staff) from providing advice or assistance to the Chief of Staff or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Army.

(5) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Army shall have sole responsibility within the Office of the Secretary and the Army Staff for the function of research and development.

(2) The Secretary of the Army may assign to the Army Staff responsibility for those aspects of the function of research and development that relate to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Army to conduct the function specified in paragraph (1).

(4) The Secretary shall prescribe the relationship of the office or other entity established or designated under paragraph (3) to the Chief of Staff of the Army and to the Army Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(e) The Secretary of the Army shall ensure that the Office of the Secretary of the Army and the Army Staff do not duplicate specific functions for which the Secretary has assigned responsibility to the other.

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Army assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 3,105.

(2) Not more than 1,865 officers of the Army on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff.

(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 67.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Army or on the Army Staff.

(Added Pub. L. 99-433, title V, Sec. 501(a)(5), Oct. 1, 1986, 100 Stat. 1036; amended Pub. L. 100-180, div. A, title XIII, Sec. 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100-456, div. A, title III, Sec. 325(a), Sept. 29, 1988, 102 Stat. 1955; Pub. L. 101-189, div. A, title VI, Sec. 652(a)(4), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 107-107, div. A, title X, Sec. 1048(a)(27), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107-314, div. A, title V, Sec. 504(c)(2), Dec. 2, 2002, 116 Stat. 2532.)

§ 3015. Under Secretary of the Army

(a) There is an Under Secretary of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Army may prescribe.

(Added Pub. L. 99-433, title V, Sec. 501(a)(5), Oct. 1, 1986, 100 Stat. 1037.)

§ 3016. Assistant Secretaries of the Army

(a) There are five Assistant Secretaries of the Army. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Army may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Army.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Civil Works. He shall have as his principal duty the overall supervision of the functions of the Department of the Army relating to programs for conservation and development of the national water resources, including flood control, navigation, shore protection, and related purposes.

(4) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Army, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Army and shall advise the Secretary of the Army on financial management.

(5)(A) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Acquisition, Technology, and Logistics. The principal duty of the Assistant Secretary shall be the overall supervision of acquisition, technology, and logistics matters of the Department of the Army.

(B) The Assistant Secretary shall have a Principal Military Deputy, who shall be a lieutenant general of the Army on active duty. The Principal Military Deputy shall be appointed from among officers who have significant experience in the areas of acquisition and program management. The position of Principal Military Deputy shall be designated as a critical acquisition position under section 1733 of this title.

(Added Pub. L. 99-433, title V, Sec. 501(a)(5), Oct. 1, 1986, 100 Stat. 1038; amended Pub. L. 100-456, div. A, title VII, Sec. 702(a)(1), Sept. 29, 1988, 102 Stat. 1992; Pub. L. 110-181, div. A, title IX, Sec. 908(a), Jan. 28, 2008, 122 Stat. 278.)

§ 3017. Secretary of the Army: successors to duties

If the Secretary of the Army dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347 of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Army.

(2) The Assistant Secretaries of the Army, in the order prescribed by the Secretary of the Army and approved by the Secretary of Defense.

(3) The General Counsel of the Department of the Army.

(4) The Chief of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 159; Pub. L. 89-718, Sec. 23, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 90-235, Sec. 4(a)(7), Jan. 2, 1968, 81 Stat. 759; Pub. L. 99-433, title V, Sec. 501(a)(6), Oct. 1, 1986, 100 Stat. 1038; Pub. L. 103-337, div. A, title IX, Sec. 902(a), Oct. 5, 1994, 108 Stat. 2823.)

§ 3018. Administrative Assistant

(a) There is an Administrative Assistant in the Department of the Army. The Administrative Assistant shall be appointed by the Secretary of the Army and shall perform duties that the Secretary considers appropriate.

(b) During a vacancy in the office of Secretary, the Administrative Assistant has charge and custody of all records, books, and papers of the Department of the Army.

(c) The Secretary may authorize the Administrative Assistant to sign, during the temporary absence of the Secretary, any paper requiring his signature. In such a case, the Administrative Assistant's signature has the same effect as the Secretary's signature.

(Aug. 10, 1956, ch. 1041, 70A Stat. 159, Sec. 3016; renumbered Sec. 3018, Pub. L. 99-433, title V, Sec. 501(a)(3), Oct. 1, 1986, 100 Stat. 1034.)

§ 3019. General Counsel

(a) There is a General Counsel of the Department of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Army may prescribe.

(Added Pub. L. 99-433, title V, Sec. 501(a)(7), Oct. 1, 1986, 100 Stat. 1038; amended Pub. L. 100-456, div. A, title VII, Sec. 703(a), Sept. 29, 1988, 102 Stat. 1996.)

§ 3020. Inspector General

(a) There is an Inspector General of the Army who shall be detailed to such position by the Secretary of the Army from the general officers of the Army. An officer may not be detailed to such position for a tour of duty of more than four years, except that the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest.

(b) When directed by the Secretary or the Chief of Staff, the Inspector General shall—

(1) inquire into and report upon the discipline, efficiency, and economy of the Army; and

(2) perform any other duties prescribed by the Secretary or the Chief of Staff.

(c) The Inspector General shall periodically propose programs of inspections to the Secretary of the Army and shall recommend additional inspections and investigations as may appear appropriate.

(d) The Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the

Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Army.

(e) The Inspector General shall have such deputies and assistants as the Secretary of the Army may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Army for a tour of duty of not more than four years, under a procedure prescribed by the Secretary.

(Added Pub. L. 99-433, title V, Sec. 501(a)(7), Oct. 1, 1986, 100 Stat. 1038.)

§ 3021. Army Reserve Forces Policy Committee

There is in the Office of the Secretary of the Army an Army Reserve Forces Policy Committee. The functions, membership, and organization of that committee are set forth in section 10302 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(b)(4)(A), Oct. 5, 1994, 108 Stat. 2982.)

§ 3022. Financial management

(a) The Secretary of the Army shall provide that the Assistant Secretary of the Army for Financial Management shall direct and manage financial management activities and operations of the Department of the Army, including ensuring that financial management systems of the Department of the Army comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Army and otherwise carry out, with respect to the Department of the Army, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Army; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Army, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Army (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Army proposes to conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Army for Financial Management shall transmit to the Secretary of the Army a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of Department of the Army financial management.

(Added Pub. L. 100-456, div. A, title VII, Sec. 702(a)(2), Sept. 29, 1988, 102 Stat. 1993; amended Pub. L. 103-337, div. A, title X, Sec. 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104-106, div. A, title XV, Sec. 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

§ 3023. Chief of Legislative Liaison

(a) There is a Chief of Legislative Liaison in the Department of the Army. An officer assigned to that position shall be an officer in the grade of major general.

(b) The Chief of Legislative Liaison shall perform legislative affairs functions as specified for the Office of the Secretary of the Army by section 3014(c)(1)(F) of this title.

(Added Pub. L. 107-314, div. A, title V, Sec. 504(c)(1)(A), Dec. 2, 2002, 116 Stat. 2531.)

§ 3024. Director of Small Business Programs

(a) DIRECTOR.—There is a Director of Small Business Programs in the Department of the Army. The Director is appointed by the Secretary of the Army.

(b) OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of the Army is the office that is established within the Department of the Army under section 15(k) of the Small Business Act (15 U.S.C. 644(k)). The Director of Small Business Programs is the head of such office.

(c) DUTIES AND POWERS.—(1) The Director of Small Business Programs shall, subject to paragraph (2), perform such duties regarding small business programs of the Department of the Army, and shall exercise such powers regarding those programs, as the Secretary of the Army may prescribe.

(2) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)), except for the designations of the Director and the Office, applies to the Director of Small Business Programs.

(Added Pub. L. 109-163, div. A, title IX, Sec. 904(c)(1), Jan. 6, 2006, 119 Stat. 3400.)

CHAPTER 305—THE ARMY STAFF

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§ 3031. The Army Staff: function; composition

(a) There is in the executive part of the Department of the Army an Army Staff. The function of the Army Staff is to assist the Secretary of the Army in carrying out his responsibilities.

(b) The Army Staff is composed of the following:

- (1) The Chief of Staff.
- (2) The Vice Chief of Staff.
- (3) The Deputy Chiefs of Staff.
- (4) The Assistant Chiefs of Staff.
- (5) The Chief of Engineers.
- (6) The Surgeon General of the Army.
- (7) The Judge Advocate General of the Army.
- (8) The Chief of Chaplains of the Army.
- (9) The Chief of Army Reserve.
- (10) Other members of the Army assigned or detailed to the Army Staff.
- (11) Civilian employees of the Department of the Army assigned or detailed to the Army Staff.

(c) Except as otherwise specifically prescribed by law, the Army Staff shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 93-547, Dec. 26, 1974, 88 Stat. 1742; Pub. L. 93-608, Sec. 1(6), Jan. 2, 1975, 88 Stat. 1968; Pub. L. 98-525, title V, Sec. 515, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-433, title V, Sec. 502(a), Oct. 1, 1986, 100 Stat. 1039.)

§ 3032. The Army Staff: general duties

(a) The Army Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Army and to the Chief of Staff of the Army.

(b) Under the authority, direction, and control of the Secretary of the Army, the Army Staff shall—

- (1) subject to subsections (c) and (d) of section 3014 of this title, prepare for such employment of the Army, and for such recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary

of the Army), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Army, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;

(2) investigate and report upon the efficiency of the Army and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Staff, coordinate the action of organizations of the Army; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 161; Pub. L. 85-599, Sec. 4(g), Aug. 6, 1958, 72 Stat. 517; Pub. L. 99-433, title V, Sec. 502(b), Oct. 1, 1986, 100 Stat. 1040.)

§ 3033. Chief of Staff

(a)(1) There is a Chief of Staff of the Army, appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Army. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Chief of Staff only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Staff, while so serving, has the grade of general without vacating his permanent grade.

(c) Except as otherwise prescribed by law and subject to section 3013(f) of this title, the Chief of Staff performs his duties under the authority, direction, and control of the Secretary of the Army and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Army, the Chief of Staff shall—

(1) preside over the Army Staff;

(2) transmit the plans and recommendations of the Army Staff to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Army Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Army as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Army.

(e)(1) The Chief of Staff shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Staff in the performance of his duties as a member of the Joint Chiefs of Staff, the Chief of Staff shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Army.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Staff shall keep the Secretary of the Army fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 162, Sec. 3034; Pub. L. 85-599, Sec. 4(a), Aug. 6, 1958, 72 Stat. 516; Pub. L. 87-651, title I, Sec. 114, Sept. 7, 1962, 76 Stat. 513; Pub. L. 90-22, title IV, Sec. 401, June 5, 1967, 81 Stat. 53; Pub. L. 96-513, title V, Sec. 502(2), Dec. 12, 1980, 94 Stat. 2909; Pub. L. 97-22, Sec. 10(b)(4), July 10, 1981, 95 Stat. 137; renumbered Sec. 3033 and amended Pub. L. 99-433, title V, Sec. 502(c), Oct. 1, 1986, 100 Stat. 1040; Pub. L. 100-456, div. A, title V, Sec. 519(a)(3), Sept. 29, 1988, 102 Stat. 1972.)

§ 3034. Vice Chief of Staff

(a) There is a Vice Chief of Staff of the Army, appointed by the President, by and with the advice and consent of the Senate, from the general officers of the Army.

(b) The Vice Chief of Staff of the Army, while so serving, has the grade of general without vacating his permanent grade.

(c) The Vice Chief of Staff has such authority and duties with respect to the Department of the Army as the Chief of Staff, with the approval of the Secretary of the Army, may delegate to or prescribe for him. Orders issued by the Vice Chief of Staff in performing such duties have the same effect as those issued by the Chief of Staff.

(d) When there is a vacancy in the office of Chief of Staff or during the absence or disability of the Chief of Staff—

(1) the Vice Chief of Staff shall perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Staff or the Vice Chief of Staff is absent or disabled, unless the President directs otherwise, the most senior officer of the Army in the Army Staff who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Staff until a successor to the Chief of Staff or the Vice Chief of Staff is appointed or until the absence or disability of the Chief of Staff or Vice Chief of Staff ceases, whichever occurs first.

(Aug. 10, 1956, ch. 1041, 70A Stat. 162, Sec. 3035; Pub. L. 85-599, Sec. 6(a), Aug. 6, 1958, 72 Stat. 519; renumbered Sec. 3034 and amended Pub. L. 99-433, title V, Sec. 502(d), Oct. 1, 1986, 100 Stat. 1041.)

§ 3035. Deputy Chiefs of Staff and Assistant Chiefs of Staff

(a) The Deputy Chiefs of Staff and the Assistant Chiefs of Staff shall be general officers detailed to those positions.

(b) The Secretary of the Army shall prescribe the number of Deputy Chiefs of Staff and Assistant Chiefs of Staff, for a total of not more than eight positions.

(Added Pub. L. 99-433, title V, Sec. 502(e), Oct. 1, 1986, 100 Stat. 1042; amended Pub. L. 110-181, div. A, title IX, Sec. 902(a), Jan. 28, 2008, 122 Stat. 272.)

§ 3036. Chiefs of branches: appointment; duties

(a) There are in the Army the following officers:

- (1) Chief of Engineers.
- (2) Surgeon General.
- (3) Judge Advocate General.
- (4) Chief of Chaplains.

(b) Each officer named in subsection (a), except the Judge Advocate General, shall be appointed by the President, by and with the advice and consent of the Senate, from officers above the grade of major who—

(1) have shown by extensive duty in the branch concerned, or by similar duty, that they are qualified for the appointment; and

(2) have been recommended by a board under subsection (e).

Each officer covered by the preceding sentence, except the Surgeon General, shall be appointed in the regular grade of major general. The Surgeon General may be appointed from officers in any corps of the Army Medical Department and, while so serving, has the grade of lieutenant general. The Judge Advocate General shall be appointed as prescribed in section 3037 of this title.

(c) An officer appointed under subsection (b) normally holds office for four years. However, the President may terminate or extend the appointment at any time.

(d)(1) Each officer named in subsection (a) shall perform duties prescribed by the Secretary of the Army and by law.

(2) Under the supervision of the Secretary, the Chief of Engineers may accept orders to provide services to another department, agency, or instrumentality of the United States or to a State or political subdivision of a State. The Chief of Engineers may provide any part of those services by contract. Services may be provided to a State, or to a political subdivision of a State, only if—

(A) the work to be undertaken on behalf of non-Federal interests involves Federal assistance and the head of the department or agency providing Federal assistance for the work does not object to the provision of services by the Chief of Engineers; and

(B) the services are provided on a reimbursable basis.

(3) In this subsection, the term “State” includes the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, territories and possessions of the United States, and Indian tribes.

(e) For each office to be filled under subsection (b), the Secretary shall select a board of five general officers, including the incumbent, if any, of the office, and at least two officers, if available,

in a grade above major general who have had extensive service in the branch concerned. The Secretary shall give the board a list of the officers to be considered and shall specify the number of officers, not less than three, to be recommended. The list shall include—

(1) the name of each officer of the Regular Army who is appointed in, or assigned to, that branch, and whose regular grade is colonel;

(2) the name of each officer whose regular grade is above colonel, who has shown by extensive duty in that branch, or by similar duty, that he is qualified for the appointment;

(3) to the extent that the Secretary determines advisable, the name of each officer of the Regular Army who is appointed in, or assigned to, that branch, and whose regular grade is lieutenant colonel, in the order in which their names appear on the applicable promotion lists; and

(4) to the extent that the Secretary considers advisable, the name of each regular or reserve officer on active duty in a grade above lieutenant colonel who has shown by extensive duty in that branch, or by similar duty, that he is qualified for the appointment.

From these officers, the board shall recommend by name the number prescribed by the Secretary, and the President may appoint any officer so recommended. If the President declines to appoint any of the recommended officers, or if the officer nominated cannot be appointed because of advice by the Senate, the Secretary shall convene a board to recommend additional officers. An officer who is recommended but not appointed shall be considered not to have been recommended. This does not affect his eligibility for selection and recommendation for the grade of brigadier general or major general under section 3306 or 3307 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 163; Pub. L. 89-288, Sec. 1, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 89-718, Sec. 24, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 97-295, Sec. 1(38), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 99-662, title IX, Sec. 922, Nov. 17, 1986, 100 Stat. 4194; Pub. L. 100-26, Sec. 7(a)(10), Apr. 21, 1987, 101 Stat. 278; Pub. L. 102-580, title II, Sec. 211, Oct. 31, 1992, 106 Stat. 4831; Pub. L. 104-106, div. A, title V, Sec. 506(a), Feb. 10, 1996, 110 Stat. 296; Pub. L. 104-201, div. A, title X, Sec. 1074(a)(18), Sept. 23, 1996, 110 Stat. 2660.)

§ 3037. Judge Advocate General, Deputy Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties

(a) The President, by and with the advice and consent of the Senate, shall appoint the Judge Advocate General, the Deputy Judge Advocate General, and general officers of the Judge Advocate General's Corps, from officers of the Judge Advocate General's Corps, who are recommended by the Secretary of the Army. The term of office of the Judge Advocate General and the Deputy Judge Advocate General is four years. The Judge Advocate General, while so serving, has the grade of lieutenant general. An officer appointed as Deputy Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

(b) The Judge Advocate General shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State, and who have had

at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General, in addition to other duties prescribed by law—

(1) is the legal adviser of the Secretary of the Army and of all officers and agencies of the Department of the Army;

(2) shall direct the members of the Judge Advocate General's Corps in the performance of their duties; and

(3) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions.

(d) Under regulations prescribed by the Secretary of Defense, the Secretary of the Army, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or Deputy Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(e) No officer or employee of the Department of Defense may interfere with—

(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Army or the Chief of Staff of the Army; or

(2) the ability of judge advocates of the Army assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 164; Pub. L. 85-861, Sec. 33(a)(18), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 103-337, div. A, title V, Sec. 504(a), Oct. 5, 1994, 108 Stat. 2750; Pub. L. 108-375, div. A, title V, Sec. 574(a), Oct. 28, 2004, 118 Stat. 1921; Pub. L. 109-163, div. A, title V, Sec. 508(a), title X, Sec. 1057(a)(2), Jan. 6, 2006, 119 Stat. 3229, 3440; Pub. L. 110-181, div. A, title V, Sec. 543(a)(1)-(3)(A), Jan. 28, 2008, 122 Stat. 114.)

§ 3038. Office of Army Reserve: appointment of Chief

(a) There is in the executive part of the Department of the Army an Office of the Army Reserve which is headed by a chief who is the adviser to the Chief of Staff on Army Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Army Reserve from general officers of the Army Reserve who have had at least 10 years of commissioned service in the Army Reserve.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Army Reserve unless the officer—

(A) is recommended by the Secretary of the Army; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Army Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2006, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Army Reserve if the Secretary of the Army requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and
(B) the waiver is necessary for the good of the service.
Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Army Reserve is appointed for a period of four years, but may be removed for cause at any time. An officer serving as Chief of Army Reserve may be reappointed for one additional four-year period.

(2) The Chief of Army Reserve, while so serving, holds the grade of lieutenant general.

(d) BUDGET.—The Chief of Army Reserve is the official within the executive part of the Department of the Army who, subject to the authority, direction, and control of the Secretary of the Army and the Chief of Staff, is responsible for justification and execution of the personnel, operation and maintenance, and construction budgets for the Army Reserve. As such, the Chief of Army Reserve is the director and functional manager of appropriations made for the Army Reserve in those areas.

(e) FULL TIME SUPPORT PROGRAM.—The Chief of Army Reserve manages, with respect to the Army Reserve, the personnel program of the Department of Defense known as the Full Time Support Program.

(f) ANNUAL REPORT.—(1) The Chief of Army Reserve shall submit to the Secretary of Defense, through the Secretary of the Army, an annual report on the state of the Army Reserve and the ability of the Army Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Staff of the Army and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Army Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 90-168, Sec. 2(16), Dec. 1, 1967, 81 Stat. 523, Sec. 3019; renumbered Sec. 3038 and amended Pub. L. 99-433, title V, Sec. 501(a)(4), 502(g)(1), Oct. 1, 1986, 100 Stat. 1034, 1042; Pub. L. 103-337, div. A, title XVI, Sec. 1672(c)(1), Oct. 5, 1994, 108 Stat. 3015; Pub. L. 104-201, div. A, title XII, Sec. 1212(a), Sept. 23, 1996, 110 Stat. 2691; Pub. L. 106-65, div. A, title V, Sec. 554(b), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106-398, Sec. 1[[div. A]], title V, Sec. 507(a), Oct. 30, 2000, 114 Stat. 1654, 1654A-102; Pub. L. 107-314, div. A, title V, Sec. 501(a), Dec. 2, 2002, 116 Stat. 2529; Pub. L. 108-375, div. A, title V, Sec. 536(a), Oct. 28, 2004, 118 Stat. 1901.)

§ 3039. Deputy and assistant chiefs of branches

(a) Each officer named in section 3036 of this title shall have, in addition to the assistants prescribed by subsections (b) and (c) and by section 3037 of this title, such deputies and assistants as the Secretary of the Army may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Army for a tour of duty of not more than four years, under a procedure prescribed by the Secretary similar to that prescribed in section 3036 of this title.

(b) There is an Assistant Surgeon General appointed from the officers of the Dental Corps, as prescribed in section 3036 of this title. The Assistant Surgeon General is Chief of the Dental Corps and is responsible for making recommendations to the Surgeon General and through the Surgeon General to the Chief of Staff on

all matters concerning dentistry and the dental health of the Army. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general.

(c) There are two assistants to the Chief of Engineers appointed as prescribed in section 3036 of this title. An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 165, Sec. 3040; Pub. L. 95-485, title VIII, Sec. 805(a), Oct. 20, 1978, 92 Stat. 1621; renumbered Sec. 3039 and amended Pub. L. 99-433, title V, Sec. 502(f)(2), Oct. 1, 1986, 100 Stat. 1042.)

[§ 3040. Repealed. Pub. L. 103-337, div. A, title IX, Sec. 904(b)(1), Oct. 5, 1994, 108 Stat. 2827]

CHAPTER 307—THE ARMY

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§ 3061. Regulations

The President may prescribe regulations for the government of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 165.)

§ 3062. Policy; composition; organized peace establishment

(a) It is the intent of Congress to provide an Army that is capable, in conjunction with the other armed forces, of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Commonwealths and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) In general, the Army, within the Department of the Army, includes land combat and service forces and such aviation and water transport as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land. It is responsible for the preparation of land forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Army to meet the needs of war.

(c) The Army consists of—

(1) the Regular Army, the Army National Guard of the United States, the Army National Guard while in the service of the United States and the Army Reserve; and

(2) all persons appointed or enlisted in, or conscripted into, the Army without component.

(d) The organized peace establishment of the Army consists of all—

(1) military organizations of the Army with their installations and supporting and auxiliary elements, including combat, training, administrative, and logistic elements; and

(2) members of the Army, including those not assigned to units;

necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 166; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(6), Jan. 6, 2006, 119 Stat. 3441.)

§ 3063. Basic branches

(a) The Secretary of the Army may assign members of the Army to its basic branches. The basic branches are—

(1) Infantry;

(2) Armor;

(3) Artillery;

(4) Corps of Engineers;

(5) Signal Corps;

(6) Adjutant General's Corps;

(7) Quartermaster Corps;

(8) Finance Corps;

(9) Ordnance Corps;

(10) Chemical Corps;

(11) Transportation Corps;

(12) Military Police Corps; and

(13) such other basic branches as the Secretary considers necessary.

(b) The Secretary may discontinue or consolidate basic branches of the Army for the duration of any war, or of any national emergency declared by Congress.

(c) The Secretary may not assign to a basic branch any commissioned officer appointed in a special branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 166.)

§ 3064. Special branches

(a) The special branches of the Army consist of commissioned officers of the Regular Army appointed therein, other members of the Army assigned thereto by the Secretary of the Army, and the sections prescribed in this chapter. The special branches are—

(1) each corps of the Army Medical Department;

(2) the Judge Advocate General's Corps;

(3) the Chaplains; and

(4) such other special branches as may be established by the Secretary of the Army under subsection (b).

(b) The Secretary of the Army may establish special branches for the Army and may assign commissioned officers (other than officers of the Regular Army) and members to such branches.

(c) Commissioned officers of the Regular Army may be appointed in a special branch, but the Secretary may not assign any officer of the Regular Army to a special branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 167; Pub. L. 90-329, June 4, 1968, 82 Stat. 170; Pub. L. 96-513, title II, Sec. 231, Dec. 12, 1980, 94 Stat. 2886; Pub. L. 97-22, Sec. 5(a), July 10, 1981, 95 Stat. 128.)

§ 3065. Assignment and detail: officers assigned or detailed to basic and special branches

(a) Commissioned officers of the Army may be detailed as general staff officers and as inspectors general.

(b) Members of the Army may be detailed to duty in particular fields specified by the Secretary, including intelligence, counter-intelligence, and military government.

(c) Members of the Army appointed in or assigned to one branch may be detailed for duty with any other branch.

(d) Members of the Army while not on active duty may be assigned to any basic or special branch, or to such other branches or groups, and to such organizations, as the Secretary considers appropriate.

(e) No officer of the Army may be assigned to perform technical, scientific, or other professional duties unless he is qualified to perform those duties and meets professional qualifications at least as strict as those in effect on June 28, 1950. If the duties to which an officer is assigned involve professional work that is the same as or is similar to that usually performed in civil life by a member of a learned profession, such as engineering, law, medicine, or theology, the officer must have the qualifications, by education, training, or experience, equal to or similar to those usually required of members of that profession, unless the exigencies of the situation prevent.

(Aug. 10, 1956, ch. 1041, 70A Stat. 167.)

[§ 3066. Repealed. Pub. L. 96-513, title II, Sec. 201, Dec. 12, 1980, 94 Stat. 2878]

§ 3067. Army Medical Department

There is an Army Medical Department in the Army. The Army Medical Department consists of—

- (1) the Surgeon General;
- (2) the Assistant Surgeons General;
- (3) the Medical Corps;
- (4) the Dental Corps;
- (5) the Veterinary Corps;
- (6) the Medical Service Corps;
- (7) the Army Nurse Corps; and
- (8) the Army Medical Specialist Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 168; Pub. L. 85-861, Sec. 1(60), Sept. 2, 1958, 72 Stat. 1462; Pub. L. 90-329, June 4, 1968, 82 Stat. 170.)

§ 3068. Medical Service Corps: organization; Chief and assistant chiefs

There is a Medical Service Corps in the Army. The Medical Service Corps consists of—

(1) the Chief of the Medical Service Corps, who shall be appointed by the Secretary of the Army from among the officers of the Medical Service Corps whose regular grade is above captain;

(2) the assistant chiefs of the Medical Service Corps, who shall be designated by the Surgeon General from officers in that Corps and who shall be his consultants on activities relating to their sections;

(3) commissioned officers of the Regular Army appointed therein;

(4) other members of the Army assigned thereto by the Secretary of the Army; and

(5) the following sections—

(A) the Administrative Health Services Section;

(B) the Medical Allied Sciences Section;

(C) the Preventive Medicine Sciences Section;

(D) the Clinical Health Sciences Section; and

(E) other sections considered necessary by the Secretary of the Army.

(Added Pub. L. 89-603, Sec. 1(1), Sept. 24, 1966, 80 Stat. 846; amended Pub. L. 97-295, Sec. 1(37), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 111-383, div. A, title V, Sec. 594, Jan. 7, 2011, 124 Stat. 4234.)

§ 3069. Army Nurse Corps: composition; Chief and assistant chief; appointment; grade

(a) The Army Nurse Corps consists of the Chief and assistant chief of that corps and other officers in grades prescribed by the Secretary of the Army.

(b) The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above lieutenant colonel and who are recommended by the Surgeon General. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed to the same position.

(c) The Surgeon General shall appoint the assistant chief from the officers of the Regular Army in that corps whose regular grade is above lieutenant colonel. The assistant chief serves during the pleasure of the Surgeon General, but not for more than four years and may not be reappointed to the same position.

(Aug. 10, 1956, ch. 1041, 70A Stat. 168; Aug. 21, 1957, Pub. L. 85-155, title I, Sec. 101(1), 71 Stat. 375; Sept. 7, 1962, Pub. L. 87-649, Sec. 6(b)(1), 76 Stat. 494; Sept. 30, 1966, Pub. L. 89-609, Sec. 1(1), 80 Stat. 852; Nov. 8, 1967, Pub. L. 90-130, Sec. 1(8)(A), 81 Stat. 374; Sept. 23, 1996, Pub. L. 104-201, div. A, title V, Sec. 502(a), 110 Stat. 2511; Pub. L. 107-314, div. A, title V, Sec. 504(a)(1), Dec. 2, 2002, 116 Stat. 2531.)

§ 3070. Army Medical Specialist Corps: organization; Chief and assistant chiefs

(a) The Army Medical Specialist Corps consists of the Chief and assistant chiefs of that corps, other officers in grades prescribed by the Secretary of the Army, and the following sections:

(1) The Dietitian Section.

(2) The Physical Therapist Section.

(3) The Occupational Therapist Section.

(4) The Physician Assistant Section.

(5) The Chiropractic Section.

(b) The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above captain and who are recommended by the Surgeon General. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed.

(c) The Surgeon General shall appoint up to five assistant chiefs from officers of the Regular Army in that corps whose regular grade is above captain. Each assistant chief is the chief of a section of that corps. An assistant chief serves during the pleasure of the Surgeon General, but not for more than four years, and may not be reappointed to the same position.

(d) Chiropractors who are qualified under regulations prescribed by the Secretary of the Army may be appointed as commissioned officers in the Chiropractic Section of the Army Medical Specialist Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 169; Pub. L. 85-155, title I, Sec. 101(2), Aug. 21, 1957, 71 Stat. 375; Pub. L. 87-649, Sec. 6(b)(2), (3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 89-609, Sec. 1(2), (3), Sept. 30, 1966, 80 Stat. 852; Pub. L. 90-130, Sec. 1(8)(B), Nov. 8, 1967, 81 Stat. 374; Pub. L. 102-190, div. A, title V, Sec. 551(a), Dec. 5, 1991, 105 Stat. 1370; Pub. L. 102-484, div. A, title V, Sec. 505(a), Oct. 23, 1992, 106 Stat. 2404.)

[§ 3071. Repealed. Pub. L. 95-485, title VIII, Sec. 820(b), Oct. 20, 1978, 92 Stat. 1627]

§ 3072. Judge Advocate General's Corps

There is a Judge Advocate General's Corps in the Army. The Judge Advocate General's Corps consists of—

- (1) the Judge Advocate General;
- (2) the Assistant Judge Advocate General;
- (3) three officers in the grade of brigadier general;
- (4) commissioned officers of the Regular Army appointed therein; and
- (5) other members of the Army assigned thereto by the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 169.)

§ 3073. Chaplains

There are chaplains in the Army. The Chaplains include—

- (1) the Chief of Chaplains;
- (2) commissioned officers of the Regular Army appointed as chaplains; and
- (3) other officers of the Army appointed as chaplains in the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170.)

§ 3074. Commands: territorial organization; engineer tactical units

(a) Except as otherwise prescribed by law or by the Secretary of Defense, the Army shall be divided into such commands, forces, and organizations as may be prescribed by the Secretary of the Army.

(b) For Army purposes, the United States, the Commonwealths and possessions, and other places in which the Army is stationed or is operating may be divided into such areas as may be directed

by the Secretary. Officers of the Army may be assigned to command Army activities, installations, and personnel in those areas. In the discharge of the Army's functions or other functions authorized by law, officers so assigned have the duties and powers prescribed by the Secretary.

(c) Such part of the Corps of Engineers as the President directs shall be formed into tactical units organized as he prescribes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170; Pub. L. 99-433, title V, Sec. 503, Oct. 1, 1986, 100 Stat. 1042; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(6), Jan. 6, 2006, 119 Stat. 3441.)

§ 3075. Regular Army: composition

(a) The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Army.

(b) The Regular Army includes—

- (1) the officers and enlisted members of the Regular Army;
- (2) the professors, director of admissions, and cadets of the United States Military Academy; and
- (3) the retired officers and enlisted members of the Regular Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170; Pub. L. 85-600, Sec. 1(1), Aug. 6, 1958, 72 Stat. 522; Pub. L. 95-551, Sec. 2, Oct. 30, 1978, 92 Stat. 2069; Pub. L. 97-295, Sec. 1(39), Oct. 12, 1982, 96 Stat. 1297.)

[§§ 3076 to 3080. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

§ 3081. Dental Corps: Chief, functions

(a) The Chief of the Dental Corps shall be an officer of that corps appointed as prescribed in section 3039 of this title.

(b) Under such regulations as the Secretary of the Army may prescribe, all dental functions of the Army shall be under the direction of the Chief of the Dental Corps. All matters relating to dentistry shall be referred to the Chief of the Dental Corps.

(c) The Chief of the Dental Corps shall—

- (1) establish professional standards and policies for dental practice;
- (2) initiate and recommend action pertaining to organization requirements and utilization of the Dental Corps and dental auxiliary strength, appointments, advancement, training assignments, and transfer of dental personnel; and
- (3) serve as the adviser to the Office of the Surgeon General on all matters relating directly to dentistry.

(d) Under such regulations as the Secretary of the Army may prescribe, dental and dental auxiliary personnel throughout the Army shall be organized into units commanded by a designated Dental Corps Officer. Such officer will be directly responsible to the commander of installations, organizations, and activities for all professional and technical matters and such administrative matters as may be prescribed by regulation.

(Added Pub. L. 95-485, title VIII, Sec. 805(b)(1), Oct. 20, 1978, 92 Stat. 1621; amended Pub. L. 99-433, title V, Sec. 502(f)(3), Oct. 1, 1986, 100 Stat. 1042.)

[§ 3082. Renumbered 10542]**§ 3083. Public Affairs Specialty**

There is a career field in the Army known as the Public Affairs Specialty. Members of the Army with the Public Affairs Specialty are—

- (1) the Chief of Public Affairs;
- (2) commissioned officers of the Army in the grade of major or above who are selected and specifically educated, trained, and experienced to perform as professional public affairs officers for the remainder of their careers; and
- (3) other members of the Army assigned to public affairs positions by the Secretary of the Army.

(Added Pub. L. 105–85, div. A, title V, Sec. 596(a), Nov. 18, 1997, 111 Stat. 1765.)

§ 3084. Chief of Veterinary Corps: grade

The Chief of the Veterinary Corps of the Army shall be appointed from among officers of the Veterinary Corps. The Chief of the Veterinary Corps serves in the grade of brigadier general. An officer appointed to that position who holds a lower grade shall be appointed in the grade of brigadier general.

(Added Pub. L. 107–314, div. A, title V, Sec. 504(b)(1), Dec. 2, 2002, 116 Stat. 2531; amended Pub. L. 108–136, div. A, title V, Sec. 502(a), Nov. 24, 2003, 117 Stat. 1456; Pub. L. 109–163, div. A, title X, Sec. 1056(c)(11), Jan. 6, 2006, 119 Stat. 3440.)

PART II—PERSONNEL

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CHAPTER 331—STRENGTH

Sec.

3201. Officers on active duty: minimum strength based on requirements.

[3202 to 3207, 3209. Repealed.]

3210. Regular Army: strength in grade; general officers.

[3211 to 3225, 3230. Repealed.]

§ 3201. Officers on active duty: minimum strength based on requirements

(a) The Secretary of the Army shall ensure that (beginning with fiscal year 1999) the strength at the end of each fiscal year of officers on active duty is sufficient to enable the Army to meet at least that percentage of the programmed manpower structure for officers for the active component of the Army that is provided for in the most recent Defense Planning Guidance issued by the Secretary of Defense.

(b) The number of officers on active duty shall be counted for purposes of this section in the same manner as applies under section 115(a)(1) of this title.

(c) In this section:

(1) The term “programmed manpower structure” means the aggregation of billets describing the full manpower requirements for units and organizations in the programmed force structure.

(2) The term “programmed force structure” means the set of units and organizations that exist in the current year and that is planned to exist in each future year under the then-current Future-Years Defense Program.

(Added Pub. L. 104–106, div. A, title V, Sec. 505(a)(1), Feb. 10, 1996, 110 Stat. 295.)

[§ 3202. Repealed. Pub. L. 101–510, div. A, title IV, Sec. 403(b)(1)(A), Nov. 5, 1990, 104 Stat. 1545]

[§§ 3203 to 3207. Repealed. Pub. L. 96–513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 3209. Repealed. Pub. L. 96–513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

§ 3210. Regular Army: strength in grade; general officers

(a) Subject to section 526 of this title, the authorized strength of the Regular Army in general officers on the active-duty list is 75/10,000 of the authorized strength of the Regular Army in commissioned officers on the active-duty list.

(b) The authorized strength of each of the following branches—

(1) each corps of the Army Medical Department; and

(2) the Chaplains;

in general officers on the active-duty list of the Regular Army is 5/1,000 of the authorized strength of the branch concerned in com-

missioned officers on the active-duty list of the Regular Army. Not more than one-half of the authorized strength in general officers in such a branch may be in a regular grade above brigadier general.

(c) When the application of the percentages and ratios specified in this section results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 174; Pub. L. 85-861, Sec. 1(66), Sept. 2, 1958, 72 Stat. 1463; Pub. L. 89-603, Sec. 1(2), Sept. 24, 1966, 80 Stat. 846; Pub. L. 90-329, June 4, 1968, 82 Stat. 170; Pub. L. 96-513, title V, Sec. 502(5), Dec. 12, 1980, 94 Stat. 2909; Pub. L. 97-22, Sec. 5(b), July 10, 1981, 95 Stat. 128; Pub. L. 102-190, div. A, title X, Sec. 1061(a)(20)(A), Dec. 5, 1991, 105 Stat. 1473.)

[§ 3211. Repealed. Pub. L. 96-513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 3212. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§§ 3213, 3214. Repealed. Pub. L. 96-513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 3215. Repealed. Pub. L. 95-485, title VIII, Sec. 820(c)(3), Oct. 20, 1978, 92 Stat. 1627]

[§ 3216. Repealed. Pub. L. 96-513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

[§§ 3217 to 3225. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§ 3230. Repealed. Pub. L. 96-513, title II, Sec. 232, Dec. 12, 1980, 94 Stat. 2886]

CHAPTER 333—ENLISTMENTS

- Sec.
3251. Definition.
3252. Bonus to encourage Army personnel to refer persons for enlistment in the Army.
[3253 to 3256. Repealed.]
3258. Regular Army: reenlistment after service as an officer.
[3259 to 3261. Repealed.]
3262. Army: percentage of high-school graduates.
[3263 to 3264. Repealed.]

§ 3251. Definition

In this chapter, the term “enlistment” means original enlistment or reenlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 177; Pub. L. 100–180, div. A, title XII, Sec. 1231(19)(A), Dec. 4, 1987, 101 Stat. 1161.)

§ 3252. Bonus to encourage Army personnel to refer persons for enlistment in the Army

(a) AUTHORITY TO PAY BONUS.—

(1) AUTHORITY.—The Secretary of the Army may pay a bonus under this section to an individual referred to in paragraph (2) who refers to an Army recruiter a person who has not previously served in an armed force and who, after such referral, enlists in the regular component of the Army or in the Army National Guard or Army Reserve.

(2) INDIVIDUALS ELIGIBLE FOR BONUS.—Subject to subsection (c), the following individuals are eligible for a referral bonus under this section:

(A) A member in the regular component of the Army.

(B) A member of the Army National Guard.

(C) A member of the Army Reserve.

(D) A member of the Army in a retired status, including a member under 60 years of age who, but for age, would be eligible for retired pay.

(E) A civilian employee of the Department of the Army.

(b) REFERRAL.—For purposes of this section, a referral for which a bonus may be paid under subsection (a) occurs—

(1) when the individual concerned contacts an Army recruiter on behalf of a person interested in enlisting in the Army; or

(2) when a person interested in enlisting in the Army contacts the Army recruiter and informs the recruiter of the role of the individual concerned in initially recruiting the person.

(c) CERTAIN REFERRALS INELIGIBLE.—

(1) REFERRAL OF IMMEDIATE FAMILY.—A member of the Army or civilian employee of the Department of the Army may

not be paid a bonus under subsection (a) for the referral of an immediate family member.

(2) MEMBERS IN RECRUITING ROLES.—A member of the Army or civilian employee of the Department of the Army serving in a recruiting or retention assignment, or assigned to other duties regarding which eligibility for a bonus under subsection (a) could (as determined by the Secretary) be perceived as creating a conflict of interest, may not be paid a bonus under subsection (a).

(3) JUNIOR RESERVE OFFICERS' TRAINING CORPS INSTRUCTORS.—A member of the Army detailed under subsection (c)(1) of section 2031 of this title to serve as an administrator or instructor in the Junior Reserve Officers' Training Corps program or a retired member of the Army employed as an administrator or instructor in the program under subsection (d) of such section may not be paid a bonus under subsection (a).

(d) AMOUNT OF BONUS.—The amount of the bonus payable for a referral under subsection (a) may not exceed \$2,000. The amount shall be payable as provided in subsection (e).

(e) PAYMENT.—A bonus payable for a referral of a person under subsection (a) shall be paid as follows:

(1) Not more than \$1,000 shall be paid upon the commencement of basic training by the person.

(2) Not more than \$1,000 shall be paid upon the completion of basic training and individual advanced training by the person.

(f) RELATION TO PROHIBITION ON BOUNTIES.—The referral bonus authorized by this section is not a bounty for purposes of section 514(a) of this title.

(g) COORDINATION WITH RECEIPT OF RETIRED PAY.—A bonus paid under this section to a member of the Army in a retired status is in addition to any compensation to which the member is entitled under this title, title 37 or 38, or any other provision of law.

(h) DURATION OF AUTHORITY.—A bonus may not be paid under subsection (a) with respect to any referral that occurs after December 31, 2011.

(Added Pub. L. 110–181, div. A, title VI, Sec. 671(a)(1), Jan. 28, 2008, 122 Stat. 181; amended Pub. L. 110–417, [div. A], title VI, Sec. 615(b), Oct. 14, 2008, 122 Stat. 4485; Pub. L. 111–84, div. A, title VI, Sec. 616(2), Oct. 28, 2009, 123 Stat. 2354; Pub. L. 111–383, div. A, title VI, Sec. 616(2), Jan. 7, 2011, 124 Stat. 4238.)

[§ 3253. Repealed. Pub. L. 109–163, div. A, title V, Sec. 542(b)(1), Jan. 6, 2006, 119 Stat. 3253]

[§§ 3254 to 3256. Repealed. Pub. L. 90–235, Sec. 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756]

§ 3258. Regular Army: reenlistment after service as an officer

(a) Any former enlisted member of the Regular Army who has served on active duty as an officer of the Army, or who was discharged as an enlisted member to accept an appointment as an officer of the Army, is entitled to be reenlisted in the Regular Army in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the ex-

istence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Army prescribes for exceptional circumstances) after termination of that service.

(b) A person is not entitled to be reenlisted under this section if—

(1) the person was discharged or released from active duty as an officer on the basis of a determination of—

(A) misconduct;

(B) moral or professional dereliction;

(C) duty performance below prescribed standards for the grade held; or

(D) retention being inconsistent with the interests of national security; or

(2) the person's former enlisted status and grade was based solely on the participation by that person in a precommissioning program that resulted in the commission held by that person during the active duty from which the person was released or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 179; Pub. L. 85-603, Sec. 1(1), Aug. 8, 1958, 72 Stat. 526; Pub. L. 102-484, div. A, title V, Sec. 520(a), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 110-181, div. A, title V, Sec. 506(a), Jan. 28, 2008, 122 Stat. 96.)

[§§ 3259 to 3261. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(b)(3), Oct. 5, 1994, 108 Stat. 2990]

§ 3262. Army: percentage of high-school graduates

Notwithstanding section 520(b) of this title, of the males with no prior military service who are enlisted or inducted into the Army during any fiscal year, the number who are not high-school graduates may not exceed, as of the end of the fiscal year, 35 percent of all such persons.

(Added Pub. L. 99-661, div. A, title IV, Sec. 402(a), Nov. 14, 1986, 100 Stat. 3859; amended Pub. L. 100-370, Sec. 1(a)(2), July 19, 1988, 102 Stat. 840.)

[§ 3263. Repealed. Pub. L. 90-235, Sec. 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756]

[§ 3264. Repealed. Pub. L. 107-314, div. A, title V, Sec. 531(c), Dec. 2, 2002, 116 Stat. 2544]

CHAPTER 335—APPOINTMENTS IN THE REGULAR ARMY

Sec.

3281. Commissioned officer grades.

3282. General officers: title of office.

3283. Commissioned officers: appointment without specification of branch; transfer between branches.

[3284 to 3309. Repealed.]

3310. Warrant officers: original appointment; qualifications.

[3311 to 3314. Repealed.]

§ 3281. Commissioned officer grades

The commissioned grades in the Regular Army are:

- (1) Major general.
- (2) Brigadier general.
- (3) Colonel.
- (4) Lieutenant colonel.
- (5) Major.
- (6) Captain.
- (7) First lieutenant.
- (8) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

§ 3282. General officers: title of office

An officer holding an appointment as a general officer in the Regular Army may be called a general officer in the Regular Army. In addition, a general officer of the Regular Army in the Medical Corps, Dental Corps, Veterinary Corps, Judge Advocate General's Corps, or the Chaplains, may be called a general officer of that branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

§ 3283. Commissioned officers: appointment without specification of branch; transfer between branches

(a) Appointments in commissioned grades in the Regular Army shall be made without specification of branch except in each of the special branches and as professors or director of admissions of the United States Military Academy.

(b) Commissioned officers appointed in the Regular Army without specification of branch shall be assigned, and may be transferred and reassigned, by the Secretary of the Army to branches other than the special branches, according to their professional qualifications and the needs of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181; Pub. L. 85-600, Sec. 1(4), Aug. 6, 1958, 72 Stat. 522; Pub. L. 95-485, title VIII, Sec. 820(d)(1), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 95-551, Sec. 2, Oct. 30, 1978, 92 Stat. 2069.)

[§§ 3284 to 3300. Repealed. Pub. L. 96-513, title II, Sec. 204, Dec. 12, 1980, 94 Stat. 2880]

[§§ 3302, 3303. Repealed. Pub. L. 96-513, title II, Sec. 204, Dec. 12, 1980, 94 Stat. 2880]

[§ 3304. Repealed. Pub. L. 90-130, Sec. 1(10)(C), Nov. 8, 1967, 81 Stat 375]

[§§ 3305 to 3309. Repealed. Pub. L. 96-513, title II, Sec. 204, Dec. 12, 1980, 94 Stat. 2880]

§ 3310. Warrant officers: original appointment; qualifications

Original appointments as warrant officers in the Regular Army shall be made from persons who have served on active duty at least one year in the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 192.)

[§ 3311. Repealed. Pub. L. 95-485, title VIII, Sec. 820(d)(4), Oct. 20, 1978, 92 Stat. 1627]

[§§ 3312 to 3314. Repealed. Pub. L. 96-513, title II, Sec. 204, Dec. 12, 1980, 94 Stat. 2880]

[CHAPTER 337—REPEALED]

[§ 3351. Renumbered 12211]

[§ 3352. Renumbered 12213]

[§§ 3353, 3354. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(a)(1), Oct. 5, 1994, 108 Stat. 2963]

[§ 3355. Repealed. Pub. L. 88-647, title III, Sec. 301(5), Oct. 13, 1964, 78 Stat. 1071]

[§§ 3357 to 3390. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(a)(1), Oct. 5, 1994, 108 Stat. 2963]

[§ 3391. Repealed. Pub. L. 90-130, Sec. 1(11)(F), Nov. 8, 1967, 81 Stat. 376]

[§§ 3392 to 3396. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(a)(1), Oct. 5, 1994, 108 Stat. 2963]

CHAPTER 339—TEMPORARY APPOINTMENTS

Sec.

[3441 to 3445. Repealed.]

3446. Retention on active duty.

[3447 to 3452. Repealed.]

[§§ 3441, 3442. Repealed. Pub. L. 96-513, title II, Sec. 207, Dec. 12, 1980, 94 Stat. 2884]

[§ 3443. Repealed. Pub. L. 85-861, Sec. 36B(6), Sept. 2, 1958, 72 Stat. 1570]

[§§ 3444, 3445. Repealed. Pub. L. 96-513, title II, Sec. 207, Dec. 12, 1980, 94 Stat. 2884]

§ 3446. Retention on active duty

The President may retain on active duty a disabled officer until—

(1) the physical condition of the officer is such that the officer will not be further benefited by retention in a military hospital or a medical facility of the Department of Veterans Affairs; or

(2) the officer is processed for physical disability benefits provided by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 196; Pub. L. 85-861, Sec. 1(81)(C), Sept. 2, 1958, 72 Stat. 1480; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(10), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 102-25, title VII, Sec. 701(j)(6), Apr. 6, 1991, 105 Stat. 116.)

[§§ 3447 to 3449. Repealed. Pub. L. 96-513, title II, Sec. 207, 208, Dec. 12, 1980, 94 Stat. 2884]

[§ 3450. Repealed. Pub. L. 90-235, Sec. 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

[§§ 3451, 3452. Repealed. Pub. L. 96-513, title II, Sec. 207, Dec. 12, 1980, 94 Stat. 2884]

CHAPTER 341—ACTIVE DUTY

Sec.
3491. Non-regular officers: status.
[3492 to 3502. Repealed.]
3503. Retired commissioned officers: status.
[3504. Repealed.]

§ 3491. Non-regular officers: status

A commissioned officer of the Army, other than of the Regular Army, who is on active duty in any commissioned grade has the rights and privileges, and is entitled to the benefits, provided by law for a commissioned officer of the Army Reserve—

- (1) whose reserve grade is that in which the officer not of the Regular Army is serving;
- (2) who has the same length of service as the officer not of the Regular Army; and
- (3) who is on active duty in his reserve grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 198.)

[§§ 3492, 3493. Repealed. Pub. L. 90-235, Sec. 1(a)(2), (b), Jan. 2, 1968, 81 Stat. 753]

[§ 3494. Repealed. Pub. L. 96-513, title II, Sec. 209(a), Dec. 12, 1980, 94 Stat. 2884]

[§§ 3495 to 3502. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(f)(2), Oct. 5, 1994, 108 Stat. 2994]

§ 3503. Retired commissioned officers: status

A retired commissioned officer of the Army who is on active duty is considered, for all purposes except promotion, to be an officer of the branch or organization to which he is assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 200.)

[§ 3504. Repealed. Pub. L. 96-513, title II, Sec. 210, Dec. 12, 1980, 94 Stat. 2884]

CHAPTER 343—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

- Sec.
[3531, 3532. Repealed.]
3533. Corps of Engineers: assignment or transfer of officers to duties involving civil functions.
3534. Corps of Engineers: detail of officers to assist Mayor of District of Columbia.
- [3535. Repealed.]
3536. Leader of Army Band: appointment.
- [3538 to 3542. Repealed.]
3543. Aides: detail; number authorized.
- [3544 to 3546. Repealed.]
3547. Duties: chaplains; assistance required of commanding officers.
3548. Duties: warrant officers; limitations.

[§§ 3531, 3532. Repealed. Pub. L. 96-513, title II, Sec. 233(a), 234, Dec. 12, 1980, 94 Stat. 2887]

§ 3533. Corps of Engineers: assignment or transfer of officers to duties involving civil functions

Officers of the Corps of Engineers may be assigned or transferred to and from duties involving the civil functions of the Corps of Engineers only with the approval of the Secretary of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 201; Pub. L. 89-718, Sec. 26, Nov. 2, 1966, 80 Stat. 1119.)

§ 3534. Corps of Engineers: detail of officers to assist Mayor of District of Columbia

The President may detail not more than three officers assigned to the Corps of Engineers to assist the Mayor of the District of Columbia in discharging his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 201; Pub. L. 90-623, Sec. 2(5), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96-513, title V, Sec. 512(5)(A), (B), Dec. 12, 1980, 94 Stat. 2929.)

[§ 3535. Repealed. Pub. L. 96-513, title II, Sec. 235, Dec. 12, 1980, 94 Stat. 2887]

§ 3536. Leader of Army Band: appointment

(a) The Secretary of the Army may appoint the leader of the Army band from the warrant officers of the Regular Army. The leader serves during the pleasure of the Secretary and may be returned to his former status in the discretion of the Secretary.

[(b) Repealed. Pub. L. 87-649, Sec. 14c(5), Sept. 7, 1962, 76 Stat. 501.]

(c) Upon retirement, the leader of the Army band has the grade of warrant officer, with the retired pay to which he would have been entitled had he not been appointed leader.

(Aug. 10, 1956, ch. 1041, 70A Stat. 201; Pub. L. 87-649, Sec. 14c(5), Sept. 7, 1962, 76 Stat. 501.)

[§§ 3538, 3539. Repealed. Pub. L. 90-235, Sec. 4(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

[§ 3540. Repealed. Pub. L. 88-647, title III, Sec. 301(7), Oct. 13, 1964, 78 Stat. 1071]

[§§ 3541, 3542. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1661(c)(2), 1662(g)(2), Oct. 5, 1994, 108 Stat. 2982, 2996]

§ 3543. Aides: detail; number authorized

(a) Each major general of the Army is entitled to three aides selected by him from commissioned officers of the Army in any grade below major.

(b) Each brigadier general of the Army is entitled to two aides selected by him from commissioned officers of the Army in any grade below captain.

(Aug. 10, 1956, ch. 1041, 70A Stat. 202.)

[§§ 3544, 3545. Repealed. Pub. L. 90-235, Sec. 4(a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

[§ 3546. Repealed. Pub. L. 85-861, Sec. 36B(7), Sept. 2, 1958, 72 Stat. 1570]

§ 3547. Duties: chaplains; assistance required of commanding officers

(a) Each chaplain shall, when practicable, hold appropriate religious services at least once on each Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Army who die while in that command.

(b) Each commanding officer shall furnish facilities, including necessary transportation, to any chaplain assigned to his command, to assist the chaplain in performing his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 203.)

§ 3548. Duties: warrant officers; limitations

Under regulations prescribed by the President, a warrant officer may be assigned to perform duties that necessarily include those normally performed by a commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 203.)

CHAPTER 345—RANK AND COMMAND

- Sec.
[3571. Repealed.]
3572. Rank: commissioned officers serving under temporary appointments.
[3573, 3574. Repealed.]
3575. Rank: warrant officers.
[3576, 3578. Repealed.]
3579. Command: commissioned officers of Army Medical Department.
[3580. Repealed.]
3581. Command: chaplains.
[3582. Repealed.]
3583. Requirement of exemplary conduct.

[§ 3571. Repealed. Pub. L. 96-513, title II, Sec. 211, Dec. 12, 1980, 94 Stat. 2885]

§ 3572. Rank: commissioned officers serving under temporary appointments

The President may, in accordance with the needs of the Army, adjust dates of rank of commissioned officers of the Army serving in temporary grades.

(Aug. 10, 1956, ch. 1041, 70A Stat. 204.)

[§§ 3573, 3574. Repealed. Pub. L. 96-513, title II, Sec. 211, Dec. 12, 1980, 94 Stat. 2885]

§ 3575. Rank: warrant officers

Warrant officers rank next below second lieutenants and rank among themselves within each warrant officer grade under regulations to be prescribed by the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 205.)

[§ 3576. Repealed. Pub. L. 90-235, Sec. 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

[§ 3578. Repealed. Pub. L. 90-235, Sec. 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

§ 3579. Command: commissioned officers of Army Medical Department

(a) Except as provided in subsection (b), a commissioned officer of the Army Medical Department is not entitled to exercise command because of his rank, except within the Army Medical Department.

(b) An officer of the Medical Service Corps may exercise command of troops that are not part of the Army Medical Department whenever authorized by the Secretary of the Army. The Secretary of the Army may delegate such authority to appropriate commanders as the interest of the Army may require.

(Aug. 10, 1956, ch. 1041, 70A Stat. 206; Pub. L. 85-861, Sec. 1(60), (87), Sept. 2, 1958, 72 Stat. 1462, 1482; Pub. L. 87-142, Aug. 17, 1961, 75 Stat. 364; Pub. L. 90-329, June 4, 1968, 82 Stat.

170; Pub. L. 96–513, title II, Sec. 212(a), Dec. 12, 1980, 94 Stat. 2885; Pub. L. 98–525, title XIV, Sec. 1405(46), Oct. 19, 1984, 98 Stat. 2625.)

[§ 3580. Repealed. Pub. L. 95–485, title VIII, Sec. 820(f), Oct. 20, 1978, 92 Stat. 1627]

§ 3581. Command: chaplains

A chaplain has rank without command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 206.)

[§ 3582. Repealed. Pub. L. 96–513, title II, Sec. 211, Dec. 12, 1980, 94 Stat. 2885]

§ 3583. Requirement of exemplary conduct

All commanding officers and others in authority in the Army are required—

(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;

(2) to be vigilant in inspecting the conduct of all persons who are placed under their command;

(3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and

(4) to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Added Pub. L. 105–85, div. A, title V, Sec. 507(a)(1), Nov. 18, 1997, 111 Stat. 1726.)

[CHAPTER 347—REPEALED]

[§§ 3611, 3612. Repealed. Pub. L. 90-235, Sec. 8(2), Jan. 2, 1968, 81 Stat. 764]

CHAPTER 349—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.

[3631 to 3638. Repealed.]

3639. Enlisted members: officers not to use as servants.

[§ 3631. Repealed. Pub. L. 90-235, Sec. 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§§ 3632, 3633. Repealed. Pub. L. 87-649, Sec. 14c(6), (7), Sept. 7, 1962, 76 Stat. 501]

[§ 3634. Repealed. Pub. L. 110-181, div. A, title V, Sec. 590(b)(1), Jan. 28, 2008, 122 Stat. 138]

[§ 3635. Repealed. Pub. L. 90-235, Sec. 6(a)(7), Jan. 2, 1968, 81 Stat. 762]

[§ 3636. Repealed. Pub. L. 87-649, Sec. 14c(8), Sept. 7, 1962, 76 Stat. 501]

[§ 3637. Repealed. Pub. L. 90-235, Sec. 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§ 3638. Repealed. Pub. L. 85-861, Sec. 36B(8), Sept. 2, 1958, 72 Stat. 1570]

§ 3639. Enlisted members: officers not to use as servants

No officer of the Army may use an enlisted member of the Army as a servant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 208.)

[CHAPTER 351—REPEALED]

[[§§ 3661 to 3663. Repealed. Pub. L. 90-377, Sec. 6(1), July 5, 1968, 82 Stat. 288]

CHAPTER 353—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.

3681. Presentation of United States flag upon retirement.

[3682 to 3683. Repealed.]

3684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.

[3685 to 3690. Repealed.]

3691. Flying officer rating: qualifications.

[3692, 3693. Repealed.]

§ 3681. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Army from active duty for retirement, the Secretary of the Army shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 105-261, div. A, title VI, Sec. 644(a)(1), Oct. 17, 1998, 112 Stat. 2048; amended Pub. L. 106-65, div. A, title VI, Sec. 652(e), Oct. 5, 1999, 113 Stat. 666.)

[§ 3682. Repealed. Pub. L. 90-235, Sec. 6(a)(2), Jan. 2, 1968, 81 Stat. 761]

[§ 3683. Repealed. Pub. L. 99-145, title XIII, Sec. 1301(b)(1)(A), Nov. 8, 1985, 99 Stat. 735]

§ 3684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service

An enlisted member of the Regular Army is entitled to count active service as an officer in the Army as enlisted service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 211.)

[§ 3685. Repealed. Pub. L. 90-235, Sec. 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

[§ 3686. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

[§ 3687. Repealed. Pub. L. 99-661, div. A, title VI, Sec. 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

[§ 3688. Repealed. Pub. L. 85-861, Sec. 36B(10), Sept. 2, 1958, 72 Stat. 1570]

[§ 3689. Repealed. Pub. L. 87-649, Sec. 14c(9), Sept. 7, 1962, 76 Stat. 501]

[§ 3690. Repealed. Pub. L. 90-235, Sec. 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

§ 3691. Flying officer rating: qualifications

Only officers of the Army in the following categories may be rated as flying officers:

(1) Officers who have aeronautical ratings as pilots of service types of aircraft or as aircraft observers.

(2) Flight surgeons.

(3) Officers undergoing flight training.

(4) Officers who are members of combat crews, other than pilots of service types of aircraft, aircraft observers, and observers.

(5) In time of war, officers who have aeronautical ratings as observers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 213.)

[§ 3692. Repealed. Pub. L. 92-168, Sec. 1(1), Nov. 24, 1971, 85 Stat. 489]

[§ 3693. Repealed. Pub. L. 90-235, Sec. 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

CHAPTER 355—HOSPITALIZATION

Sec.

[3721, 3722. Repealed.]

3723. When Secretary may require.

[§§ 3721, 3722. Repealed. Pub. L. 99-661, div. A, title VI, Sec. 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

§ 3723. When Secretary may require

The Secretary of the Army may order the hospitalization, medical and surgical treatment, and domiciliary care, for as long as necessary, of any member of the Army on active duty, and may incur obligations with respect thereto, whether or not the member incurred an injury, illness, or disease in line of duty, except in the case of a member treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; Pub. L. 99-661, div. A, title VI, Sec. 604(f)(1)(D), Nov. 14, 1986, 100 Stat. 3878; Pub. L. 100-180, div. A, title XII, Sec. 1231(16), Dec. 4, 1987, 101 Stat. 1161.)

CHAPTER 357—DECORATIONS AND AWARDS

Sec.	
3741.	Medal of honor: award.
3742.	Distinguished-service cross: award.
3743.	Distinguished-service medal: award.
3744.	Medal of honor; distinguished-service cross; distinguished-service medal: limitations on award.
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3747.	Medal of honor; distinguished-service cross; distinguished-service medal; silver star: replacement.
3748.	Medal of honor; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.
3749.	Distinguished flying cross: award; limitations.
3750.	Soldier's Medal: award; limitations.
3751.	Service medals: issue; replacement; availability of appropriations.
3752.	Medals: posthumous award and presentation.
3753.	Civil War battle streamers.
3754.	Medal of honor: duplicate medal.
3755.	Medal of honor: presentation of Medal of Honor Flag.
3756.	Korea Defense Service Medal.

§ 3741. Medal of honor: award

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who while a member of the Army, distinguished himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

- (1) while engaged in an action against an enemy of the United States;
- (2) while engaged in military operations involving conflict with an opposing foreign force; or
- (3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; July 25, 1963, Pub. L. 88-77, Sec. 1(1), 77 Stat. 93.)

§ 3742. Distinguished-service cross: award

The President may award a distinguished-service cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Army, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

- (1) while engaged in an action against an enemy of the United States;
- (2) while engaged in military operations involving conflict with an opposing foreign force; or
- (3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; Pub. L. 88-77, Sec. 1(2), July 25, 1963, 77 Stat. 93.)

§ 3743. Distinguished-service medal: award

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to a person who, while serving in any capacity with the Army, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

§ 3744. Medal of honor; distinguished-service cross; distinguished-service medal: limitations on award

(a) No more than one medal of honor, distinguished-service cross, or distinguished-service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded to a person unless—

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Army that the person is entitled to the award.

(c) No medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Army determines that—

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on; a medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; Pub. L. 86-582, Sec. 1(1), July 5, 1960, 74 Stat. 320.)

§ 3745. Medal of honor; distinguished-service cross; distinguished-service medal: delegation of power to award

The President may delegate his authority to award the medal of honor, distinguished-service cross, and distinguished-service medal, to a commanding general of a separate army or higher unit in the field.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

§ 3746. Silver star: award

The President may award a silver star of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Army, is cited for gallantry in action that does not warrant a medal of honor or distinguished-service cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; July 25, 1963, Pub. L. 88–77, Sec. 1(3), 77 Stat. 93.)

§ 3747. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: replacement

Any medal of honor, distinguished-service cross, distinguished-service medal, or silver star, or any bar, ribbon, rosette, or other device issued for wear with or in place of any of them, that is stolen, lost, or destroyed, or becomes unfit for use, without fault or neglect of the person to whom it was awarded, shall be replaced without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; Pub. L. 107–107, div. A, title V, Sec. 553(a)(2), Dec. 28, 2001, 115 Stat. 1116.)

§ 3748. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations

The Secretary of the Army may spend, from any appropriation for contingent expenses of the Department of the Army, amounts necessary to provide medals and devices under sections 3741, 3742, 3743, 3744, 3746, 3747, and 3752 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

§ 3749. Distinguished flying cross: award; limitations

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Army, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

(c) No distinguished flying cross, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

§ 3750. Soldier's Medal: award; limitations

(a)(1) The President may award a decoration called the “Soldier's Medal”, of appropriate design with accompanying ribbon, to any person who, while serving in any capacity with the Army, dis-

tinguishes himself by heroism not involving actual conflict with an enemy.

(2) The authority in paragraph (1) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(b) Not more than one Soldier's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217; Pub. L. 105-85, div. A, title V, Sec. 574(a), Nov. 18, 1997, 111 Stat. 1758.)

§ 3751. Service medals: issue; replacement; availability of appropriations

(a) The Secretary of the Army shall procure, and issue without charge to any person entitled thereto, any service medal authorized for members of the Army after May 12, 1928, and any ribbon, clasp, star, or similar device prescribed as a part of that medal.

(b) Under such regulations as the Secretary may prescribe, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use, without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Army or the Air Force, the medal or device may be replaced without charge.

(c) The Secretary may spend, from any appropriation for the support of the Army, amounts necessary to provide medals and devices under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

§ 3752. Medals: posthumous award and presentation

(a) If a person dies before the award of a medal of honor, distinguished-service cross, distinguished-service medal, distinguished flying cross, or device in place thereof, to which he is entitled, the award may be made and the medal or device presented to his representative, as designated by the President.

(b) If a person dies before an authorized service medal or device prescribed as a part thereof is presented to him under section 3751 of this title, it shall be presented to his family.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217; Pub. L. 85-861, Sec. 33(a)(23), Sept. 2, 1958, 72 Stat. 1565.)

§ 3753. Civil War battle streamers

If, under regulations prescribed by the Secretary of the Army, it is determined that a regiment or other unit of the Army is entitled to that honor, the regiment or unit may carry any appropriate Civil War battle streamer with its colors or standards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 218.)

§ 3754. Medal of honor: duplicate medal

A person awarded a medal of honor shall, upon written application of that person, be issued, without charge, one duplicate medal of honor with ribbons and appurtenances. Such duplicate medal of honor shall be marked, in such manner as the Secretary

of the Army may determine, as a duplicate or for display purposes only.

(Added Pub. L. 107–107, div. A, title V, Sec. 553(a)(1)(A), Dec. 28, 2001, 115 Stat. 1115.)

§ 3755. Medal of honor: presentation of Medal of Honor Flag

The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 3741 of this title. Presentation of the flag shall be made at the same time as the presentation of the medal under section 3741 or 3752(a) of this title. In the case of a posthumous presentation of the medal, the flag shall be presented to the person to whom the medal is presented.

(Added Pub. L. 107–248, title VIII, Sec. 8143(c)(1)(A), Oct. 23, 2002, 116 Stat. 1570; amended Pub. L. 107–314, div. A, title X, Sec. 1062(a)(16), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 109–364, div. A, title V, Sec. 555(a), Oct. 17, 2006, 120 Stat. 2217.)

§ 3756. Korea Defense Service Medal

(a) The Secretary of the Army shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Army served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

(b) In this section, the term “KDSM eligibility period” means the period beginning on July 28, 1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

(c) The Secretary of the Army shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.

(Added Pub. L. 107–314, div. A, title V, Sec. 543(b)(1), Dec. 2, 2002, 116 Stat. 2549, Sec. 3755; renumbered Sec. 3756, Pub. L. 108–375, div. A, title X, Sec. 1084(d)(28), Oct. 28, 2004, 118 Stat. 2063.)

[CHAPTER 359—REPEALED]

[§§ 3781 to 3787. Repealed. Pub. L. 96-513, title II, Sec. 213, Dec. 12, 1980, 94 Stat. 2885]

[CHAPTER 360—REPEALED]

[§§ 3791 to 3797. Repealed. Pub. L. 96-513, title II, Sec. 213, Dec. 12, 1980, 94 Stat. 2885]

[CHAPTER 361—REPEALED]

[§§ 3811 to 3813. Repealed. Pub. L. 90-235, Sec. 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

[§ 3814. Repealed. Pub. L. 96-513, title II, Sec. 214, Dec. 12, 1980, 94 Stat. 2885]

[§ 3814a. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(a)(2), Oct. 5, 1994, 108 Stat. 2963]

[§§ 3815, 3816. Repealed. Pub. L. 90-235, Sec. 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

[§ 3818. Repealed. Pub. L. 96-513, title II, Sec. 236, Dec. 12, 1980, 94 Stat. 2887]

[§ 3819. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(a)(2), Oct. 5, 1994, 108 Stat. 2963]

[CHAPTER 363—REPEALED]

- [§§ 3841, 3842. Repealed. Pub. L. 86-559, Sec. 1(22), June 30, 1960, 74 Stat. 271]**
- [§ 3843. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(a)(3), Oct. 5, 1994, 108 Stat. 2963]**
- [§ 3847. Repealed. Pub. L. 90-130, Sec. 1(12)(A), Nov. 8, 1967, 81 Stat. 376]**
- [§ 3848. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(a)(3), Oct. 5, 1994, 108 Stat. 2963]**
- [§ 3849. Repealed. Pub. L. 86-559, Sec. 1(27), June 30, 1960, 74 Stat. 272]**
- [§ 3850. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(a)(3), Oct. 5, 1994, 108 Stat. 2963]**

[CHAPTER 365—REPEALED]

- [§§ 3881, 3882. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]**
- [§§ 3883 to 3886. Repealed. Pub. L. 96-513, title II, Sec. 216, Dec. 12, 1980, 94 Stat. 2886]**
- [§ 3887. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]**
- [§§ 3888, 3889. Repealed. Pub. L. 96-513, title II, Sec. 216, Dec. 12, 1980, 94 Stat. 2886]**

CHAPTER 367—RETIREMENT FOR LENGTH OF SERVICE

Sec.

3911. Twenty years or more: regular or reserve commissioned officers.
[3912, 3913. Repealed.]
3914. Twenty to thirty years: enlisted members.
[3915, 3916. Repealed.]
3917. Thirty years or more: regular enlisted members.
3918. Thirty years or more: regular commissioned officers.
[3919. Repealed.]
3920. More than thirty years: permanent professors and the Director of Admissions of the United States Military Academy.
3921. Mandatory retirement: Superintendent of the United States Military Academy; waiver authority.
[3922, 3923. Repealed.]
3924. Forty years or more: Army officers.
3925. Computation of years of service: voluntary retirement; enlisted members.
3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
[3927, 3928. Repealed.]
3929. Computation of retired pay: law applicable.

§ 3911. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b)(1) The Secretary of Defense may authorize the Secretary of the Army, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than eight years.

(2) The period specified in this paragraph is the period beginning on the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013.

(Aug. 10, 1956, ch. 1041, 70A Stat. 224; Pub. L. 101-510, div. A, title V, Sec. 523(a), Nov. 5, 1990, 104 Stat. 1562; Pub. L. 103-160, div. A, title V, Sec. 561(c), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105-261, div. A, title V, Sec. 561(e), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 571(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134; Pub. L. 109-163, div. A, title V, Sec. 502(a), Jan. 6, 2006, 119 Stat. 3225; Pub. L. 109-364, div. A, title X, Sec. 1071(a)(27), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 111-383, div. A, title V, Sec. 506(a), Jan. 7, 2011, 124 Stat. 4210.)

[§ 3912. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]

[§ 3913. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 3914. Twenty to thirty years: enlisted members

Under regulations to be prescribed by the Secretary of the Army, an enlisted member of the Army who has at least 20, but less than 30, years of service computed under section 3925 of this title may, upon his request, be retired.

(Aug. 10, 1956, ch. 1041, 70A Stat. 225; Pub. L. 85-861, Sec. 33(a)(25), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 96-343, Sec. 9(a)(1), Sept. 8, 1980, 94 Stat. 1128; Pub. L. 103-337, div. A, title V, Sec. 515(a), Oct. 5, 1994, 108 Stat. 2753.)

[§ 3915. Repealed. Pub. L. 90-130, Sec. 1(13), Nov. 8, 1967, 81 Stat. 376]**[§ 3916. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]****§ 3917. Thirty years or more: regular enlisted members**

A regular enlisted member of the Army who has at least 30 years of service computed under section 3925 of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

§ 3918. Thirty years or more: regular commissioned officers

A regular commissioned officer of the Army who has at least 30 years of service computed under section 3926 of this title may be retired upon his request, in the discretion of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

[§ 3919. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]**§ 3920. More than thirty years: permanent professors and the Director of Admissions of the United States Military Academy**

(a) The Secretary of the Army may retire an officer specified in subsection (b) who has more than 30 years of service as a commissioned officer.

(b) Subsection (a) applies in the case of the following officers:

(1) Any permanent professor of the United States Military Academy.

(2) The Director of Admissions of the United States Military Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226; Pub. L. 104-106, div. A, title V, Sec. 509(a)(1), Feb. 10, 1996, 110 Stat. 297.)

§ 3921. Mandatory retirement: Superintendent of the United States Military Academy; waiver authority

(a) MANDATORY RETIREMENT.—Upon the termination of the detail of an officer to the position of Superintendent of the United States Military Academy, the Secretary of the Army shall retire the officer under any provision of this chapter under which that officer is eligible to retire.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the

House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer not retire, and a written notification of the intent of the President to nominate the officer for reassignment.

(Added Pub. L. 106-65, div. A, title V, Sec. 532(a)(1)(A), Oct. 5, 1999, 113 Stat. 602; amended Pub. L. 108-375, div. A, title V, Sec. 541(a)(1), (c)(1)(A), Oct. 28, 2004, 118 Stat. 1902, 1903.)

[§§ 3922, 3923. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 3924. Forty years or more: Army officers

(a) Except as provided in section 1186 of this title, a commissioned officer of the Army who has at least 40 years of service computed under section 3926 of this title shall be retired upon his request.

(b) Any warrant officer of the Army who has at least 40 years of service computed under section 3926(a) of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 227; Pub. L. 96-513, title V, Sec. 502(17), Dec. 12, 1980, 94 Stat. 2910.)

§ 3925. Computation of years of service: voluntary retirement; enlisted members

(a) For the purpose of determining whether an enlisted member of the Army may be retired under section 3914 or 3917 of this title, his years of service are computed by adding all active service in the armed forces and service computed under section 3683 of this title.

(b) Time required to be made up under section 972(a) of this title may not be counted in determining years of service under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 228; Pub. L. 85-861, Sec. 1(97), Sept. 2, 1958, 72 Stat. 1488; Pub. L. 96-343, Sec. 9(a)(2), Sept. 8, 1980, 94 Stat. 1128; Pub. L. 99-348, title II, Sec. 202(c), July 1, 1986, 100 Stat. 695; Pub. L. 103-337, div. A, title VI, Sec. 635(a)(1), Oct. 5, 1994, 108 Stat. 2788; Pub. L. 104-106, div. A, title V, Sec. 561(d)(2)(A), Feb. 10, 1996, 110 Stat. 322.)

§ 3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers

(a) For the purpose of determining whether an officer of the Army may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding—

(1) all active service performed as a member of the Army or the Air Force;

(2) all service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement;

(3) all service computed under section 3683 of this title; and

(4) if an officer of the Regular Army, all active service performed as an officer of the Philippine Constabulary.

(b) For the purpose of determining whether a commissioned officer of the Regular Army in the Medical Corps may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding to his service under subsection (a) all service performed as a contract surgeon, acting assistant surgeon, or

contract physician, under a contract to serve full time and to take and change station as ordered.

(c) For the purpose of determining whether a commissioned officer of the Regular Army in the Dental Corps may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding to his service under subsection (a) all service as a contract dental surgeon or acting dental surgeon.

(d) For the purpose of determining whether a commissioned officer of the Army Nurse Corps or the Army Medical Specialist Corps may be retired under section 3911 of this title, all service computed under section 3683 of this title shall be treated as if it were service as a commissioned officer.

(e) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 228; Pub. L. 86-197, Sec. 1(5), Aug. 25, 1959, 73 Stat. 426; Pub. L. 104-106, div. A, title V, Sec. 561(d)(2)(B), Feb. 10, 1996, 110 Stat. 322.)

[§ 3927. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]

[§ 3928. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]

§ 3929. Computation of retired pay: law applicable

A member of the Army retired under this chapter is entitled to retired pay computed under chapter 371 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230.)

CHAPTER 369—RETIRED GRADE

- Sec.
3961. General rule.
3962. Higher grade for service in special positions.
3963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.
3964. Higher grade after 30 years of service: warrant officers and enlisted members.
3965. Restoration to former grade: retired warrant officers and enlisted members.
3966. Retired lists.

§ 3961. General rule

(a) The retired grade of a regular commissioned officer of the Army who retires other than for physical disability, and the retired grade of a reserve commissioned officer of the Army who retires other than for physical disability, is determined under section 1370 of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Army not covered by subsection (a) who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230; Pub. L. 96-513, title V, Sec. 502(18), Dec. 12, 1980, 94 Stat. 2910; Pub. L. 103-337, div. A, title XVI, Sec. 1672(c)(2), Oct. 5, 1994, 108 Stat. 3015; Pub. L. 106-398, Sec. 1 [div. A], title V, Sec. 506(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-102.)

§ 3962. Higher grade for service in special positions

Upon retirement, any permanent professor of the United States Military Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230; Pub. L. 85-861, Sec. 1(99), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 89-288, Sec. 2, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 96-343, Sec. 13(a)(1)-(3), Sept. 8, 1980, 94 Stat. 1131; Pub. L. 96-513, title V, Sec. 502(19), Dec. 12, 1980, 94 Stat. 2910; Pub. L. 97-22, Sec. 10(a)(2)(B), July 10, 1981, 95 Stat. 136; Pub. L. 104-106, div. A, title V, Sec. 502(c), (d)(1), Feb. 10, 1996, 110 Stat. 293.)

§ 3963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A Reserve enlisted member of the Army described in subsection (b) who is retired under section 3914 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National Guard, in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Army.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of retirement is serving on active duty (or, in the case of a member of the National Guard, on full-time National Guard duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or full-time National Guard duty); and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Army.

(c) This section applies with respect to Reserve enlisted members who are retired under section 3914 of this title after September 30, 1996.

(Added Pub. L. 104–201, div. A, title V, Sec. 532(a)(1), Sept. 23, 1996, 110 Stat. 2518.)

§ 3964. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each retired member of the Army covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Army.

(b) This section applies to—

- (1) warrant officers of the Army;
- (2) enlisted members of the Regular Army; and
- (3) reserve enlisted members of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Pub. L. 85–861, Sec. 1(100), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 98–525, title V, Sec. 533(c), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 100–180, div. A, title V, Sec. 512(a), Dec. 4, 1987, 101 Stat. 1089.)

§ 3965. Restoration to former grade: retired warrant officers and enlisted members

Each retired warrant officer or enlisted member of the Army who has been advanced on the retired list to a higher commissioned grade under section 3964 of this title, and who applies to the Secretary of the Army within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Pub. L. 100–180, div. A, title V, Sec. 512(d)(1), Dec. 4, 1987, 101 Stat. 1090; Pub. L. 100–456, div. A, title XII, Sec. 1233(i)(1)(A), Sept. 29, 1988, 102 Stat. 2058.)

§ 3966. Retired lists

(a) The Secretary of the Army shall maintain a retired list containing the name of each retired commissioned officer of the Regular Army.

(b) The Secretary shall maintain a retired list containing the name of—

- (1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Army, other than of the Regular Army; and

(2) each retired warrant officer or enlisted member of the Army who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Army.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Pub. L. 85-861, Sec. 1(101), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 100-180, div. A, title V, Sec. 512(d)(1), Dec. 4, 1987, 101 Stat. 1090.)

CHAPTER 371—COMPUTATION OF RETIRED PAY

Sec.	
3991.	Computation of retired pay.
3992.	Recomputation of retired pay to reflect advancement on retired list.

§ 3991. Computation of retired pay

(a) COMPUTATION.—

(1) FORMULA.—The monthly retired pay of a member entitled to such pay under this subtitle is computed by multiplying—

(A) the member's retired pay base (as computed under section 1406(c) or 1407 of this title), by

(B) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(2) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—If a member who is retired under section 3914 of this title has been credited by the Secretary of the Army with extraordinary heroism in the line of duty, the member's retired pay shall be increased by 10 percent of the amount determined under paragraph (1) (but to not more than 75 percent of the retired pay base upon which the computation of such retired pay is based). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(b) GENERAL RULES.—

(1) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula in subsection (a) or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him.

(2) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (a), if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(c) SPECIAL RULE FOR RETIRED RESERVE ENLISTED MEMBERS COVERED BY SECTION 3963.—In the case of a Reserve enlisted member retired under section 3914 of this title whose retired grade is determined under section 3963 of this title and who first became a member of a uniformed service before September 8, 1980, the retired pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the member's retired grade (determined based upon the rates of basic pay applicable on the date of the member's retirement), and that amount shall be used for the purposes of subsection (a)(1)(A) rather than the amount computed under section 1406(c) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 232; Pub. L. 85-155, title I, Sec. 101(23), Aug. 21, 1957, 71 Stat. 380; Pub. L. 85-422, Sec. 6(1), (8), 11(a)(5), May 20, 1958, 72 Stat. 129, 131; Pub. L. 85-861, Sec. 1(101A), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 88-132, Sec. 5(h)(2), Oct. 2, 1963,

77 Stat. 214; Pub. L. 90-207, Sec. 3(2), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96-342, title VIII, Sec. 813(c), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96-513, title V, Sec. 502(21), (22), 512(10), Dec. 12, 1980, 94 Stat. 2910, 2929; Pub. L. 98-94, title IX, Sec. 922(a)(7), 923(a)(1), (2)(F), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99-348, title II, Sec. 202(a), July 1, 1986, 100 Stat. 694; Pub. L. 103-337, div. A, title VI, Sec. 635(a)(2), Oct. 5, 1994, 108 Stat. 2788; Pub. L. 104-201, div. A, title V, Sec. 532(d)(1), Sept. 23, 1996, 110 Stat. 2520.)

§ 3992. Recomputation of retired pay to reflect advancement on retired list

(a) ENTITLEMENT TO RECOMPUTATION.—An enlisted member or warrant officer of the Army who is advanced on the retired list under section 3964 of this title is entitled to recompute his retired pay in accordance with this section.

(b) FORMULA.—The monthly retired pay of a member entitled to recompute that pay under this section is computed by multiplying—

(1) the member's retired pay base (as computed under section 1406(c) or 1407 of this title), by

(2) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(c) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (b), if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 233; Pub. L. 96-342, title VIII, Sec. 813(c), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96-513, title V, Sec. 512(10), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 97-295, Sec. 1(40), Oct. 12, 1982, 96 Stat. 1297; Pub. L. 98-94, title IX, Sec. 922(a)(8), 923(a)(1), (2)(G), Sept. 24, 1983, 97 Stat. 641-643; Pub. L. 99-348, title II, Sec. 202(b), July 1, 1986, 100 Stat. 695; Pub. L. 103-337, div. A, title VI, Sec. 635(a)(3), Oct. 5, 1994, 108 Stat. 2788.)

CHAPTER 373—CIVILIAN EMPLOYEES

- Sec.
4021. Army War College and United States Army Command and General Staff College: civilian faculty members.
[4022, 4023. Repealed.]
4024. Expert accountant for Inspector General.
4025. Production of supplies and munitions: hours and pay of laborers and mechanics.
4027. Civilian special agents of the Criminal Investigation Command: authority to execute warrants and make arrests.

§ 4021. Army War College and United States Army Command and General Staff College: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College after the end of the 90-day period beginning on November 29, 1989.

(2) This section shall not apply with respect to professors, instructors, and lecturers employed at the Army War College or the United States Army Command and General Staff College if the duration of the principal course of instruction offered at the college involved is less than 10 months.

(Added Pub. L. 101–189, div. A, title XI, Sec. 1124(b)(1), Nov. 29, 1989, 103 Stat. 1558; amended Pub. L. 107–107, title X, Sec. 1048(c)(12), Dec. 28, 2001, 115 Stat. 1226.)

[§ 4022. Repealed. Pub. L. 98–94, title IX, Sec. 932(b)(1), Sept. 24, 1983, 97 Stat. 650]

[§ 4023. Repealed. Pub. L. 87–651, title I, Sec. 116(1), Sept. 7, 1962, 76 Stat. 513]

§ 4024. Expert accountant for Inspector General

The Secretary of the Army shall appoint an expert accountant to perform duties under the Inspector General.

(Aug. 10, 1956, ch. 1041, 70A Stat. 234.)

§ 4025. Production of supplies and munitions: hours and pay of laborers and mechanics

During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Army producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Army these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 234.)

§ 4027. Civilian special agents of the Criminal Investigation Command: authority to execute warrants and make arrests

(a) **AUTHORITY.**—The Secretary of the Army may authorize any Department of the Army civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) **AGENTS TO HAVE AUTHORITY.**—Subsection (a) applies to any employee of the Department of the Army who is a special agent of the Army Criminal Investigation Command (or a successor to that command) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Army.

(c) **GUIDELINES FOR EXERCISE OF AUTHORITY.**—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Army and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Army, the Secretary of Defense, or the Attorney General.

(Added Pub. L. 106–398, Sec. 1 [(div. A), title V, Sec. 554(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–126.)

CHAPTER 375—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.
4061. Fatality reviews.

§ 4061. Fatality reviews

(a) REVIEW OF FATALITIES.—The Secretary of the Army shall conduct a multidisciplinary, impartial review (referred to as a “fatality review”) in the case of each fatality known or suspected to have resulted from domestic violence or child abuse against any of the following:

- (1) A member of the Army on active duty.
- (2) A current or former dependent of a member of the Army on active duty.
- (3) A current or former intimate partner who has a child in common or has shared a common domicile with a member of the Army on active duty.

(b) MATTERS TO BE INCLUDED.—The report of a fatality review under subsection (a) shall, at a minimum, include the following:

- (1) An executive summary.
- (2) Data setting forth victim demographics, injuries, autopsy findings, homicide or suicide methods, weapons, police information, assailant demographics, and household and family information.
- (3) Legal disposition.
- (4) System intervention and failures, if any, within the Department of Defense.
- (5) A discussion of significant findings.
- (6) Recommendations for systemic changes, if any, within the Department of the Army and the Department of Defense.

(c) OSD GUIDANCE.—The Secretary of Defense shall prescribe guidance, which shall be uniform for the military departments, for the conduct of reviews by the Secretary under subsection (a).

(Added Pub. L. 108–136, div. A, title V, Sec. 576(a)(1), Nov. 24, 2003, 117 Stat. 1486.)

PART III—TRAINING

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401.	Training Generally	4301
403.	United States Military Academy	4331
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407.	Schools and Camps	4411

CHAPTER 401—TRAINING GENERALLY

- Sec.
4301. Members of Army: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.
4302. Enlisted members of Army: schools.
4303. Army Ranger training: instructor staffing; safety.
4306. Service schools: leaves of absence for instructors.
[4307, 4308. Repealed.]
4309. Rifle ranges: availability for use by members and civilians.
[4310 to 4313. Repealed.]
4314. Degree granting authority for United States Army Command and General Staff College.
4315. The Judge Advocate General's School: master of laws in military law.
4316. Reporting requirements.
4317. Military history fellowships.
4318. Drill sergeant trainees: human relations training.
4319. Recruit basic training: separate housing for male and female recruits.
4320. Recruit basic training: privacy.
4321. Degree granting authority for United States Army War College.

§ 4301. Members of Army: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Army may detail members of the Army as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Army on the active-duty list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Army may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Army National Guard of the United States, without the approval of the governor or other appropriate authority of the State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands of whose Army National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Army under subsection (a) during one enlistment may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Army, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Army, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 234; Pub. L. 93-169, Nov. 29, 1973, 87 Stat. 689; Pub. L. 96-513, title V, Sec. 502(23), Dec. 12, 1980, 94 Stat. 2910; Pub. L. 100-456, div. A, title XII, Sec. 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(9), Jan. 6, 2006, 119 Stat. 3441.)

§ 4302. Enlisted members of Army: schools

(a) So far as consistent with the requirements of military training and service, and under regulations to be prescribed by the Secretary of the Army with the approval of the President, enlisted members of the Army shall be permitted to study and receive instruction to increase their military efficiency and to enable them to return to civilian life better equipped for industrial, commercial, and business occupations. Part of this instruction may be vocational education in agriculture or the mechanic arts. Civilian teachers may be employed to aid Army officers in this instruction.

(b) Schools for the instruction of enlisted members of the Army in the common branches of education, including United States history shall be maintained at all posts at which members of the Army are stationed. The Secretary may detail members of the Army to carry out this subsection. The commander of each post where schools are maintained under this subsection shall provide a suitable room or building for school and religious purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

§ 4303. Army Ranger training: instructor staffing; safety

(a) LEVELS OF PERSONNEL ASSIGNED.—(1) The Secretary of the Army shall ensure that at all times the number of officers, and the number of enlisted members, permanently assigned to the Ranger Training Brigade (or other organizational element of the Army primarily responsible for Ranger student training) are not less than 90 percent of the required manning spaces for officers, and for enlisted members, respectively, for that brigade.

(2) In this subsection, the term “required manning spaces” means the number of personnel spaces for officers, and the number of personnel spaces for enlisted members, that are designated in Army authorization documents as the number required to accomplish the missions of a particular unit or organization.

(b) TRAINING SAFETY CELLS.—(1) The Secretary of the Army shall establish and maintain an organizational entity known as a “safety cell” as part of the organizational elements of the Army responsible for conducting each of the three major phases of the

Ranger Course. The safety cell in each different geographic area of Ranger Course training shall be comprised of personnel who have sufficient continuity and experience in that geographic area of such training to be knowledgeable of the local conditions year-round, including conditions of terrain, weather, water, and climate and other conditions and the potential effect on those conditions on Ranger student training and safety.

(2) Members of each safety cell shall be assigned in sufficient numbers to serve as advisers to the officers in charge of the major phase of Ranger training and shall assist those officers in making informed daily “go” and “no-go” decisions regarding training in light of all relevant conditions, including conditions of terrain, weather, water, and climate and other conditions.

(Added Pub. L. 104–106, div. A, title V, Sec. 562(a)(1), Feb. 10, 1996, 110 Stat. 323.)

§ 4306. Service schools: leaves of absence for instructors

The officer in charge of an Army service school may grant a leave of absence for the period of the suspension of the ordinary academic studies, without reduction of pay or allowances, to any officer on duty exclusively as an instructor at the school.

(Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

[§§ 4307, 4308. Repealed. Pub. L. 104–106, div. A, title XVI, Sec. 1624(a)(1), Feb. 10, 1996, 110 Stat. 522]

§ 4309. Rifle ranges: availability for use by members and civilians

(a) RANGES AVAILABLE.—All rifle ranges constructed in whole or in part with funds provided by the United States may be used by members of the armed forces and by persons capable of bearing arms.

(b) MILITARY RANGES.—(1) In the case of a rifle range referred to in subsection (a) that is located on a military installation, the Secretary concerned may establish reasonable fees for the use by civilians of that rifle range to cover the material and supply costs incurred by the armed forces to make that rifle range available to civilians.

(2) Fees collected pursuant to paragraph (1) in connection with the use of a rifle range shall be credited to the appropriation available for the operation and maintenance of that rifle range and shall be available for the operation and maintenance of that rifle range.

(3) Use of a rifle range referred to in paragraph (1) by civilians may not interfere with the use of the range by members of the armed forces.

(c) REGULATIONS.—Regulations to carry out this section with respect to a rifle range shall be prescribed, subject to the approval of the Secretary concerned, by the authorities controlling the rifle range.

(Aug. 10, 1956, ch. 1041, 70A Stat. 236; Pub. L. 99–145, title XIII, Sec. 1301(b)(3)(A), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–510, div. A, title III, Sec. 328(e), Nov. 5, 1990, 104 Stat. 1533; Pub. L. 102–484, div. A, title III, Sec. 380(b)(1), Oct. 23, 1992, 106 Stat. 2390.)

[§ 4310. Repealed. Pub. L. 104-106, div. A, title XVI, Sec. 1624(a)(1), Feb. 10, 1996, 110 Stat. 522]

[§§ 4312, 4313. Repealed. Pub. L. 105-225, Sec. 6(b), Aug. 12, 1998, 112 Stat. 1499]

§ 4314. Degree granting authority for United States Army Command and General Staff College

(a) **AUTHORITY.**—Under regulations prescribed by the Secretary of the Army, the Commandant of the United States Army Command and General Staff College may, upon the recommendation of the faculty and dean of the college, confer appropriate degrees upon graduates who meet the degree requirements.

(b) **LIMITATION.**—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the United States Army Command and General Staff College is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) **CONGRESSIONAL NOTIFICATION REQUIREMENTS.**—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the United States Army Command and General Staff College to award any new or existing degree.

(Added Pub. L. 93-365, title VII, Sec. 708(a)(1), Aug. 5, 1974, 88 Stat. 407; amended Pub. L. 96-513, title V, Sec. 512(11), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 101-510, div. A, title XIII, Sec. 1322(a)(13), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 110-417, [div. A], title V, Sec. 543(c)(1), Oct. 14, 2008, 122 Stat. 4458.)

§ 4315. The Judge Advocate General's School: master of laws in military law

Under regulations prescribed by the Secretary of the Army, the Commandant of the Judge Advocate General's School of the Army may, upon recommendation by the faculty of such school, confer the degree of master of laws (LL.M.) in military law upon graduates of the school who have fulfilled the requirements for that degree.

(Added Pub. L. 100–180, div. A, title V, Sec. 504(a), Dec. 4, 1987, 101 Stat. 1086.)

§ 4316. Reporting requirements

The Secretary of the Army shall biennially submit to the Congress a report that specifies the overall expenditures for programs and activities under this chapter and any progress made with respect to achieving financial self-sufficiency of the programs and activities.

(Added Pub. L. 102–484, div. A, title III, Sec. 380(d)(1), Oct. 23, 1992, 106 Stat. 2391; amended Pub. L. 104–106, div. A, title XVI, Sec. 1624(b)(2), Feb. 10, 1996, 110 Stat. 522.)

§ 4317. Military history fellowships

(a) FELLOWSHIPS.—The Secretary of the Army shall prescribe regulations under which the Secretary may award fellowships in military history of the Army to the persons described in subsection (b).

(b) ELIGIBLE PERSONS.—The persons eligible for awards of fellowships under this section are citizens and nationals of the United States who—

(1) are graduate students in United States military history;

(2) have completed all requirements for a doctoral degree other than preparation of a dissertation; and

(3) agree to prepare a dissertation in a subject area of military history determined by the Secretary.

(c) REGULATIONS.—The regulations prescribed under this section shall include—

(1) the criteria for award of fellowships;

(2) the procedures for selecting recipients;

(3) the basis for determining the amount of a fellowship; and

(4) the total amount that may be awarded as fellowships during an academic year.

(Added Pub. L. 102–484, div. A, title X, Sec. 1076(a), Oct. 23, 1992, 106 Stat. 2511, Sec. 4316; renumbered Sec. 4317, Pub. L. 103–35, title II, Sec. 201(b)(2)(A), May 31, 1993, 107 Stat. 98.)

§ 4318. Drill sergeant trainees: human relations training

(a) HUMAN RELATIONS TRAINING REQUIRED.—The Secretary of the Army shall include as part of the training program for drill sergeants a course in human relations. The course shall be a minimum of two days in duration.

(b) RESOURCES.—In developing a human relations course under this section, the Secretary shall use the capabilities and expertise of the Defense Equal Opportunity Management Institute (DEOMI).

(Added Pub. L. 105–85, div. A, title V, Sec. 557(a)(1), Nov. 18, 1997, 111 Stat. 1750.)

§ 4319. Recruit basic training: separate housing for male and female recruits

(a) **PHYSICALLY SEPARATE HOUSING.**—(1) The Secretary of the Army shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2), the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) **ALTERNATIVE SEPARATE HOUSING.**—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Army shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) **CONSTRUCTION PLANNING.**—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Army shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) **BASIC TRAINING DEFINED.**—In this section, the term “basic training” means the initial entry training program of the Army that constitutes the basic training of new recruits.

(Added Pub. L. 105–261, div. A, title V, Sec. 521(a)(1), Oct. 17, 1998, 112 Stat. 2009.)

§ 4320. Recruit basic training: privacy

The Secretary of the Army shall require that access by drill sergeants and other training personnel to a living area in which recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to drill sergeants and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added Pub. L. 105–261, div. A, title V, Sec. 522(a)(1), Oct. 17, 1998, 112 Stat. 2012.)

§ 4321. Degree granting authority for United States Army War College

(a) **AUTHORITY.**—Under regulations prescribed by the Secretary of the Army, the Commandant of the United States Army War College may, upon the recommendation of the faculty and dean of the college, confer appropriate degrees upon graduates who meet the degree requirements.

(b) LIMITATION.—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the United States Army War College is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the United States Army War College to award any new or existing degree.

(Added Pub. L. 106-65, div. A, title V, Sec. 542(a), Oct. 5, 1999, 113 Stat. 607; amended Pub. L. 110-417, [div. A], title V, Sec. 543(d)(1), Oct. 14, 2008, 122 Stat. 4459.)

CHAPTER 403—UNITED STATES MILITARY ACADEMY

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§ 4331. Establishment; Superintendent; faculty

(a) There is in the Department of the Army a United States Military Academy, at West Point, New York (hereinafter in this chapter referred to as the “Academy”), for the instruction and preparation for military service of selected persons called “cadets”. The organization of the Academy shall be prescribed by the Secretary of the Army.

(b) There shall be at the Academy the following:

- (1) A Superintendent.
- (2) A Dean of the Academic Board, who is a permanent professor.
- (3) A Commandant of Cadets.
- (4) Twenty-eight permanent professors.

(5) A chaplain.

(6) A director of admissions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238; Pub. L. 85-600, Sec. 1(8), Aug. 6, 1958, 72 Stat. 522; Pub. L. 85-723, Aug. 21, 1958, 72 Stat. 711; Pub. L. 95-551, Sec. 1, Oct. 30, 1978, 92 Stat. 2069; Pub. L. 96-513, title V, Sec. 512(12), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 102-484, div. A, title V, Sec. 523(a), Oct. 23, 1992, 106 Stat. 2409; Pub. L. 103-160, div. A, title V, Sec. 533(a)(3), Nov. 30, 1993, 107 Stat. 1658; Pub. L. 110-181, div. A, title V, Sec. 507, Jan. 28, 2008, 122 Stat. 96.)

§ 4332. Departments and professors: titles

(a) The Secretary of the Army may prescribe the titles of each of the departments of instruction and the professors of the Academy. However, the change of the title of a department or officer does not affect the status, rank, or eligibility for promotion or retirement of, or otherwise prejudice, a professor at the Academy.

(b) Upon becoming the senior professor in a department, a permanent professor thereby becomes the head of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238.)

§ 4333. Superintendent; faculty: appointment and detail

(a) The Superintendent and the Commandant of Cadets of the Academy shall be detailed to those positions by the President from any branch of the Army. Other officers on duty at the Academy, except the permanent professors, may be detailed from any branch of the Army.

(b) The permanent professors of the Academy shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The director of admissions of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army.

(d) Any officer of the Regular Army in a grade above captain may be detailed to perform the duties of director of admissions without being appointed as director of admissions. Such a detail does not affect his position on the active-duty list.

(e) No graduate of the Academy may be appointed or detailed to serve at the Academy as a professor or instructor, or as an assistant to a professor or instructor, within two years after his graduation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238; Pub. L. 85-600, Sec. 1(9), Aug. 6, 1958, 72 Stat. 522; Pub. L. 95-551, Sec. 2, Oct. 30, 1978, 92 Stat. 2069; Pub. L. 96-513, title V, Sec. 502(24), Dec. 12, 1980, 94 Stat. 2910.)

§ 4333a. Superintendent: condition for detail to position

(a) RETIREMENT.—As a condition for detail to the position of Superintendent of the Academy, an officer shall acknowledge that upon termination of that detail the officer shall be retired pursuant to section 3921(a) of this title, unless such retirement is waived under section 3921(b) of this title.

(b) MINIMUM TOUR OF DUTY.—An officer who is detailed to the position of Superintendent of the Academy shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise

leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Army shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.

(Added Pub. L. 106-65, div. A, title V, Sec. 532(a)(1)(B), Oct. 5, 1999, 113 Stat. 603; amended Pub. L. 108-375, div. A, title V, Sec. 541(b)(1), Oct. 28, 2004, 118 Stat. 1902.)

§ 4334. Command and supervision

(a) The supervision and charge of the Academy is in the Department of the Army, under officers of the Army detailed to that duty by the Secretary of the Army.

(b) The immediate government of the Academy is under the Superintendent, who is also the commanding officer of the Academy and of the military post at West Point.

(c) The Commandant of Cadets is the immediate commander of the Corps of Cadets, and is in charge of the instruction of the Corps in tactics.

(d) The permanent professors and the director of admissions exercise command only in the academic department of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Pub. L. 85-600, Sec. 1(10), Aug. 6, 1958, 72 Stat. 523; Pub. L. 95-551, Sec. 2, Oct. 30, 1978, 92 Stat. 2069.)

§ 4335. Dean of Academic Board

(a) The Dean of the Academic Board shall be appointed as an additional permanent professor from the permanent professors who have served as heads of departments of instruction at the Academy.

(b) The Dean of the Academic Board shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army.

(c) While serving as Dean of the Academic Board, an officer of the Army who holds a grade lower than brigadier general shall hold the grade of brigadier general, if appointed to that grade by the President, by and with the advice and consent of the Senate. The retirement age of an officer so appointed is that of a permanent professor of the Academy. An officer so appointed is counted for purposes of the limitation in section 526(a) of this title on general officers of the Army on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Pub. L. 85-861, Sec. 33(a)(46)(A), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 99-661, div. A, title V, Sec. 508(a), Nov. 14, 1986, 100 Stat. 3866; Pub. L. 102-484, div. A, title V, Sec. 521(a), Oct. 23, 1992, 106 Stat. 2409; Pub. L. 106-65, div. A, title V, Sec. 533(a), Oct. 5, 1999, 113 Stat. 604.)

§ 4336. Permanent professors; director of admissions

(a) A permanent professor of the Academy, other than the Dean of the Academic Board, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Army has the grade of colonel after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone,

whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Army has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Pub. L. 85-600, Sec. 1(11), Aug. 6, 1958, 72 Stat. 523; Pub. L. 85-861, Sec. 33(a)(46)(B), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 95-551, Sec. 2, 4(a), Oct. 30, 1978, 92 Stat. 2069; Pub. L. 96-513, title II, Sec. 218(a), title V, Sec. 502(25), Dec. 12, 1980, 94 Stat. 2886, 2911; Pub. L. 98-525, title V, Sec. 533(d)(1), Oct. 19, 1984, 98 Stat. 2528.)

§ 4337. Chaplain

There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to a monthly housing allowance in the same amount as the basic allowance for housing allowed to a lieutenant colonel, and to fuel and light for quarters in kind. The chaplain may be reappointed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Pub. L. 87-651, title I, Sec. 117, Sept. 7, 1962, 76 Stat. 513; Pub. L. 107-107, div. A, title V, Sec. 540(a), Dec. 28, 2001, 115 Stat. 1109.)

§ 4338. Civilian faculty: number; compensation

(a) The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Academy as the Secretary considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Army may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(Added Pub. L. 103-160, div. A, title V, Sec. 533(a)(1), Nov. 30, 1993, 107 Stat. 1658; amended Pub. L. 106-65, div. A, title XI, Sec. 1107(a), Oct. 5, 1999, 113 Stat. 778.)

[§ 4339. Repealed. Pub. L. 89-716, Sec. 1, Nov. 2, 1966, 80 Stat. 1114]

§ 4340. Quartermaster

The Secretary of the Army shall detail a commissioned officer of the Army as quartermaster for the Corps of Cadets. The quartermaster shall—

- (1) buy and issue all supplies for the cadets;
- (2) buy and issue all provisions for the mess; and
- (3) supervise the mess.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240.)

§ 4341. Faculty and other officers: leaves of absence

The Superintendent of the Academy may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to a professor, assistant professor, instructor, or other officer of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240.)

§ 4341a. Cadets: appointment by the President

Cadets at the Academy shall be appointed by the President alone. An appointment is conditional until the cadet is admitted.

(Added Pub. L. 97-60, title II, Sec. 203(a)(2)(A), Oct. 14, 1981, 95 Stat. 1006.)

§ 4342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of the Corps of Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,400 or such lower number as may be prescribed by the Secretary of the Army under subsection (j). Subject to that limitation, cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examinations from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a "missing status" as defined in section 551(2) of title 37, and children of civilian employees who are in "missing status" as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Army.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Three cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Three cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) Two cadets from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) Two cadets from the Commonwealth of the Northern Mariana Islands, nominated by the Delegate in Congress from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age; however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Army from enlisted members of the Regular Army.

(3) 85 nominated by the Secretary of the Army from enlisted members of reserve components of the Army.

(4) 20 nominated by the Secretary of the Army, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Army in order of merit (prescribed pursuant to section 4343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy children of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) The Superintendent may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of the Corps of Cadets to exceed the authorized number.

(e) If the annual quota of cadets under subsection (b)(1), (2), (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were

found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Army may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy, as determined by the Secretary after consulting with Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a)(3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a)(3) or (4), appointments under subsection (b)(1)–(4) are limited as follows:

- (A) 27 appointments under subsection (b)(1);
- (B) 27 appointments under subsection (b)(2);
- (C) 27 appointments under subsection (b)(3); and
- (D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b)(2)–(4) are limited as follows:

- (A) 27 appointments under subsection (b)(2);
- (B) 27 appointments under subsection (b)(3); and
- (C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) The Superintendent shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(i) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of the Corps of Cadets, the Secretary of the Army may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(j)(1) Beginning with the 2003–2004 academic year, the Secretary of the Army may prescribe annual increases in the cadet strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 cadets or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the cadet strength limit is 4,400.

(2) Any increase in the cadet strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under section 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Sec-

retary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the cadet strength limit and the new cadet strength limit, as so increased, and the amount of the increase in Senior Army Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

(3) The amount of an increase under paragraph (1) in the cadet strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of cadets enrolled in the Army Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

(4) In this subsection, the term "cadet strength limit" means the authorized maximum strength of the Corps of Cadets of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240; Pub. L. 85-861, Sec. 33(a)(26), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87-663, Sec. 1(1), (2), Sept. 14, 1962, 76 Stat. 547; Pub. L. 88-276, Sec. 1(1), Mar. 3, 1964, 78 Stat. 148; Pub. L. 89-650, Sec. 1(1)-(4), Oct. 13, 1966, 80 Stat. 896; Pub. L. 90-374, July 5, 1968, 82 Stat. 283; Pub. L. 90-623, Sec. 2(8), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 91-405, title II, Sec. 204(c), Sept. 22, 1970, 84 Stat. 852; Pub. L. 92-365, Sec. 1(1), Aug. 7, 1972, 86 Stat. 505; Pub. L. 93-171, Sec. 1(1)-(4), Nov. 29, 1973, 87 Stat. 690; Pub. L. 94-106, title VIII, Sec. 803(b)(1), Oct. 7, 1975, 89 Stat. 538; Pub. L. 96-513, title V, Sec. 512(13), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 96-600, Sec. 2(a), Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97-60, title II, Sec. 203(a)(1), Oct. 14, 1981, 95 Stat. 1006; Pub. L. 98-94, title X, Sec. 1005(a)(1), (b)(1), Sept. 24, 1983, 97 Stat. 660; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101-510, div. A, title V, Sec. 532(a)(1), Nov. 5, 1990, 104 Stat. 1563; Pub. L. 103-160, div. A, title V, Sec. 531, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 103-337, div. A, title XVI, Sec. 1672(c)(3), Oct. 5, 1994, 108 Stat. 3015; Pub. L. 104-106, div. A, title V, Sec. 532(a), title XV, Sec. 1502(a)(1), Feb. 10, 1996, 110 Stat. 314, 502; Pub. L. 105-85, div. A, title X, Sec. 1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106-65, div. A, title V, Sec. 531(b)(1), title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 602, 774; Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 531(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-109; Pub. L. 107-314, div. A, title V, Sec. 532(a), (f), Dec. 2, 2002, 116 Stat. 2545, 2547; Pub. L. 108-136, div. A, title V, Sec. 524(a), title X, Sec. 1031(a)(53), Nov. 24, 2003, 117 Stat. 1464, 1603; Pub. L. 109-364, div. A, title X, Sec. 1071(a)(28), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 110-181, div. A, title V, Sec. 525, Jan. 28, 2008, 122 Stat. 104; Pub. L. 110-229, title VII, Sec. 718(a), May 8, 2008, 122 Stat. 869; Pub. L. 110-417, [div. A], title V, Sec. 540(a), Oct. 14, 2008, 122 Stat. 4454; Pub. L. 111-84, div. A, title V, Sec. 527(a), Oct. 28, 2009, 123 Stat. 2288.)

§ 4343. Cadets: appointment; to bring Corps to full strength

If it is determined that, upon the admission of a new class to the Academy, the number of cadets at the Academy will be below the authorized number, the Secretary of the Army may fill the vacancies by nominating additional cadets from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this section shall be selected from qualified alternates nominated by the persons named in clauses (2) through (8) of section 4342(a) of this title, and the remainder from qualified candidates holding competitive nominations under any other provision of law. An appointment under this section is an additional appointment and is not in place of an appointment otherwise authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 88-276, Sec. 1(2), Mar. 3, 1964, 78 Stat. 150; Pub. L. 93-171, Sec. 1(5), Nov. 29, 1973, 87 Stat. 690; Pub. L. 102-25, title VII, Sec. 701(f)(5), Apr. 6, 1991, 105 Stat. 115.)

§ 4344. Selection of persons from foreign countries

(a)(1) The Secretary of the Army may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the au-

thorized strength of the Corps of the Cadets of the Academy under section 4342 of this title.

(2) The Secretary of the Army, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Army may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Army shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Army shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.

(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a cadet under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.

(c)(1) Except as the Secretary of the Army determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 4346(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 98-94, title X, Sec. 1004(a)(1), Sept. 24, 1983, 97 Stat. 657; Pub. L. 105-85, div. A, title V, Sec. 543(a), Nov. 18, 1997, 111 Stat. 1743; Pub. L. 106-65, div. A, title V, Sec. 534(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 532(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-110; Pub. L. 107-107, div. A, title V, Sec. 533(a)(1), (2), Dec. 28, 2001, 115 Stat. 1105.)

§ 4345. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Army may permit a student enrolled at a military academy of a foreign country to receive instruction at the Academy in exchange

for a cadet receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 4344 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 100 cadets and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of a cadet by reason of attendance at the Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged cadet in that foreign country.

(3) The Academy shall bear all costs of the exchange program from funds appropriated for the Academy and such additional funds as may be available to the Academy from a source other than appropriated funds to support cultural immersion, regional awareness, or foreign language training activities in connection with the exchange program.

(4) Expenditures in support of the exchange program from funds appropriated for the Academy may not exceed \$1,000,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 4344 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added Pub. L. 105–85, div. A, title V, Sec. 542(a)(1), Nov. 18, 1997, 111 Stat. 1740; amended Pub. L. 106–65, div. A, title V, Sec. 535(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 109–364, div. A, title V, Sec. 531(a), Oct. 17, 2006, 120 Stat. 2198.)

§ 4345a. Foreign and cultural exchange activities

(a) ATTENDANCE AUTHORIZED.—The Secretary of the Army may authorize the Academy to permit students, officers, and other representatives of a foreign country to attend the Academy for periods of not more than two weeks if the Secretary determines that the attendance of such persons contributes significantly to the develop-

ment of foreign language, cross cultural interactions and understanding, and cultural immersion of cadets.

(b) COSTS AND EXPENSES.—The Secretary may pay the travel, subsistence, and similar personal expenses of persons incurred to attend the Academy under subsection (a).

(c) EFFECT OF ATTENDANCE.—Persons attending the Academy under subsection (a) are not considered to be students enrolled at the Academy and are in addition to persons receiving instruction at the Academy under section 4344 or 4345 of this title.

(d) SOURCE OF FUNDS; LIMITATION.—(1) The Academy shall bear the costs of the attendance of persons under subsection (a) from funds appropriated for the Academy and from such additional funds as may be available to the Academy from a source, other than appropriated funds, to support cultural immersion, regional awareness, or foreign language training activities in connection with their attendance.

(2) Expenditures from appropriated funds in support of activities under this section may not exceed \$40,000 during any fiscal year.

(Added Pub. L. 110–417, [div. A], title V, Sec. 541(a)(1), Oct. 14, 2008, 122 Stat. 4454.)

§ 4346. Cadets: requirements for admission

(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Army, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to the following oath—

“I, _____, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the Uniform Code of Military Justice.”

If a candidate for admission refuses to take this oath, his appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 104–201, div. A, title V, Sec. 555(b), Sept. 23, 1996, 110 Stat. 2527.)

§ 4347. Cadets; nominees: effect of redistricting of States

If as a result of redistricting a State the domicile of a cadet, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of cadets otherwise authorized for that district is increased to include him. However, the number as so in-

creased is reduced by one if he fails to become a cadet or when he is finally separated from the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243.)

§ 4348. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Army or the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer before completion of the commissioned service obligation of the cadet, the cadet—

(A) will accept an appointment as a commissioned officer as a Reserve for service in the Army Reserve or the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the cadet.

(4) That if an appointment described in paragraph (2) or (3) is tendered and the cadet participates in a program under section 2121 of this title, the cadet will fulfill any unserved obligation incurred under this section on active duty, regardless of the type of appointment held, upon completion of, and in addition to, any service obligation incurred under section 2123 of this title for participation in such program.

(b)(1) The Secretary of the Army may transfer to the Army Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a cadet who breaches an agreement under subsection (a). The period of time for which a cadet is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A cadet who is transferred to the Army Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a cadet shall be considered to have breached an agreement under subsection (a) if the cadet is separated from the Academy under circumstances which the Secretary determines constitute a breach by the cadet of the cadet's agreement to complete the course of instruction at the Academy and accept an appointment as a commissioned officer upon graduation from the Academy.

(c) The Secretary of the Army shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, the term “commissioned service obligation”, with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer’s appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a cadet who is not a citizen or national of the United States.

(2) In the case of a cadet who is a minor and who has parents or a guardian, the cadet may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(f) A cadet or former cadet who does not fulfill the terms of the agreement as specified under subsection (a), or the alternative obligation imposed under subsection (b), shall be subject to the repayment provisions of section 303a(e) of title 37.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243; Pub. L. 88–276, Sec. 5(a), Mar. 3, 1964, 78 Stat. 153; Pub. L. 88–647, title III, Sec. 301(9), Oct. 13, 1964, 78 Stat. 1072; Pub. L. 98–525, title V, Sec. 541(a), 542(b), Oct. 19, 1984, 98 Stat. 2529; Pub. L. 99–145, title V, Sec. 512(a), Nov. 8, 1985, 99 Stat. 623; Pub. L. 101–189, div. A, title V, Sec. 511(b), title XVI, Sec. 1622(e)(5), Nov. 29, 1989, 103 Stat. 1439, 1605; Pub. L. 104–106, div. A, title V, Sec. 531(a), Feb. 10, 1996, 110 Stat. 314; Pub. L. 109–163, div. A, title VI, Sec. 687(c)(9), Jan. 6, 2006, 119 Stat. 3335; Pub. L. 111–84, div. A, title X, Sec. 1073(a)(29), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–383, div. A, title V, Sec. 554(a), Jan. 7, 2011, 124 Stat. 4221.)

§ 4349. Cadets: organization of Corps; service; instruction

(a) The Corps of Cadets shall be divided into companies, as directed by the Superintendent, for the purpose of military instruction. Each company shall be commanded by a commissioned officer of the Army.

(b) A cadet shall perform duties at such places and of such type as the President may direct.

(c) The course of instruction at the Academy is four years.

(d) The Secretary of the Army shall so arrange the course of studies at the Academy that cadets are not required to pursue their studies on Sunday.

(e) The Corps of Cadets shall be trained in the duties of members of the Army, shall be encamped at least three months in each year, and shall be trained in all duties incident to a camp.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243.)

§ 4350. Cadets: clothing and equipment

(a) The Secretary of the Army may prescribe the amount to be credited to a cadet, upon original admission to the Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a cadet is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in so much of his clothing and equipment of a distinctive military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(b) Under such regulations as the Secretary may prescribe, uniforms and equipment shall be furnished to a cadet at the Academy upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

§ 4351. Cadets: deficiencies in conduct or studies; effect of failure on successor

(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academic Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Academic Board within 10 days after he is officially notified of his failure. The reexamination shall be held within 60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

§ 4352. Cadets: hazing

(a) Subject to the approval of the Secretary of the Army, the Superintendent of the Academy shall issue regulations—

- (1) defining hazing;
- (2) designed to prevent that practice; and
- (3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed to the Corps of Cadets, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, or Marine Corps, until two years after the graduation of his class.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

§ 4353. Cadets: degree and commission on graduation

(a) Under such conditions as the Secretary of the Army may prescribe, the Superintendent of the Academy may confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Army under section 531 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245; Pub. L. 85-861, Sec. 1(103), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 96-513, title V, Sec. 502(26), Dec. 12, 1980, 94 Stat. 2911.)

§ 4354. Buildings and grounds: memorial hall; buildings for religious worship

(a) The memorial hall at the Academy is a repository for statues, busts, mural tablets, portraits of distinguished and deceased officers and graduates of the Academy, paintings of battle scenes, trophies of war, and other objects that may tend to elevate the military profession. No object may be placed in this hall without the approval of two-thirds of the members of the Academic Board of the Academy by a recorded vote taken by ayes and nays.

(b) The Secretary of the Army may authorize any denomination, sect, or religious body to erect a building for religious worship on the West Point Military Reservation, if its erection will not interfere with the use of the reservation for military purposes and will be without expense to the United States. Such a building shall be removed, or its location changed, without compensation for it and without other expense to the United States, by the denomination, sect, or religious body that erected it, whenever in the opinion of the Secretary public or military necessity so requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245.)

§ 4355. Board of Visitors

(a) A Board of Visitors to the Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Army, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action, and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245; Pub. L. 96-579, Sec. 13(a), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 104-106, div. A, title X, Sec. 1061(e)(2), title XV, Sec. 1502(a)(12), Feb. 10, 1996, 110 Stat. 443, 503; Pub. L. 106-65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 4356. Use of certain gifts

Under regulations prescribed by the Secretary of the Army, the Superintendent of the Academy may (without regard to section 2601 of this title) accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property of a value of \$20,000 or less made to the United States on the condition that such gift, devise, or bequest be used for the benefit of the Academy or any entity thereof. The Secretary may pay or authorize the payment of all reasonable and necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest under this section.

(Added Pub. L. 97-295, Sec. 1(41)(A), Oct. 12, 1982, 96 Stat. 1297.)

§ 4357. Acceptance of guarantees with gifts for major projects

(a) ACCEPTANCE AUTHORITY.—Subject to subsection (c), the Secretary of the Army may accept from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the Academy.

(b) OBLIGATION AUTHORITY.—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Army may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress or, if earlier, the expiration of 14 days following the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) PROHIBITION ON COMMINGLING OF FUNDS.—The Secretary of the Army may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) DEFINITIONS.—In this section:

(1) MAJOR PROJECT.—The term “major project” means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least \$1,000,000.

(2) QUALIFIED GUARANTEE.—The term “qualified guarantee”, with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in cash or securities that, as determined by the Secretary of the Army, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor’s other gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term “qualified account control agreement”, with respect to a guarantee of a donor, means an agreement among the donor, the Secretary of the Army, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term “major United States commercial bank” means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Army to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term “major United States investment management firm” means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Army to qualify the firm as a major investment management firm.

(Added Pub. L. 106-65, div. B, title XXVIII, Sec. 2871(a)(1), Oct. 5, 1999, 113 Stat. 871; amended Pub. L. 106-398, Sec. 1[[div. A], title X, Sec. 1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A-291; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(54), Nov. 24, 2003, 117 Stat. 1603.)

§ 4358. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Army may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Army shall prescribe regulations for the administration of this section.

(Added Pub. L. 105–261, div. A, title X, Sec. 1063(a)(1), Oct. 17, 1998, 112 Stat. 2130.)

§ 4359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds

(a) AUTHORITY.—In the case of an Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Army may designate funds appropriated to the Department of the Army and available for that program to be treated as nonappropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds. Appropriated funds so designated shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

(b) COVERED PROGRAMS.—In this section, the term “Academy mixed-funded athletic or recreational extracurricular program” means an athletic or recreational extracurricular program of the Academy to which each of the following applies:

- (1) The program is not considered a morale, welfare, or recreation program.
- (2) The program is supported through appropriated funds.
- (3) The program is supported by a nonappropriated fund instrumentality.
- (4) The program is not a private organization and is not operated by a private organization.

(Added Pub. L. 108–375, div. A, title V, Sec. 544(a)(1), Oct. 28, 2004, 118 Stat. 1906.)

§ 4360. Cadets: charges and fees for attendance; limitation

(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.

(Added Pub. L. 108–375, div. A, title V, Sec. 545(a)(1), Oct. 28, 2004, 118 Stat. 1908.)

§ 4361. Policy on sexual harassment and sexual violence

(a) REQUIRED POLICY.—Under guidance prescribed by the Secretary of Defense, the Secretary of the Army shall direct the Superintendent of the Academy to prescribe a policy on sexual harassment and sexual violence applicable to the cadets and other personnel of the Academy.

(b) MATTERS TO BE SPECIFIED IN POLICY.—The policy on sexual harassment and sexual violence prescribed under this section shall include specification of the following:

(1) Programs to promote awareness of the incidence of rape, acquaintance rape, and other sexual offenses of a criminal nature that involve cadets or other Academy personnel.

(2) Procedures that a cadet should follow in the case of an occurrence of sexual harassment or sexual violence, including—

(A) if the cadet chooses to report an occurrence of sexual harassment or sexual violence, a specification of the person or persons to whom the alleged offense should be reported and the options for confidential reporting;

(B) a specification of any other person whom the victim should contact; and

(C) procedures on the preservation of evidence potentially necessary for proof of criminal sexual assault.

(3) Procedures for disciplinary action in cases of alleged criminal sexual assault involving a cadet or other Academy personnel.

(4) Any other sanction authorized to be imposed in a substantiated case of sexual harassment or sexual violence involving a cadet or other Academy personnel in rape, acquaintance rape, or any other criminal sexual offense, whether forcible or nonforcible.

(5) Required training on the policy for all cadets and other Academy personnel, including the specific training required for personnel who process allegations of sexual harassment or sexual violence involving Academy personnel.

(c) ANNUAL ASSESSMENT.—(1) The Secretary of Defense, through the Secretary of the Army, shall direct the Superintendent to conduct at the Academy during each Academy program year an assessment, to be administered by the Department of Defense, to determine the effectiveness of the policies, training, and procedures of the Academy with respect to sexual harassment and sexual violence involving Academy personnel.

(2) For the assessment at the Academy under paragraph (1) with respect to an Academy program year that begins in an odd-numbered calendar year, the Secretary of the Army shall conduct a survey, to be administered by the Department of Defense, of Academy personnel—

(A) to measure—

(i) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have been reported to officials of the Academy; and

(ii) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have not been reported to officials of the Academy; and

(B) to assess the perceptions of Academy personnel of—

(i) the policies, training, and procedures on sexual harassment and sexual violence involving Academy personnel;

(ii) the enforcement of such policies;

(iii) the incidence of sexual harassment and sexual violence involving Academy personnel; and

(iv) any other issues relating to sexual harassment and sexual violence involving Academy personnel.

(d) ANNUAL REPORT.—(1) The Secretary of the Army shall direct the Superintendent of the Academy to submit to the Secretary a report on sexual harassment and sexual violence involving cadets or other personnel at the Academy for each Academy program year.

(2) Each report under paragraph (1) shall include, for the Academy program year covered by the report, the following:

(A) The number of sexual assaults, rapes, and other sexual offenses involving cadets or other Academy personnel that have been reported to Academy officials during the program year and, of those reported cases, the number that have been substantiated.

(B) The policies, procedures, and processes implemented by the Secretary of the Army and the leadership of the Academy in response to sexual harassment and sexual violence involving cadets or other Academy personnel during the program year.

(C) A plan for the actions that are to be taken in the following Academy program year regarding prevention of and response to sexual harassment and sexual violence involving cadets or other Academy personnel.

(3) Each report under paragraph (1) for an Academy program year that begins in an odd-numbered calendar year shall include the results of the survey conducted in that program year under subsection (c)(2).

(4)(A) The Secretary of the Army shall transmit to the Secretary of Defense, and to the Board of Visitors of the Academy, each report received by the Secretary under this subsection, together with the Secretary's comments on the report.

(B) The Secretary of Defense shall transmit each such report, together with the Secretary's comments on the report, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 109-364, div. A, title V, Sec. 532(a)(1), Oct. 17, 2006, 120 Stat. 2200.)

[CHAPTER 405—REPEALED]

[§§ 4381 to 4387. Repealed. Pub. L. 88-647, title III, Sec. 301(10), Oct. 13, 1964, 78 Stat. 1072]

CHAPTER 407—SCHOOLS AND CAMPS

- Sec.
4411. Establishment: purpose.
4412. Operation.
4413. Transportation and subsistence during travel.
4414. Quartermaster and ordnance property: sales.
[4415. Repealed.]
4416. Academy of Health Sciences: admission of civilians in physician assistant training program.
4417. United States Army War College: acceptance of grants for faculty research for scientific, literary, and educational purposes.

§ 4411. Establishment: purpose

The Secretary of the Army may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Army and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Army Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 249.)

§ 4412. Operation

In maintaining schools and camps established under section 4411 of this title, the Secretary of the Army may—

- (1) prescribe the periods during which they will be operated;
- (2) prescribe regulations for their administration;
- (3) prescribe the courses to be taught;
- (4) detail members of the Regular Army to designated duties relating to the camps;
- (5) use necessary supplies and transportation;
- (6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camps; and
- (7) authorize necessary expenditures from proper Army funds for—
 - (A) water;
 - (B) fuel;
 - (C) light;
 - (D) temporary structures, except barracks and officers' quarters;
 - (E) screening;
 - (F) damages resulting from field exercises;

(G) expenses incident to theoretical winter instruction of trainees; and

(H) other expenses incident to maintaining the camps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 249.)

§ 4413. Transportation and subsistence during travel

(a) There may be furnished to a person attending a school or camp established under section 4411 of this title, for travel to and from that school or camp—

(1) transportation and subsistence;

(2) transportation in kind and a subsistence allowance of one cent a mile; or

(3) a travel allowance of five cents a mile.

(b) The travel allowance for the return trip may be paid in advance.

(c) For the purposes of this section, distance is computed by the shortest usually traveled route, within such territorial limits as the Secretary of the Army may prescribe, from the authorized starting point to the school or camp and return.

(Aug. 10, 1956, ch. 1041, 70A Stat. 250.)

§ 4414. Quartermaster and ordnance property: sales

The Secretary of the Army may sell to a person attending a school or camp established under section 4411 of this title quartermaster and ordnance property necessary for his proper equipment. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 250.)

[§ 4415. Repealed. Pub. L. 106-398, Sec. 1 [[div. A], title IX, Sec. 911(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-228]

§ 4416. Academy of Health Sciences: admission of civilians in physician assistant training program

(a) IN GENERAL.—The Secretary of the Army may, pursuant to an agreement entered into with an accredited institution of higher education—

(1) permit students of the institution to attend the didactic portion of the physician assistant training program conducted by the Army Medical Department at the Academy of Health Sciences at Fort Sam Houston, Texas; and

(2) accept from the institution academic services to support the physician assistant training program at the Academy.

(b) AGREEMENT FOR EXCHANGE OF SERVICES.—An agreement entered into with an institution of higher education under this section shall require the institution, in exchange for services provided under paragraph (1) of subsection (a), to provide academic services described in paragraph (2) of such subsection that the Secretary and authorized representatives of the institution consider appropriate.

(c) SELECTION OF STUDENTS.—In consultation with the authorized representatives of the institution of higher education concerned, the Secretary shall prescribe the qualifications and methods of selection for students of the institution to receive instruction at the Academy under this section. The qualifications shall be com-

parable to those generally required for admission to the physician assistant training program at the Academy.

(d) **RULES OF ATTENDANCE.**—Except as the Secretary determines necessary, a student who receives instruction at the Academy under this section shall be subject to the same regulations governing attendance, discipline, discharge, and dismissal as apply to other persons attending the Academy.

(e) **LIMITATIONS.**—The Secretary shall ensure the following:

(1) That the Army Medical Department, in carrying out an agreement under this section, does not incur costs in excess of the costs that the department would incur to obtain, by means other than the agreement, academic services that are comparable to those provided by the institution pursuant to the agreement.

(2) That attendance of civilian students at the Academy under this section does not cause a decrease in the number of members of the armed forces enrolled in the physician assistant training program at the Academy.

(Added Pub. L. 105–85, div. A, title VII, Sec. 741(a)(1), Nov. 18, 1997, 111 Stat. 1816; amended Pub. L. 107–314, div. A, title X, Sec. 1041(a)(19), Dec. 2, 2002, 116 Stat. 2645.)

§ 4417. United States Army War College: acceptance of grants for faculty research for scientific, literary, and educational purposes

(a) **ACCEPTANCE OF RESEARCH GRANTS.**—The Secretary of the Army may authorize the Commandant of the United States Army War College to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College for a scientific, literary, or educational purpose.

(b) **QUALIFYING GRANTS.**—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) **ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.**—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) **ADMINISTRATION OF GRANT FUNDS.**—The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) **RELATED EXPENSES.**—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Army War College may be used to pay expenses incurred by the College in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) **REGULATIONS.**—The Secretary shall prescribe regulations for the administration of this section.

(Added Pub. L. 109–163, div. A, title V, Sec. 522(b)(1), Jan. 6, 2006, 119 Stat. 3240.)

**PART IV—SERVICE, SUPPLY, AND
PROCUREMENT**

Chap.	Sec.
[431. Repealed.]	
433. Procurement	4531
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[CHAPTER 431—REPEALED]

[§§ 4501 to 4508. Repealed. Pub. L. 103-160, div. A, title VIII, Sec. 822(a)(2), (b)(3), (c)(2), 823(1), 827(c), 828(c)(6), Nov. 30, 1993, 107 Stat. 1705-1707, 1713, 1714]

CHAPTER 433—PROCUREMENT

Sec.

[4531. Repealed.]

4532. Factories and arsenals: manufacture at; abolition of.

[4533 to 4535. Repealed.]

4536. Equipment: post bakeries, schools, kitchens, and mess halls.

[4537 to 4539. Repealed.]

4540. Architectural and engineering services.

4541. Army arsenals: treatment of unutilized or underutilized plant-capacity costs.

4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception.

4543. Army industrial facilities: sales of manufactured articles or services outside Department of Defense.

4544. Army industrial facilities: cooperative activities with non-Army entities.

[§ 4531. Repealed. Pub. L. 103-160, div. A, title VIII, Sec. 823(2), Nov. 30, 1993, 107 Stat. 1707]

§ 4532. Factories and arsenals: manufacture at; abolition of

(a) The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States, so far as those factories or arsenals can make those supplies on an economical basis.

(b) The Secretary may abolish any United States arsenal that he considers unnecessary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

[§§ 4533 to 4535. Repealed. Pub. L. 103-160, div. A, title VIII, Sec. 823(3)-(5), Nov. 30, 1993, 107 Stat. 1707]

§ 4536. Equipment: post bakeries, schools, kitchens, and mess halls

Money necessary for the following items for the use of enlisted members of the Army may be spent from appropriations for regular supplies:

- (1) Equipment for post bakeries.
- (2) Furniture, textbooks, paper, and equipment for post schools.
- (3) Tableware and mess furniture for kitchens and mess halls.

(Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

[§§ 4537, 4538. Repealed. Pub. L. 103-160, div. A, title VIII, Sec. 823(6), (7), Nov. 30, 1993, 107 Stat. 1707]

[§ 4539. Repealed. Pub. L. 91-482, Sec. 1(a), Oct. 21, 1970, 84 Stat. 1082]

§ 4540. Architectural and engineering services

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the Army are inadequate, the Secretary of the Army may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5 do not apply to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 255; Nov. 2, 1966, Pub. L. 89-718, Sec. 28, 80 Stat. 1119; Oct. 13, 1978, Pub. L. 95-454, title VII, Sec. 703(c)(3), title VIII, Sec. 801(a)(3)(I), 92 Stat. 1217, 1222; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 512(16), 94 Stat. 2930.)

§ 4541. Army arsenals: treatment of unutilized or underutilized plant-capacity costs

(a) ESTIMATE OF COSTS.—The Secretary of the Army shall include in the budget justification documents submitted to Congress in support of the President's budget for a fiscal year submitted under section 1105 of title 31 an estimate of the funds to be required in that fiscal year to cover unutilized and underutilized plant-capacity costs at Army arsenals.

(b) USE OF FUNDS.—Funds appropriated to the Secretary of the Army for a fiscal year to cover unutilized and underutilized plant-capacity costs at Army arsenals shall be used in such fiscal year only for such costs.

(c) TREATMENT OF COSTS.—(1) The Secretary of the Army shall not include unutilized and underutilized plant-capacity costs when evaluating the bid of an Army arsenal for purposes of the arsenal's contracting to provide a good or service to a Government agency.

(2) When an Army arsenal is serving as a subcontractor to a private-sector entity with respect to a good or service to be provided to a Government agency, the cost charged by the arsenal shall not include unutilized and underutilized plant-capacity costs that are funded by a direct appropriation.

(d) DEFINITIONS.—In this section:

(1) The term "Army arsenal" means a Government-owned, Government-operated defense plant of the Department of the Army that manufactures weapons, weapon components, or both.

(2) The term "unutilized and underutilized plant-capacity costs" means the costs associated with operating and maintaining the facilities and equipment of an Army arsenal that the Secretary of the Army determines are required to be kept for

mobilization needs, in those months in which the facilities and equipment are not used or are used only 20 percent or less of available work days.

(Added Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 342(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-64.)

§ 4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception

(a) GENERAL RULE.—Funds appropriated to the Department of Defense may not be used—

(1) to transfer to a foreign country a technical data package for a defense item being manufactured or developed in an arsenal; or

(2) to assist a foreign country in producing such a defense item.

(b) EXCEPTION.—The Secretary of the Army may use funds appropriated to the Department of Defense to transfer a technical data package, or to provide assistance, described in subsection (a) if—

(1) the transfer or provision of assistance is to a friendly foreign country (as determined by the Secretary of Defense in consultation with the Secretary of State);

(2) the Secretary of the Army determines that such action—

(A) would have a clear benefit to the preservation of the production base for the production of cannon at the arsenal concerned; and

(B) would not transfer technology (including production techniques) considered unique to the arsenal concerned, except as provided in subsection (e); and

(3) the Secretary of Defense enters into an agreement with the country concerned described in subsection (c) or (d).

(c) COPRODUCTION AGREEMENTS.—An agreement under this subsection shall be in the form of a Government-to-Government Memorandum of Understanding and shall include provisions that—

(1) prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

(2) require that production by the participating foreign country of the defense item to which the technical data package or assistance relates be shared with the arsenal concerned;

(3) subject to such exceptions as may be approved under subsection (f), prohibit transfer by the participating foreign country to a third party or country of—

(A) any defense article, technical data package, technology, or assistance provided by the United States under the agreement; and

(B) any defense article produced by the participating foreign country under the agreement; and

(4) require the Secretary of Defense to monitor compliance with the agreement and the participating foreign country to report periodically to the Secretary of Defense concerning the agreement.

(d) COOPERATIVE PROJECT AGREEMENTS.—An agreement under this subsection is a cooperative project agreement under section 27 of the Arms Export Control Act (22 U.S.C. 2767) which includes provisions that—

(1) for development phases describe the technical data to be transferred and for the production phase prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

(2) require that at least the United States production of the defense item to which the technical data package or assistance relates be carried out by the arsenal concerned; and

(3) require the Secretary of Defense to monitor compliance with the agreement.

(e) LICENSING FEES AND ROYALTIES.—The limitation in subsection (b)(2)(B) shall not apply if the technology (or production technique) transferred is subject to nonexclusive license and payment of any negotiated licensing fee or royalty that reflects the cost of development, implementation, and prove-out of the technology or production technique. Any negotiated license fee or royalty shall be placed in the operating fund of the arsenal concerned for the purpose of capital investment and technology development at that arsenal.

(f) TRANSFERS TO THIRD PARTIES.—A transfer described in subsection (c)(3) may be made if—

(1) the defense article, technical data package, or technology to be transferred is a product of a cooperative research and development program or a cooperative project in which the United States and the participating foreign country were partners; or

(2) the President—

(A) complies with all requirements of section 3(d) of the Arms Export Control Act (22 U.S.C. 2753(d)) with respect to such transfer; and

(B) certifies to Congress, before the transfer, that the transfer would provide a clear benefit to the production base of the United States for large-caliber cannon.

(g) NOTICE AND REPORTS TO CONGRESS.—(1) The Secretary of the Army shall submit to Congress a notice of each agreement entered into under this section.

(2) The Secretary shall submit to Congress a semi-annual report on the operation of this section and of agreements entered into under this section.

(h) ARSENAL DEFINED.—In this section, the term “arsenal” means a Government-owned, Government-operated defense plant that manufactures large-caliber cannon.

(Added Pub. L. 99-500, Sec. 101(e) [title IX, Sec. 9036(b)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-107, and Pub. L. 99-591, Sec. 101(e) [title IX, Sec. 9036(b)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-107; Pub. L. 99-661, div. A, title XII, Sec. 1203(a)(1), Nov. 14, 1986, 100 Stat. 3968; amended Pub. L. 101-189, div. A, title VIII, Sec. 806, Nov. 29, 1989, 103 Stat. 1489; Pub. L. 102-190, div. A, title X, Sec. 1061(a)(24), 1086, Dec. 5, 1991, 105 Stat. 1473, 1483.)

§ 4543. Army industrial facilities: sales of manufactured articles or services outside Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—Regulations under section 2208(h) of this title shall authorize a working-capital funded

Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof to sell manufactured articles or services to a person outside the Department of Defense if—

(1) in the case of an article, the article is sold to a United States manufacturer, assembler, developer, or other concern—

(A) for use in developing new products;

(B) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States;

(C) for incorporation into items to be sold to, or to be used in a contract with, or to be used for purposes of soliciting a contract with, a friendly foreign government; or

(D) for use in commercial products;

(2) in the case of an article, the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(3) the sale is to be made on a basis that does not interfere with performance of work by the facility for the Department of Defense or for a contractor of the Department of Defense;

(4) in the case of services, the services are related to an article authorized to be sold under this section and are to be performed in the United States for the purchaser;

(5) the Secretary of the Army determines that the articles or services are not available from a commercial source located in the United States;

(6) the purchaser of an article or service agrees to hold harmless and indemnify the United States, except in a case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the article or service;

(7) the article to be sold can be manufactured, or the service to be sold can be substantially performed, by the industrial facility with only incidental subcontracting;

(8) it is in the public interest to manufacture such article or perform such service; and

(9) the sale will not interfere with performance of the military mission of the industrial facility.

(b) **ADDITIONAL REQUIREMENTS.**—The regulations shall also—

(1) require that the authority to sell articles or services under the regulations be exercised at the level of the commander of the major subordinate command of the Army with responsibility over the facility concerned;

(2) authorize a purchaser of articles or services to use advance incremental funding to pay for the articles or services; and

(3) in the case of a sale of commercial articles or commercial services in accordance with subsection (a) by a facility that manufactures large caliber cannons, gun mounts, or recoil mechanisms, or components thereof, authorize such facility—

(A) to charge the buyer, at a minimum, the variable costs that are associated with the commercial articles or commercial services sold;

(B) to enter into a firm, fixed-price contract or, if agreed by the buyer, a cost reimbursement contract for the sale; and

(C) to develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the commercial articles or commercial services sold.

(c) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(d) DEFINITIONS.—In this section:

(1) The term “commercial article” means an article that is usable for a nondefense purpose.

(2) The term “commercial service” means a service that is usable for a nondefense purpose.

(3) The term “advance incremental funding”, with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the production of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(4) The term “variable costs”, with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103–160, div. A, title I, Sec. 158(a)(1), Nov. 30, 1993, 107 Stat. 1581; amended Pub. L. 103–337, div. A, title I, Sec. 141, Oct. 5, 1994, 108 Stat. 2688.)

§ 4544. Army industrial facilities: cooperative activities with non-Army entities

(a) COOPERATIVE ARRANGEMENTS AUTHORIZED.—A working-capital funded Army industrial facility may enter into a contract or other cooperative arrangement with a non-Army entity to carry out with the non-Army entity a military or commercial project described in subsection (b), subject to the conditions prescribed in subsection (c). This authority may be used to enter into not more than eight contracts or cooperative agreements in addition to the contracts and cooperative agreements in place as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181).

(b) AUTHORIZED ACTIVITIES.—A cooperative arrangement entered into by an Army industrial facility under subsection (a) may provide for any of the following activities:

(1) The sale of articles manufactured by the facility or services performed by the facility to persons outside the Department of the Army.

(2) The performance of work by a non-Army entity at the facility.

(3) The performance of work by the facility for a non-Army entity.

(4) The sharing of work by the facility and a non-Army entity.

(5) The leasing, or use under a facilities use contract or otherwise, of the facility (including excess capacity) or equipment (including excess equipment) of the facility by a non-Army entity.

(6) The preparation and submission of joint offers by the facility and a non-Army entity for competitive procurements entered into with Federal agency.

(c) CONDITIONS.—An activity authorized by subsection (b) may be carried out at an Army industrial facility under a cooperative arrangement entered into under subsection (a) only under the following conditions:

(1) In the case of an article to be manufactured or services to be performed by the facility, the articles can be substantially manufactured, or the services can be substantially performed, by the facility without subcontracting for more than incidental performance.

(2) The activity does not interfere with performance of—
(A) work by the facility for the Department of Defense;

or

(B) a military mission of the facility.

(3) The activity meets one of the following objectives:

(A) Maximized utilization of the capacity of the facility.

(B) Reduction or elimination of the cost of ownership of the facility.

(C) Reduction in the cost of manufacturing or maintaining Department of Defense products at the facility.

(D) Preservation of skills or equipment related to a core competency of the facility.

(4) The non-Army entity agrees to hold harmless and indemnify the United States from any liability or claim for damages or injury to any person or property arising out of the activity, including any damages or injury arising out of a decision by the Secretary of the Army or the Secretary of Defense to suspend or terminate an activity, or any portion thereof, during a war or national emergency or to require the facility to perform other work or provide other services on a priority basis, except—

(A) in any case of willful misconduct or gross negligence; and

(B) in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the United States to comply with quality, schedule, or cost performance requirements in the contract to carry out the activity.

(d) ARRANGEMENT METHODS AND AUTHORITIES.—To establish a cooperative arrangement under subsection (a) with a non-Army entity, the approval authority described in subsection (f) for an Army industrial facility may—

(1) enter into a firm, fixed-price contract (or, if agreed to by the non-Army entity, a cost reimbursement contract) for a sale of articles or services or use of equipment or facilities;

(2) enter into a multiyear contract for a period not to exceed five years, unless a longer period is specifically authorized by law;

(3) charge the non-Army entity the amounts necessary to recover the full costs of the articles or services provided, including capital improvement costs, and equipment depreciation costs associated with providing the articles, services, equipment, or facilities;

(4) authorize the non-Army entity to use incremental funding to pay for the articles, services, or use of equipment or facilities; and

(5) accept payment-in-kind.

(e) PROCEEDS CREDITED TO WORKING CAPITAL FUND.—The proceeds received from the sale of an article or service pursuant to a contract or other cooperative arrangement under this section shall be credited to the working capital fund that incurs the cost of manufacturing the article or performing the service.

(f) APPROVAL AUTHORITY.—The authority of an Army industrial facility to enter into a cooperative arrangement under subsection (a) shall be exercised at the level of the commander of the major subordinate command of the Army that has responsibility for the facility. The commander may approve such an arrangement on a case-by-case basis or a class basis.

(g) COMMERCIAL SALES.—Except in the case of work performed for the Department of Defense, for a contract of the Department of Defense, for foreign military sales, or for authorized foreign direct commercial sales (defense articles or defense services sold to a foreign government or international organization under export controls), a sale of articles or services may be made under this section only if the approval authority described in subsection (f) determines that the articles or services are not available from a commercial source located in the United States in the required quantity or quality, or within the time required.

(h) EXCLUSION FROM DEPOT-LEVEL MAINTENANCE AND REPAIR PERCENTAGE LIMITATION.—Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at an Army industrial facility shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by a non-Army entity pursuant to a cooperative arrangement entered into under subsection (a).

(i) RELATIONSHIP TO OTHER LAWS.—Nothing in this section shall be construed to affect the application of—

(1) foreign military sales and the export controls provided for in sections 30 and 38 of the Arms Export Control Act (22 U.S.C. 2770 and 2778) to activities of a cooperative arrangement entered into under subsection (a); and

(2) section 2667 of this title to leases of non-excess property in the administration of such an arrangement.

(j) DEFINITIONS.—In this section:

(1) The term “Army industrial facility” includes an ammunition plant, an arsenal, a depot, and a manufacturing plant.

(2) The term “non-Army entity” includes the following:

(A) A Federal agency (other than the Department of the Army).

(B) An entity in industry or commercial sales.

(C) A State or political subdivision of a State.

(D) An institution of higher education or vocational training institution.

(3) The term “incremental funding” means a series of partial payments that—

(A) are made as the work on manufacture or articles is being performed or services are being performed or equipment or facilities are used, as the case may be; and

(B) result in full payment being completed as the required work is being completed.

(4) The term “full costs”, with respect to articles or services provided under a cooperative arrangement entered into under subsection (a), means the variable costs and the fixed costs that are directly related to the production of the articles or the provision of the services.

(5) The term “variable costs” means the costs that are expected to fluctuate directly with the volume of sales or services provided or the use of equipment or facilities.

(k) EXPIRATION OF AUTHORITY.—The authority to enter into a cooperative arrangement under subsection (a) expires September 30, 2014.

(Added Pub. L. 108–375, div. A, title III, Sec. 353(a), Oct. 28, 2004, 118 Stat. 1859; amended Pub. L. 109–163, div. A, title III, Sec. 321, Jan. 6, 2006, 119 Stat. 3191; Pub. L. 109–364, div. A, title X, Sec. 1071(a)(29), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 110–181, div. A, title III, Sec. 328(a), Jan. 28, 2008, 122 Stat. 66; Pub. L. 111–84, div. A, title III, Sec. 324(a), Oct. 28, 2009, 123 Stat. 2253.)

CHAPTER 434—ARMAMENTS INDUSTRIAL BASE

Sec.	
4551.	Definitions.
4552.	Policy.
4553.	Armament Retooling and Manufacturing Support Initiative.
4554.	Property management contracts and leases.
4555.	ARMS Initiative loan guarantee program.

§ 4551. Definitions

In this chapter:

(1) The term “ARMS Initiative” means the Armament Retooling and Manufacturing Support Initiative authorized by this chapter.

(2) The term “eligible facility” means a Government-owned, contractor-operated ammunition manufacturing facility, or a Government-owned, contractor-operated depot for the storage, maintenance, renovation, or demilitarization of ammunition, of the Department of the Army that is in an active, inactive, layaway, or caretaker status.

(3) The term “property manager” includes any person or entity managing an eligible facility made available under the ARMS Initiative through a property management contract.

(4) The term “property management contract” includes facility use contracts, site management contracts, leases, and other agreements entered into under the authority of this chapter.

(5) The term “Secretary” means the Secretary of the Army.

(Added Pub. L. 106–398, Sec. 1[[div. A], title III, Sec. 344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–67; amended Pub. L. 109–163, div. A, title III, Sec. 323(a), Jan. 6, 2006, 119 Stat. 3193.)

§ 4552. Policy

It is the policy of the United States—

(1) to encourage, to the maximum extent practicable, commercial firms to use Government-owned, contractor-operated ammunition manufacturing, storage, maintenance, renovation, and demilitarization facilities of the Department of the Army;

(2) to use such facilities for supporting programs, projects, policies, and initiatives that promote competition in the private sector of the United States economy and that advance United States interests in the global marketplace;

(3) to increase the manufacture of products inside the United States;

(4) to support policies and programs that provide manufacturers with incentives to assist the United States in making more efficient and economical use of eligible facilities for commercial purposes;

(5) to provide, as appropriate, small businesses (including socially and economically disadvantaged small business con-

cerns and new small businesses) with incentives that encourage those businesses to undertake manufacturing and other industrial processing activities that contribute to the prosperity of the United States;

(6) to encourage the creation of jobs through increased investment in the private sector of the United States economy;

(7) to foster a more efficient, cost-effective, and adaptable armaments industry in the United States;

(8) to achieve, with respect to armaments manufacturing, storage, maintenance, renovation, and demilitarization capacity, an optimum level of readiness of the national technology and industrial base within the United States that is consistent with the projected threats to the national security of the United States and the projected emergency requirements of the armed forces; and

(9) to encourage facility use contracting where feasible.

(Added Pub. L. 106-398, Sec. 1 [div. A], title III, Sec. 344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-67; amended Pub. L. 109-163, div. A, title III, Sec. 323(c), Jan. 6, 2006, 119 Stat. 3194.)

§ 4553. Armament Retooling and Manufacturing Support Initiative

(a) **AUTHORITY FOR INITIATIVE.**—The Secretary may carry out a program to be known as the “Armament Retooling and Manufacturing Support Initiative”.

(b) **PURPOSES.**—The purposes of the ARMS Initiative are as follows:

(1) To encourage commercial firms, to the maximum extent practicable, to use eligible facilities for commercial purposes.

(2) To increase the opportunities for small businesses (including socially and economically disadvantaged small business concerns and new small businesses) to use eligible facilities for those purposes.

(3) To maintain in the United States a work force having the skills necessary to meet industrial emergency planned requirements for national security purposes.

(4) To demonstrate innovative business practices, to support Department of Defense acquisition reform, and to serve as both a model and a laboratory for future defense conversion initiatives of the Department of Defense.

(5) To the maximum extent practicable, to allow the operation of eligible facilities to be rapidly responsive to the forces of free market competition.

(6) To reduce or eliminate the cost of Government ownership of eligible facilities, including the costs of operations and maintenance, the costs of environmental remediation, and other costs.

(7) To reduce the cost of products of the Department of Defense produced at eligible facilities.

(8) To leverage private investment at eligible facilities through long-term facility use contracts, property management contracts, leases, or other agreements that support and advance the policies and purposes of this chapter, for the following activities:

(A) Recapitalization of plant and equipment.

- (B) Environmental remediation.
- (C) Promotion of commercial business ventures.
- (D) Other activities approved by the Secretary.

(9) To foster cooperation between the Department of the Army, property managers, commercial interests, and State and local agencies in the implementation of sustainable development strategies and investment in eligible facilities made available for purposes of the ARMS Initiative.

(10) To reduce or eliminate the cost of asset disposal that would be incurred if property at an eligible facility was declared excess to the needs of the Department of the Army.

(c) AVAILABILITY OF FACILITIES.—The Secretary may make any eligible facility available for the purposes of the ARMS Initiative.

(d) CONSIDERATION FOR LEASES.—Section 1302 of title 40 shall not apply to uses of property or facilities in accordance with the ARMS Initiative.

(e) PROGRAM SUPPORT.—(1) Funds appropriated for purposes of the ARMS Initiative may be used for administrative support and management.

(2) A full annual accounting of such expenses for each fiscal year shall be provided to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives not later than March 30 of the following fiscal year.

(Added Pub. L. 106–398, Sec. 1[[div. A], title III, Sec. 344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–68; amended Pub. L. 108–178, Sec. 4(b)(5), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 109–163, div. A, title III, Sec. 323(d), Jan. 6, 2006, 119 Stat. 3194.)

§ 4554. Property management contracts and leases

(a) IN GENERAL.—In the case of each eligible facility that is made available for the ARMS Initiative, the Secretary—

(1) shall make full use of facility use contracts, leases, and other such commercial contractual instruments as may be appropriate;

(2) shall evaluate, on the basis of efficiency, cost, emergency mobilization requirements, and the goals and purposes of the ARMS Initiative, the procurement of services from the property manager, including maintenance, operation, modification, infrastructure, environmental restoration and remediation, and disposal of ammunition manufacturing assets, and other services; and

(3) may, in carrying out paragraphs (1) and (2)—

(A) enter into contracts, and provide for subcontracts, for terms up to 25 years, as the Secretary considers appropriate and consistent with the needs of the Department of the Army and the goals and purposes of the ARMS Initiative; and

(B) use procedures that are authorized to be used under section 2304(c)(5) of this title when the contractor or subcontractor is a source specified in law.

(b) CONSIDERATION FOR USE.—(1) To the extent provided in a contract entered into under this section for the use of property at an eligible facility that is accountable under the contract, the Sec-

retary may accept consideration for such use that is, in whole or in part, in a form other than—

- (A) rental payments; or
 - (B) revenue generated at the facility.
- (2) Forms of consideration acceptable under paragraph (1) for a use of an eligible facility or any property at an eligible facility include the following:
- (A) The improvement, maintenance, protection, repair, and restoration of the facility, the property, or any property within the boundaries of the installation where the facility is located.
 - (B) Reductions in overhead costs.
 - (C) Reductions in product cost.
 - (D) The demilitarization and storage of conventional ammunition.
- (3) The authority under paragraph (1) may be exercised without regard to section 3302(b) of title 31 and any other provision of law.

(Added Pub. L. 106–398, Sec. 1 [[div. A], title III, Sec. 344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–69; amended Pub. L. 109–163, div. A, title III, Sec. 323(b), Jan. 6, 2006, 119 Stat. 3194.)

§ 4555. ARMS Initiative loan guarantee program

(a) PROGRAM AUTHORIZED.—Subject to subsection (b), the Secretary may carry out a loan guarantee program to encourage commercial firms to use eligible facilities under this chapter. Under any such program, the Secretary may guarantee the repayment of any loan made to a commercial firm to fund, in whole or in part, the establishment of a commercial activity to use an eligible facility under this chapter.

(b) ADVANCED BUDGET AUTHORITY.—Loan guarantees under this section may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required by section 504 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c).

(c) PROGRAM ADMINISTRATION.—(1) The Secretary may enter into an agreement with any of the officials named in paragraph (2) under which that official may, for the purposes of this section—

- (A) process applications for loan guarantees;
 - (B) guarantee repayment of loans; and
 - (C) provide any other services to the Secretary to administer the loan guarantee program.
- (2) The officials referred to in paragraph (1) are as follows:
- (A) The Administrator of the Small Business Administration.
 - (B) The head of any appropriate agency in the Department of Agriculture, including—
 - (i) the Administrator of the Farmers Home Administration; and
 - (ii) the Administrator of the Rural Development Administration.
- (3) Each official authorized to do so under an agreement entered into under paragraph (1) may guarantee loans under this section to commercial firms of any size, notwithstanding any limitations on the size of applicants imposed on other loan guarantee programs that the official administers.

(4) To the extent practicable, each official processing loan guarantee applications under this section pursuant to an agreement entered into under paragraph (1) shall use the same processing procedures as the official uses for processing loan guarantee applications under other loan guarantee programs that the official administers.

(d) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed—

(1) \$20,000,000, with respect to any single borrower; and

(2) \$320,000,000 with respect to all borrowers.

(e) TRANSFER OF FUNDS.—The Secretary may transfer to an official providing services under subsection (c), and that official may accept, such funds as may be necessary to administer the loan guarantee program under this section.

(Added Pub. L. 106-398, Sec. 1[[div. A], title III, Sec. 344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-70.)

CHAPTER 435—ISSUE OF SERVICEABLE MATERIAL TO ARMED FORCES

Sec.	
4561.	Rations.
4562.	Clothing.
4563.	Clothing: replacement when destroyed to prevent contagion.
4564.	Navy and Marine Corps: camp equipment and transportation; when on shore duty with Army.
4565.	Colors, standards, and guidons of demobilized organizations: disposition.

§ 4561. Rations

(a) The President may prescribe the components, and the quantities thereof, of the Army ration. He may direct the issue of equivalent articles in place of the prescribed components whenever, in his opinion, economy and the health and comfort of the members of the Army so require.

(b) Under the direction of the Secretary of the Army, the branch, office, or officer designated by him shall issue the components of the Army ration.

(c) An enlisted member of the Army on active duty is entitled to one ration daily. The emergency ration, when issued, is in addition to the regular ration.

(d) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick in hospitals shall be provided under regulations prescribed by the Surgeon General and approved by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 255.)

§ 4562. Clothing

The President may prescribe the quantity and kind of clothing to be issued annually to members of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

§ 4563. Clothing: replacement when destroyed to prevent contagion

Upon the recommendation of the Surgeon General, the Secretary of the Army may order a gratuitous issue of clothing to any enlisted member of the Army who has had a contagious disease, and to any hospital attendant who attended him while he had that disease, to replace clothing destroyed by order of an officer of the Medical Corps to prevent contagion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

§ 4564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Army

While any detachment of the Navy or Marine Corps is on shore duty in cooperation with troops of the Army, the officer of the Army designated by the Secretary of the Army shall, upon the requisition

of the officer of the Navy or Marine Corps in command of the detachment, issue rations and camp equipment, and furnish transportation, to that detachment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

§ 4565. Colors, standards, and guidons of demobilized organizations: disposition

(a) The Secretary of the Army may dispose of colors, standards, and guidons of demobilized organizations of the Army, as follows:

(1) Those brought into Federal service by the Army National Guard of a State may be returned to that State upon the request of its governor.

(2) Those that cannot be returned under clause (1) may, upon the request of its governor, be sent to the State that, as determined by the Secretary, furnished the majority of members of the organization when it was formed.

Those that cannot be returned or sent under clause (1) or (2) of this subsection shall be delivered to the Secretary for such national use as the Secretary may direct.

(b) Title to colors, standards, and guidons of demobilized organizations of the Army remains in the United States.

(c) No color, standard, or guidon may be disposed of under this section unless provision satisfactory to the Secretary has been made for its preservation and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256; Pub. L. 89-718, Sec. 29, Nov. 2, 1966, 80 Stat. 1119.)

CHAPTER 437—UTILITIES AND SERVICES

- Sec.
4591. Utilities: proceeds from overseas operations.
4592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.
4593. Quarters: heat and light.
4594. Furnishing of heraldic services.
4595. Army Military History Institute: fee for providing historical information to the public.

§ 4591. Utilities: proceeds from overseas operations

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Corps of Engineers in the field overseas are available for that utility until the close of the fiscal year following that in which they are received.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

§ 4592. Radiograms and telegrams: forwarding charges due connecting commercial facilities

In the operation of telegraph lines, cables, or radio stations, members of the Signal Corps may, in the discretion of the Secretary of the Army, collect forwarding charges due connecting commercial telegraph or radio companies for sending radiograms or telegrams over their lines. Under such regulations as the Secretary may prescribe, they may present a voucher to a disbursing official for payment of the forwarding charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257; Pub. L. 97-258, Sec. 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052; Pub. L. 104-316, title I, Sec. 105(e), Oct. 19, 1996, 110 Stat. 3830.)

§ 4593. Quarters: heat and light

The heat and light necessary for the authorized quarters of members of the Army shall be furnished at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

§ 4594. Furnishing of heraldic services

(a) Under regulations to be prescribed by the Secretary of the Army, an authority designated by him may, upon the request of, and subject to approval by, the Secretary of another military department, design flags, insignia, badges, medals, seals, decorations, guidons, streamers, finial pieces for flagstaves, buttons, buckles, awards, trophies, marks, emblems, rosettes, scrolls, braids, ribbons, knots, tabs, cords, and similar items for the requesting department.

(b) Upon request the Secretary of the Army may advise other departments and agencies of the United States on matters of heraldry.

(c) The Secretary of the Army may prescribe regulations providing for reimbursement for services furnished under this section.

(Added Pub. L. 85-263, Sec. 1(1), Sept. 2, 1957, 71 Stat. 589.)

§ 4595. Army Military History Institute: fee for providing historical information to the public

(a) **AUTHORITY.**—Except as provided in subsection (b), the Secretary of the Army may charge a person a fee for providing the person with information from the United States Army Military History Institute that is requested by that person.

(b) **EXCEPTIONS.**—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) **LIMITATION ON AMOUNT.**—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) **RETENTION OF FEES.**—Amounts received under subsection (a) for providing information in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from the United States Army Military History Institute during that fiscal year.

(e) **DEFINITIONS.**—In this section:

(1) The term “United States Army Military History Institute” means the archive for historical records and materials of the Army that the Secretary of the Army designates as the primary archive for such records and materials.

(2) The terms “officer of the United States” and “employee of the United States” have the meanings given the terms “officer” and “employee”, respectively, in sections 2104 and 2105, respectively, of title 5.

(Added Pub. L. 106-398, Sec. 1 [[div. A], title X, Sec. 1085(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-287.)

CHAPTER 439—SALE OF SERVICEABLE MATERIAL

- Sec.
4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices.
4622. Rations: commissioned officers in field.
[4623. Repealed.]
4624. Medical supplies: civilian employees of the Army; American National Red Cross; Armed Forces Retirement Home.
4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans.
4626. Aircraft supplies and services: foreign military or air attaché.
4627. Supplies: educational institutions.
4628. Airplane parts and accessories: civilian flying schools.
4629. Proceeds: disposition.

§ 4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a) The Secretary of the Army shall procure and sell, for cash or credit—

(1) articles specified by the Secretary of the Army or a person designated by him, to members of the Army; and

(2) items of individual clothing and equipment, to officers of the Army, under such restrictions as the Secretary may prescribe.

An account of sales on credit shall be kept and the amount due reported to any branch, office, or officer designated by the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Army.

(c) The Secretary may sell serviceable quartermaster property, other than subsistence supplies, to an officer of another armed force for his use in the service, in the same manner as these articles are sold to an officer of the Army.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to a member of the Army.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Army honorably or under honorable conditions, at

the prices at which like articles are sold to members of the Army. This subsection does not modify section 772 or 773 of this title.

(f) Whenever, under regulations to be prescribed by the Secretary, subsistence supplies are furnished to any branch of the Army or sold to employees of any executive department other than the Department of Defense, payment shall be made in cash or by commercial credit.

(g) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of military activities.

However, sales to officers and employees inside the United States may be made only to those residing within military installations.

(h) Appropriations for subsistence of the Army may be applied to the purchase of subsistence supplies for sale to members of the Army on active duty for the use of themselves and their families.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257; Pub. L. 87-651, title I, Sec. 118, Sept. 7, 1962, 76 Stat. 513; Pub. L. 96-513, title V, Sec. 512(17), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 100-180, div. A, title III, Sec. 313(c), Dec. 4, 1987, 101 Stat. 1074; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104-106, div. A, title III, Sec. 375(b)(1), Feb. 10, 1996, 110 Stat. 283.)

§ 4622. Rations: commissioned officers in field

Commissioned officers of the Army serving in the field may buy rations for their own use, on credit, from any officer designated by the Secretary of the Army. Amounts due for these purchases shall be reported monthly to the officer of the Army designated by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 258.)

[§ 4623. Repealed. Pub. L. 91-482, Sec. 1(a), Oct. 21, 1970, 84 Stat. 1082]

§ 4624. Medical supplies: civilian employees of the Army; American National Red Cross; Armed Forces Retirement Home

(a) Under regulations to be prescribed by the Secretary of the Army, a civilian employee of the Department of the Army who is stationed at an Army post may buy necessary medical supplies from the Army when they are prescribed by an officer of the Medical Corps on active duty.

(b) With the approval of the Secretary, the Army Medical Department may sell medical supplies to the American National Red Cross for cash.

(c) Any branch, office, or officer designated by the Secretary may sell medical and hospital supplies to the Armed Forces Retirement Home.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259; Pub. L. 90-329, June 4, 1968, 82 Stat. 170; Pub. L. 96-513, title V, Sec. 512(18)(A), (B), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 101-510, div. A, title XV, Sec. 1533(a)(5)(A), (B), Nov. 5, 1990, 104 Stat. 1734.)

§ 4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans

(a) Any branch, office, or officer designated by the Secretary of the Army may sell articles of ordnance property to officers of other armed forces for their use in the service, in the same manner as those articles are sold to officers of the Army.

(b) Under such regulations as the Secretary may prescribe, ordnance stores may be sold to civilian employees of the Army and to the American National Red Cross.

(c) Articles of ordnance property may be sold to educational institutions and to State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to those institutions and homes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

§ 4626. Aircraft supplies and services: foreign military or air attaché

Under such conditions as he may prescribe, the Secretary of the Army may provide for the sale of fuel, oil, and other supplies for use in aircraft operated by a foreign military or air attaché accredited to the United States, and for the furnishing of mechanical service and other assistance to such aircraft. Shelter may be furnished to such aircraft, but only without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

§ 4627. Supplies: educational institutions

Under such regulations as the Secretary of the Army may prescribe, supplies and military publications procured for the Army may be sold to any educational institution to which an officer of the Army is detailed as professor of military science and tactics, for the use of its military students. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

§ 4628. Airplane parts and accessories: civilian flying schools

The Secretary of the Army may sell, to civilian flying schools at which personnel of the Department of the Army or the Department of the Air Force are receiving flight training under contracts requiring these schools to maintain and repair airplanes of the Army furnished to them for flight training, the spare parts and accessories needed for those repairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

§ 4629. Proceeds: disposition

The proceeds of sales of the following shall be paid into the Treasury to the credit of the appropriation out of which they were purchased, and are available for the purposes of that appropriation:

- (1) Exterior articles of uniform sold under section 4621 of this title.

(2) Supplies and military publications sold to educational institutions under section 4627 of this title.

(3) Fuel, oil, other supplies, and services for aircraft of a foreign military or air attache sold under section 4626 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

CHAPTER 441—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

- Sec.
4651. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.
4652. Rifles and ammunition for target practice: educational institutions having corps of cadets.
4653. Ordnance and ordnance stores: District of Columbia high schools.
4654. Quartermaster supplies: military instruction camps.
4655. Arms and ammunition: agencies and departments of the United States.
4656. Aircraft and equipment: civilian aviation schools.
4657. Sale of ammunition for avalanche-control purposes.

§ 4651. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Army may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit students over 14 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260; Pub. L. 99-145, title XIII, Sec. 1301(b)(3)(C), Nov. 8, 1985, 99 Stat. 736.)

§ 4652. Rifles and ammunition for target practice: educational institutions having corps of cadets

(a) The Secretary of the Army may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of cadets of sufficient number for target practice. He may also issue 40 rounds of ball cartridges for each cadet for each range at which target practice is held, but not more than 120 rounds each year for each cadet participating in target practice.

(b) The institutions to which property is lent under subsection (a) shall use it for target practice, take proper care of it and return it when required.

(c) The Secretary shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

§ 4653. Ordnance and ordnance stores: District of Columbia high schools

The Secretary of the Army, under regulations to be prescribed by him, may issue to the high schools of the District of Columbia ordnance and ordnance stores required for military instruction and

practice. The Secretary shall require a bond in double the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

§ 4654. Quartermaster supplies: military instruction camps

Under such conditions as he may prescribe, the Secretary of the Army may issue, to any educational institution at which an Army officer is detailed as professor of military science and tactics, such quartermaster supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall require a bond in the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

§ 4655. Arms and ammunition: agencies and departments of the United States

(a) Whenever required for the protection of public money and property, the Secretary of the Army may lend arms and their accouterments, and issue ammunition, to a department or independent agency of the United States, upon request of its head. Property lent or issued under this subsection may be delivered to an officer of the department or agency designated by the head thereof, and that officer shall account for the property to the Secretary of the Army. Property lent or issued under this subsection and not properly expended shall be returned when it is no longer needed.

(b) The department or agency to which property is lent or issued under subsection (a) shall transfer funds to the credit of the Department of the Army to cover the costs of—

- (1) ammunition issued;
- (2) replacing arms and accouterments that have been lost or destroyed, or cannot be repaired;
- (3) repairing arms and accouterments returned to the Department of the Army; and
- (4) making and receiving shipments by the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

§ 4656. Aircraft and equipment: civilian aviation schools

The Secretary of the Army, under regulations to be prescribed by him, may lend aircraft, aircraft parts, and aeronautical equipment and accessories that are required for instruction, training, and maintenance, to accredited civilian aviation schools at which personnel of the Department of the Army or the Department of the Air Force are pursuing a course of instruction and training under detail by competent orders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261; Pub. L. 97-295, Sec. 1(42), Oct. 12, 1982, 96 Stat. 1298.)

§ 4657. Sale of ammunition for avalanche-control purposes

Subject to the needs of the Army, the Secretary of the Army may sell ammunition for military weapons which are used for avalanche-control purposes to any State (or entity of a State) or to any other non-Federal entity that has been authorized by a State to use those weapons in that State for avalanche-control purposes. Sales of ammunition under this section shall be on a reimbursable basis and shall be subject to the condition that the ammunition be used only for avalanche-control purposes.

(Added Pub. L. 98-525, title XV, Sec. 1538(a)(1), Oct. 19, 1984, 98 Stat. 2636.)

CHAPTER 443—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

- Sec.
4681. Surplus war material: sale to States and foreign governments.
4682. Obsolete or excess material: sale to National Council of Boy Scouts of America.
4683. Excess M-1 rifles: loan or donation for funeral and other ceremonial purposes.
4684. Surplus obsolete ordnance: sale to patriotic organizations.
4685. Obsolete ordnance: loan to educational institutions and State soldiers and sailors' orphans' homes.
4686. Obsolete ordnance: gift to State homes for soldiers and sailors.
4687. Sale of excess, obsolete, or unserviceable ammunition and ammunition components.
4688. Armor-piercing ammunition and components: condition on disposal.
4689. Transfer of material and equipment to the Architect of the Capitol.
4690. Recyclable munitions materials: sale; use of proceeds.

§ 4681. Surplus war material: sale to States and foreign governments

Subject to regulations under section 121 of title 40, the Secretary of the Army may sell surplus war material and supplies, except food, of the Department of the Army, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 512(19), 94 Stat. 2930; Pub. L. 107-217, Sec. 3(b)(24), Aug. 21, 2002, 116 Stat. 1297.)

§ 4682. Obsolete or excess material: sale to National Council of Boy Scouts of America

Subject to regulations under section 121 of title 40, the Secretary of the Army, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Army, including packing, handling, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 512(19), 94 Stat. 2930; Pub. L. 107-217, Sec. 3(b)(25), Aug. 21, 2002, 116 Stat. 1297.)

§ 4683. Excess M-1 rifles: loan or donation for funeral and other ceremonial purposes

(a) **AUTHORITY TO LEND OR DONATE.**—(1) The Secretary of the Army, under regulations prescribed by the Secretary, may conditionally lend or donate excess M-1 rifles (not more than 15), slings, and cartridge belts to any eligible organization for use by that organization for funeral ceremonies of a member or former member of the armed forces, and for other ceremonial purposes.

(2) If the rifles to be loaned or donated under paragraph (1) are to be used by the eligible organization for funeral ceremonies of a member or former member of the armed forces, the Secretary may issue and deliver the rifles, together with the necessary accoutrements and blank ammunition, without charge.

(b) RELIEF FROM LIABILITY.—The Secretary may relieve an eligible organization to which materials are lent or donated under subsection (a), and the surety on its bond, from liability for loss or destruction of the material lent or donated, if there is conclusive evidence that the loss or destruction did not result from negligence.

(c) CONDITIONS ON LOAN OR DONATION.—In lending or donating rifles under subsection (a), the Secretary shall impose such conditions on the use of the rifles as may be necessary to ensure security, safety, and accountability. The Secretary may impose such other conditions as the Secretary considers appropriate.

(d) ELIGIBLE ORGANIZATION DEFINED.—In this section, the term “eligible organization” means—

(1) a unit or other organization of honor guards recognized by the Secretary of the Army as honor guards for a national cemetery;

(2) a law enforcement agency; or

(3) a local unit of any organization that, as determined by the Secretary of the Army, is a nationally recognized veterans’ organization.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Pub. L. 101–189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 106–65, div. A, title III, Sec. 381(a)–(d)(1), Oct. 5, 1999, 113 Stat. 582.)

§ 4684. Surplus obsolete ordnance: sale to patriotic organizations

Subject to regulations under section 121 of title 40, any branch, office, or officer designated by the Secretary of the Army may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers’ monuments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Dec. 12, 1980, Pub. L. 96–513, title V, Sec. 512(19), 94 Stat. 2930; Pub. L. 107–217, Sec. 3(b)(26), Aug. 21, 2002, 116 Stat. 1297.)

§ 4685. Obsolete ordnance: loan to educational institutions and State soldiers and sailors’ orphans’ homes

(a) Upon the recommendation of the governor of the State concerned or Guam or the Virgin Islands, the Secretary of the Army, under regulations to be prescribed by him and without cost to the United States for transportation, may lend obsolete ordnance and ordnance stores to State, Guam, and the Virgin Islands educational institutions and to State soldiers and sailors’ orphans’ homes, for drill and instruction. However, no loan may be made under this subsection to an institution to which ordnance or ordnance stores may be issued under any law that was in effect on June 30, 1906, and is still in effect.

(b) The Secretary shall require a bond from each institution or home to which property is lent under subsection (a), in double the value of the property lent, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 263; Pub. L. 109–163, div. A, title X, Sec. 1057(a)(10), Jan. 6, 2006, 119 Stat. 3441.)

§ 4686. Obsolete ordnance: gift to State homes for soldiers and sailors

Subject to regulations under section 121 of title 40, the Secretary of the Army may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 263; Dec. 12, 1980, Pub. L. 96–513, title V, Sec. 512(19), 94 Stat. 2930; Pub. L. 107–217, Sec. 3(b)(27), Aug. 21, 2002, 116 Stat. 1297.)

§ 4687. Sale of excess, obsolete, or unserviceable ammunition and ammunition components

(a) **AUTHORITY TO SELL OUTSIDE DoD.**—The Secretary of the Army may sell to an eligible purchaser described in subsection (c) ammunition or ammunition components that are excess, obsolete, or unserviceable and have not been demilitarized if—

(1) the purchaser enters into an agreement, in advance, with the Secretary—

(A) to demilitarize the ammunition or components; and

(B) to reclaim, recycle, or reuse the component parts or materials; or

(2) the Secretary, or an official of the Department of the Army designated by the Secretary, approves the use of the ammunition or components proposed by the purchaser as being consistent with the public interest.

(b) **METHOD OF SALE.**—The Secretary shall use competitive procedures to sell ammunition and ammunition components under this section, except that the Secretary may use procedures other than competitive procedures in any case in which the Secretary determines that there is only one potential buyer of the items being offered for sale.

(c) **ELIGIBLE PURCHASERS.**—To be eligible to purchase excess, obsolete, or unserviceable ammunition or ammunition components under this section, the purchaser shall be a licensed manufacturer (as defined in section 921(a)(10) of title 18) that, as determined by the Secretary, has a capability to modify, reclaim, transport, and either store or sell the ammunition or ammunition components sought to be purchased.

(d) **HOLD HARMLESS AGREEMENT.**—The Secretary shall require a purchaser of ammunition or ammunition components under this section to agree to hold harmless and indemnify the United States from any claim for damages for death, injury, or other loss resulting from a use of the ammunition or ammunition components, except in a case of willful misconduct or gross negligence of a representative of the United States.

(e) VERIFICATION OF DEMILITARIZATION.—The Secretary shall establish procedures for ensuring that a purchaser of ammunition or ammunition components under this section demilitarizes the ammunition or ammunition components in accordance with any agreement to do so under subsection (a)(1). The procedures shall include onsite verification of demilitarization activities.

(f) CONSIDERATION.—The Secretary may accept ammunition, ammunition components, or ammunition demilitarization services as consideration for ammunition or ammunition components sold under this section. The fair market value of any such consideration shall be equal to or exceed the fair market value or, if higher, the sale price of the ammunition or ammunition components sold.

(g) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the applicability of section 38 of the Arms Export Control Act (22 U.S.C. 2778) to sales of ammunition or ammunition components on the United States Munitions List.

(h) DEFINITIONS.—In this section:

(1) The term “excess, obsolete, or unserviceable”, with respect to ammunition or ammunition components, means that the ammunition or ammunition components are no longer necessary for war reserves or for support of training of the Army or production of ammunition or ammunition components.

(2) The term “demilitarize”, with respect to ammunition or ammunition components—

(A) means to destroy the military offensive or defensive advantages inherent in the ammunition or ammunition components; and

(B) includes any mutilation, scrapping, melting, burning, or alteration that prevents the use of the ammunition or ammunition components for the military purposes for which the ammunition or ammunition components was designed or for a lethal purpose.

(Added Pub. L. 105–85, div. A, title X, Sec. 1065(a)(1), Nov. 18, 1997, 111 Stat. 1893; amended Pub. L. 109–364, div. A, title X, Sec. 1071(a)(30), Oct. 17, 2006, 120 Stat. 2399.)

§ 4688. Armor-piercing ammunition and components: condition on disposal

(a) LIMITATION ON RESALE OR OTHER TRANSFER.—Except as provided in subsection (b), whenever the Secretary of the Army carries out a disposal (by sale or otherwise) of armor-piercing ammunition, or a component of armor-piercing ammunition, the Secretary shall require as a condition of the disposal that the recipient agree in writing not to sell or otherwise transfer any of the ammunition (reconditioned or otherwise), or any armor-piercing component of that ammunition, to any purchaser in the United States other than a law enforcement or other governmental agency.

(b) EXCEPTION.—Subsection (a) does not apply to a transfer of a component of armor-piercing ammunition solely for the purpose of metal reclamation by means of a destructive process such as melting, crushing, or shredding.

(c) SPECIAL RULE FOR NON-ARMOR-PIERCING COMPONENTS.—A component of the armor-piercing ammunition that is not itself armor-piercing and is not subjected to metal reclamation as de-

scribed in subsection (b) may not be used as a component in the production of new or remanufactured armor-piercing ammunition other than for sale to a law enforcement or other governmental agency or for a government-to-government sale or commercial export to a foreign government under the Arms Export Control Act (22 U.S.C. 2751).

(d) DEFINITION.—In this section, the term “armor-piercing ammunition” means a center-fire cartridge the military designation of which includes the term “armor penetrator” or “armor-piercing”, including a center-fire cartridge designated as armor-piercing incendiary (API) or armor-piercing incendiary-tracer (API-T).

(Added Pub. L. 106–398, Sec. 1 [[div. A], title III, Sec. 382(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–85.)

§ 4689. Transfer of material and equipment to the Architect of the Capitol

The Secretary of the Army is authorized to transfer, without payment, to the Architect of the Capitol, such material and equipment, not required by the Department of the Army, as the Architect may request for use at the Capitol power plant, the Capitol, and the Senate and House Office Buildings.

(Added Pub. L. 107–217, Sec. 2(1), Aug. 21, 2002, 116 Stat. 1294; amended Pub. L. 108–375, div. A, title X, Sec. 1084(d)(29), Oct. 28, 2004, 118 Stat. 2063.)

§ 4690. Recyclable munitions materials: sale; use of proceeds

(a) AUTHORITY FOR PROGRAM.—Notwithstanding section 2577 of this title, the Secretary of the Army may carry out a program to sell recyclable munitions materials resulting from the demilitarization of conventional military munitions without regard to chapter 5 of title 40 and use any proceeds in accordance with subsection (c).

(b) METHOD OF SALE.—The Secretary shall use competitive procedures to sell recyclable munitions materials under this section in a manner consistent with Federal procurement laws and regulations.

(c) PROCEEDS.—(1) Proceeds from the sale of recyclable munitions materials under this section shall be credited to an account that is specified as being for Army ammunition demilitarization from funds made available for the procurement of ammunition, to be available only for reclamation, recycling, and reuse of conventional military munitions (including research and development and equipment purchased for such purpose).

(2) Amounts credited under this subsection shall be available for obligation for the fiscal year during which the funds are so credited and for three subsequent fiscal years.

(d) REGULATIONS.—The Secretary shall prescribe regulations to carry out the program established under this section. Such regulations shall be consistent and in compliance with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the regulations implementing that Act.

(Added Pub. L. 109–364, div. A, title III, Sec. 353(a), Oct. 17, 2006, 120 Stat. 2161.)

CHAPTER 445—DISPOSITION OF EFFECTS OF DECEASED PERSONS; CAPTURED FLAGS

- Sec.
[4711. Repealed.]
4712. Disposition of effects of deceased persons by summary court-martial.
[4713. Repealed.]
4714. Collection of captured flags, standards, and colors.

[§ 4711. Repealed. Pub. L. 106-65, div. A, title VII, Sec. 721(b), Oct. 5, 1999, 113 Stat. 694]

§ 4712. Disposition of effects of deceased persons by summary court-martial

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Army; or

(2) a resident of the Armed Forces Retirement Home who dies in an Army hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then in camp or quarters.

(b) If there is no legal representative or surviving spouse present, the commanding officer shall direct a summary court-martial to collect the effects of the deceased that are then in camp or quarters.

(c) The summary court-martial may collect debts due the decedent's estate by local debtors, pay undisputed local creditors of the deceased to the extent permitted by money of the deceased in the court's possession, and shall take receipts for those payments, to be filed with the court's final report to the Department of the Army.

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) The surviving spouse or legal representative.

(2) A child of the deceased.

(3) A parent of the deceased.

(4) A brother or sister of the deceased.

(5) The next-of-kin of the deceased.

(6) A beneficiary named in the will of the deceased.

(e) If the summary court-martial cannot dispose of the effects under subsection (d) because there are no persons in those categories or because the court finds that the addresses of the persons are not known or readily ascertainable, the court may convert the effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly

as keepsakes, into cash, by public or private sale, but not until 30 days after the date of death of the deceased.

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects, and articles not permitted to be sold, to the executive part of the Department of the Army. The Secretary of the Army shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Army under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 264; Pub. L. 89-718, Sec. 30, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 96-513, title V, Sec. 512(20), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 99-145, title XIII, Sec. 1301(b)(4)(A), Nov. 8, 1985, 99 Stat. 736; Pub. L. 101-510, div. A, title XV, Sec. 1533(a)(6), Nov. 5, 1990, 104 Stat. 1734; Pub. L. 104-316, title II, Sec. 202(g), Oct. 19, 1996, 110 Stat. 3842.)

[§ 4713. Repealed. Pub. L. 101-510, div. A, title XV, Sec. 1533(a)(7)(A), Nov. 5, 1990, 104 Stat. 1734]

§ 4714. Collection of captured flags, standards, and colors

The Secretary of the Army shall have sent to him all flags, standards, and colors taken by the Army from enemies of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

CHAPTER 447—TRANSPORTATION

Sec.

[4741 to 4748. Repealed or Renumbered.]

4749. Property: for United States surveys.

[§ 4741. Repealed. Pub. L. 108-375, div. A, title X, Sec. 1072(c), Oct. 28, 2004, 118 Stat. 2058]

[§ 4742. Renumbered 2644]

[§ 4743. Repealed. Pub. L. 108-375, div. A, title X, Sec. 1072(c), Oct. 28, 2004, 118 Stat. 2058]

[§ 4744. Secs. 4744 to 4747. Renumbered Secs. 2648 to 2651]

[§ 4748. Repealed. Pub. L. 87-651, title I, Sec. 119(1), Sept. 7, 1962, 76 Stat. 513]

§ 4749. Property: for United States surveys

Under regulations governing the transportation of Army supplies, any branch, office, or officer designated by the Secretary of the Army shall receive, transport, and be responsible for property turned over by the officers or agents of any United States survey, for the National Museum or for a department of the United States or field office thereof. The amount paid by the Army for transportation under this section shall be refunded to the Army by the National Museum or the department to which the property is consigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

CHAPTER 449—REAL PROPERTY

- Sec.
4771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
4772. Heritage Center for the National Museum of the United States Army: development and operation.
[4774 to 4775. Repealed.]
4776. Emergency construction: fortifications.
4777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
4779. Use of public property.
4780. Acquisition of buildings in District of Columbia.

§ 4771. Acceptance of donations: land for mobilization, training, supply base, or aviation field

The Secretary of the Army may accept for the United States a gift of—

- (1) land that he considers suitable and desirable for a permanent mobilization, training, or supply station; and
- (2) land that he considers suitable and desirable for an aviation field, if the gift is from a citizen of the United States and its terms authorize the use of the property by the United States for any purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

§ 4772. Heritage Center for the National Museum of the United States Army: development and operation

(a) AGREEMENT FOR DEVELOPMENT OF CENTER.—The Secretary of the Army may enter into an agreement with the Army Historical Foundation, a nonprofit organization, for the design, construction, and operation of a facility or group of facilities at Fort Belvoir, Virginia, for the National Museum of the United States Army. The facility or group of facilities constructed pursuant to the agreement shall be known as the Heritage Center for the National Museum of the United States Army (in this section referred to as the “Center”).

(b) PURPOSE OF CENTER.—The Center shall be used for the identification, curation, storage, and public viewing of artifacts and artwork of significance to the United States Army, as agreed to by the Secretary of the Army. The Center may also be used to support such education, training, research, and associated purposes as the Secretary considers appropriate.

(c) DESIGN AND CONSTRUCTION.—(1) The design of the Center shall be subject to the approval of the Secretary of the Army.

(2) For each phase of the development of the Center, the Secretary may—

(A) accept funds from the Army Historical Foundation for the design and construction of such phase of the Center; or

(B) permit the Army Historical Foundation to contract for the design and construction of such phase of the Center.

(d) ACCEPTANCE BY SECRETARY.—Upon the satisfactory completion, as determined by the Secretary of the Army, of any phase of the Center, and upon the satisfaction of any financial obligations incident to such phase of the Center by the Army Historical Foundation, the Secretary shall accept such phase of the Center from the Army Historical Foundation, and all right, title, and interest in and to such phase of the Center shall vest in the United States. Upon becoming the property of the United States, the Secretary shall assume administrative jurisdiction over the Center.

(e) USE OF CERTAIN GIFTS.—(1) Under regulations prescribed by the Secretary of the Army, the Commander of the United States Army Center of Military History may, without regard to section 2601 of this title, accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property of a value of \$250,000 or less made to the United States if such gift, devise, or bequest is for the benefit of the National Museum of the United States Army or the Center.

(2) The Secretary may pay or authorize the payment of any reasonable and necessary expense in connection with the conveyance or transfer of a gift, devise, or bequest under this subsection.

(f) LEASE OF FACILITY.—(1) Under such terms and conditions as the Secretary of the Army considers appropriate, the Secretary may lease portions of the Center to the Army Historical Foundation to be used by the Foundation, consistent with the purpose of the Center, for—

(A) generating revenue for activities of the Center through rental use by the public, commercial and nonprofit entities, State and local governments, and other Federal agencies; and

(B) such administrative purposes as may be necessary for the support of the Center.

(2) The annual amount of consideration paid to the Secretary by the Army Historical Foundation for a lease under paragraph (1) may not exceed an amount equal to the actual cost, as determined by the Secretary, of the annual operations and maintenance of the Center.

(3) Notwithstanding any other provision of law, the Secretary shall use amounts paid under paragraph (2) to cover the costs of operation of the Center.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of the Army may require such additional terms and conditions in connection with the agreement authorized by subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(Added Pub. L. 108–375, div. B, title XXVIII, Sec. 2822(a), Oct. 28, 2004, 118 Stat. 2130.)

[§ 4774. Repealed. Pub. L. 97–214, Sec. 7(1), July 12, 1982, 96 Stat. 173]

[§ 4775. Repealed. Pub. L. 92-145, title V, Sec. 509(a), Oct. 27, 1971, 85 Stat. 408]

§ 4776. Emergency construction: fortifications

If in an emergency the President considers it urgent, a temporary fort or fortification may be built on private land if the owner consents in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 91-393, Sec. 5, Sept. 1, 1970, 84 Stat. 835.)

§ 4777. Permits: military reservations; landing ferries, erecting bridges, driving livestock

Whenever the Secretary of the Army considers that it can be done without injury to the reservation or inconvenience to the military forces stationed there, he may permit—

- (1) the landing of ferries at a military reservation;
- (2) the erection of bridges on a military reservation; and
- (3) the driving of livestock across a military reservation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 96-513, title V, Sec. 512(23), Dec. 12, 1980, 94 Stat. 2930.)

§ 4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association

Under such conditions as he may prescribe, the Secretary of the Army may issue a revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain on military reservations, inside the United States and the Commonwealths and possessions, buildings needed by that organization for the promotion of the social, physical, intellectual, and moral welfare of the members of the Army on those reservations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(5), (6), Jan. 6, 2006, 119 Stat. 3440, 3441; Pub. L. 111-383, div. A, title X, Sec. 1075(h)(4)(A)(i), Jan. 7, 2011, 124 Stat. 4377.)

§ 4779. Use of public property

(a) When the economy of the Army so requires, the Secretary of the Army shall establish military headquarters in places where suitable buildings are owned by the United States.

(b) No money appropriated for the support of the Army may be spent for post gardens or Army exchanges. However, this does not prevent Army exchanges from using public buildings or public transportation that, in the opinion of the office or officer designated by the Secretary, are not needed for other purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 99-661, div. B, title VII, Sec. 2721, Nov. 14, 1986, 100 Stat. 4042.)

§ 4780. Acquisition of buildings in District of Columbia

(a) In time of war or when war is imminent, the Secretary of the Army may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Army, requisition the use and take possession of any building or space in any building, and its appurtenances, in the District of Columbia, other than—

- (1) a dwelling house occupied as such;
- (2) a building occupied by any other agency of the United States; or
- (3) space in such a dwelling house or building.

The Secretary shall determine, and pay out of funds appropriated for the payment of rent by the Department of the Army, just compensation for that use. If the amount of the compensation is not satisfactory to the person entitled to it, the Secretary shall pay 75 percent of it to that person, and the claimant is entitled to recover by action against the United States an additional amount that, when added to the amount paid by the Secretary, is determined by the court to be just compensation for that use.

(Added Pub. L. 85-861, Sec. 1(105)(A), Sept. 2, 1958, 72 Stat. 1489.)

CHAPTER 451—MILITARY CLAIMS

Sec.	
4801.	Definition.
4802.	Admiralty claims against the United States.
4803.	Admiralty claims by United States.
4804.	Salvage claims by United States.
[4805.	Repealed.]
4806.	Settlement or compromise: final and conclusive.

§ 4801. Definition

In this chapter, the term “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 100–180, div. A, title XII, Sec. 1231(19)(B), Dec. 4, 1987, 101 Stat. 1161.)

§ 4802. Admiralty claims against the United States

(a) The Secretary of the Army may settle or compromise an admiralty claim against the United States for—

(1) damage caused by a vessel of, or in the service of, the Department of the Army or by other property under the jurisdiction of the Department of the Army;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Army or to other property under the jurisdiction of the Department of the Army; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Army or by property under the jurisdiction of the Department of the Army.

(b) If a claim under subsection (a) is settled or compromised for \$500,000 or less, the Secretary of the Army may pay it. If it is settled or compromised for more than \$500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than \$100,000, the Secretary of the Army may delegate his authority under subsection (a) to any person in the Department of the Army designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; Pub. L. 89–67, July 7, 1965, 79 Stat. 212; Pub. L. 92–417, Sec. 1(1), Aug. 29, 1972, 86 Stat. 654; Pub. L. 101–189, div. A, title XVI, Sec. 1633, Nov. 29, 1989, 103 Stat. 1608.)

§ 4803. Admiralty claims by United States

(a) Under the direction of the Secretary of Defense, the Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Army or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the amount to be received by the United States is not more than \$500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Army may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than \$100,000, the Secretary of the Army may delegate his authority under subsections (a) and (b) to any person in the Department of the Army designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; Pub. L. 89-67, July 7, 1965, 79 Stat. 212; Pub. L. 101-189, div. A, title XVI, Sec. 1633, Nov. 29, 1989, 103 Stat. 1608.)

§ 4804. Salvage claims by United States

(a) The Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Army. Amounts received under this section shall be covered into the Treasury.

(b) In any case where the amount to be received by the United States is not more than \$10,000, the Secretary of the Army may delegate his authority under subsection (a) to any person designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; Pub. L. 92-417, Sec. 1(3), Aug. 29, 1972, 86 Stat. 654.)

[§ 4805. Repealed. Pub. L. 86-533, Sec. 1(8)(A), June 29, 1960, 74 Stat. 247]

§ 4806. Settlement or compromise: final and conclusive

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 4802 or 4803 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

CHAPTER 453—ACCOUNTABILITY AND RESPONSIBILITY

- Sec.
4831. Custody of departmental records and property.
[4832 to 4836. Repealed.]
4837. Settlement of accounts: remission or cancellation of indebtedness of members.
4838. Settlement of accounts: affidavit of company commander.
4839. Settlement of accounts: oaths.
4840. Final settlement of officer's accounts.
4841. Payment of small amounts to public creditors.
4842. Settlement of accounts of line officers.

§ 4831. Custody of departmental records and property

The Secretary of the Army has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

[§ 4832. Repealed. Pub. L. 110-181, div. A, title III, Sec. 375(c)(1)(A), Jan. 28, 2008, 122 Stat. 83]

[§ 4833. Repealed. Pub. L. 87-480, Sec. 1(2), June 8, 1962, 76 Stat. 94]

[§ 4834. Repealed. Pub. L. 92-310, title II, Sec. 204(a), June 6, 1972, 86 Stat. 202]

[§ 4835. Repealed. Pub. L. 107-314, div. A, title X, Sec. 1006(c)(1), Dec. 2, 2002, 116 Stat. 2633]

[§ 4836. Repealed. Pub. L. 110-181, div. A, title III, Sec. 375(c)(1)(B), Jan. 28, 2008, 122 Stat. 83]

§ 4837. Settlement of accounts: remission or cancellation of indebtedness of members

(a) IN GENERAL.—The Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving on active duty as a member of the Army, but only if the Secretary considers such action to be in the best interest of the United States.

(b) RETROACTIVE APPLICABILITY TO CERTAIN DEBTS.—The authority in subsection (a) may be exercised with respect to any debt covered by that subsection that is incurred on or after October 7, 2001.

(c) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 273; Pub. L. 85-861, Sec. 33(a)(27), Sept. 2, 1958, 72 Stat. 1566; Pub. L. 87-649, Sec. 14c(10), Sept. 7, 1962, 76 Stat. 501; Pub. L. 96-513, title V, Sec. 512(24)(A), (B), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 109-163, div. A, title VI, Sec. 683(a)(1),

Jan. 6, 2006, 119 Stat. 3322; Pub. L. 109–364, div. A, title VI, Sec. 673(a)(1), (2), (e)(1), Oct. 17, 2006, 120 Stat. 2271, 2272; Pub. L. 110–181, div. A, title X, Sec. 1063(c)(7)(A), Jan. 28, 2008, 122 Stat. 323.)

§ 4838. Settlement of accounts: affidavit of company commander

In the settlement of the accounts of the commanding officer of a company for clothing and other military supplies, his affidavit may be received to show—

- (1) that vouchers or company books were lost;
- (2) anything tending to prove that any apparent deficiency of those articles was caused by unavoidable accident, or by loss in actual service without his fault; or
- (3) that all or part of the clothing and supplies was properly used.

The affidavit may be used as evidence of the facts set forth, with or without other evidence, as determined by the Secretary of the Army to be just and proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

§ 4839. Settlement of accounts: oaths

The Secretary of the Army may detail any employee of the Department of the Army to administer oaths required by law in the settlement of an officer's accounts for clothing and other military supplies. An oath administered under this section shall be without expense to the person to whom it is administered.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

§ 4840. Final settlement of officer's accounts

Before final payment upon discharge may be made to an officer of the Army who has been accountable or responsible for public property, he must obtain a certificate of nonindebtedness to the United States from each officer to whom he was accountable or responsible for property. He must also make an affidavit, certified by his commanding officer to be correct, that he is not accountable or responsible for property to any other officer. An officer who has not been responsible for public property must make an affidavit of that fact, certified by his commanding officer. Compliance with this section warrants the final payment of the officer concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

§ 4841. Payment of small amounts to public creditors

When authorized by the Secretary of the Army, a disbursing official of Army subsistence funds may keep a limited amount of those funds in the personal possession and at the risk of the disbursing official to pay small amounts to public creditors.

(Added Pub. L. 97–258, Sec. 2(b)(10)(B), Sept. 13, 1982, 96 Stat. 1056.)

§ 4842. Settlement of accounts of line officers

The Comptroller General shall settle the account of a line officer of the Army for pay due the officer even if the officer cannot account for property entrusted to the officer or cannot make a monthly report or return, when the Comptroller General is satis-

fied that the inability to account for property or make a report or return was the result of the officer having been a prisoner, or of an accident or casualty of war.

(Added Pub. L. 97-258, Sec. 2(b)(10)(B), Sept. 13, 1982, 96 Stat. 1057.)

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CHAPTER 501—DEFINITIONS

Sec.
5001. Definitions.

§ 5001. Definitions

(a) In this subtitle:

(1) The term “Navy” means the United States Navy. It includes the Regular Navy, the Fleet Reserve, and the Navy Reserve.

(2) The term “Marine Corps” means the United States Marine Corps. It includes the Regular Marine Corps, the Fleet Marine Corps Reserve, and the Marine Corps Reserve.

(3) The term “member of the naval service” means a person appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps.

(4) The term “enlisted member” means a member of the naval service serving in an enlisted grade or rating. It excludes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(5) The term “officer” means a member of the naval service serving in a commissioned or warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(6) The term “commissioned officer” means a member of the naval service serving in a grade above warrant officer, W-1. It includes, unless otherwise specified, a member who holds a permanent enlisted grade or the permanent grade of warrant officer, W-1, and a temporary appointment in a grade above warrant officer, W-1.

(7) The term “warrant officer” means a member of the naval service serving in a warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a warrant officer grade.

(8) The term “officer restricted in the performance of duty” means an officer of the Navy designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, or an officer of the Marine Corps designated for limited duty.

(b) For the purposes of this subtitle, a member of the naval service who holds a temporary appointment in a grade higher than his permanent grade is considered, unless otherwise specified, to be serving in the higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 276; Pub. L. 87-123, Sec. 5(1), Aug. 3, 1961, 75 Stat. 264; Pub. L. 96-513, title III, Sec. 371, title V, Sec. 513(2), Dec. 12, 1980, 94 Stat. 2903, 2931; Pub. L. 100-26, Sec. 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(E), Jan. 6, 2006, 119 Stat. 3233.)

CHAPTER 503—DEPARTMENT OF THE NAVY

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§ 5011. Organization

The Department of the Navy is separately organized under the Secretary of the Navy. It operates under the authority, direction, and control of the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 277; Pub. L. 87-651, title II, Sec. 212, Sept. 7, 1962, 76 Stat. 524; Pub. L. 99-433, title V, Sec. 511(b)(2), (c)(1), Oct. 1, 1986, 100 Stat. 1043.)

§ 5012. Department of the Navy: seal

The Secretary of the Navy shall have a seal for the Department of the Navy. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Added Pub. L. 99-433, title V, Sec. 511(c)(2), Oct. 1, 1986, 100 Stat. 1043.)

§ 5013. Secretary of the Navy

(a)(1) There is a Secretary of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Navy.

(2) A person may not be appointed as Secretary of the Navy within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Navy is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Navy, including the following functions:

- (1) Recruiting.
- (2) Organizing.
- (3) Supplying.

- (4) Equipping (including research and development).
- (5) Training.
- (6) Servicing.
- (7) Mobilizing.
- (8) Demobilizing.
- (9) Administering (including the morale and welfare of personnel).
- (10) Maintaining.
- (11) The construction, outfitting, and repair of military equipment.
- (12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Navy is also responsible to the Secretary of Defense for—

(1) the functioning and efficiency of the Department of the Navy;

(2) the formulation of policies and programs by the Department of the Navy that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;

(3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Navy;

(4) carrying out the functions of the Department of the Navy so as to fulfill the current and future operational requirements of the unified and specified combatant commands;

(5) effective cooperation and coordination between the Department of the Navy and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;

(6) the presentation and justification of the positions of the Department of the Navy on the plans, programs, and policies of the Department of Defense; and

(7) the effective supervision and control of the intelligence activities of the Department of the Navy.

(d) The Secretary of the Navy is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Navy may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Navy may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Navy and to the Assistant Secretaries of the Navy. Officers of the Navy and the Marine Corps shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Navy may—

(1) assign, detail, and prescribe the duties of members of the Navy and Marine Corps and civilian personnel of the Department of the Navy;

(2) change the title of any officer or activity of the Department of the Navy not prescribed by law; and

(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Added Pub. L. 99-433, title V, Sec. 511(c)(2), Oct. 1, 1986, 100 Stat. 1043; amended Pub. L. 99-661, div. A, title V, Sec. 534, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 108-136, div. A, title IX, Sec. 901, Nov. 24, 2003, 117 Stat. 1558.)

§ 5013a. Secretary of the Navy: powers with respect to Coast Guard

(a) Whenever the Coast Guard operates as a service in the Navy under section 3 of title 14, the Secretary of the Navy has the same powers and duties with respect to the Coast Guard as the Secretary of Homeland Security has when the Coast Guard is not so operating.

(b) While operating as a service in the Navy, the Coast Guard is subject to the orders of the Secretary of the Navy, who may order changes in Coast Guard operations to make them uniform, to the extent he considers advisable, with Navy operations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 279, Sec. 5032; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 513(3), 94 Stat. 2931; renumbered Sec. 5013a, Oct. 1, 1986, Pub. L. 99-433, title V, Sec. 511(c)(3), 100 Stat. 1045; Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 5014. Office of the Secretary of the Navy

(a) There is in the Department of the Navy an Office of the Secretary of the Navy. The function of the Office is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Office of the Secretary of the Navy is composed of the following:

- (1) The Under Secretary of the Navy.
- (2) The Assistant Secretaries of the Navy.
- (3) The General Counsel of the Department of the Navy.
- (4) The Judge Advocate General of the Navy.
- (5) The Naval Inspector General.
- (6) The Chief of Legislative Affairs.
- (7) The Chief of Naval Research.

(8) Such other offices and officials as may be established by law or as the Secretary of the Navy may establish or designate.

(c)(1) The Office of the Secretary of the Navy shall have sole responsibility within the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, for the following functions:

- (A) Acquisition.
- (B) Auditing.
- (C) Comptroller (including financial management).
- (D) Information management.
- (E) Inspector General.
- (F) Legislative affairs.
- (G) Public affairs.

(2) The Secretary of the Navy shall establish or designate a single office or other entity within the Office of the Secretary of the Navy to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Office of the Chief of Naval Operations or the Headquarters, Marine Corps, to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall—

(A) prescribe the relationship of each office or other entity established or designated under paragraph (2)—

(i) to the Chief of Naval Operations and the Office of the Chief of Naval Operations; and

(ii) to the Commandant of the Marine Corps and the Headquarters, Marine Corps; and

(B) ensure that each such office or entity provides the Chief of Naval Operations and the Commandant of the Marine Corps such staff support as each considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Navy of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Navy (including the Office of the Chief of Naval Operations and the Headquarters, Marine Corps) from providing advice or assistance to the Chief of Naval Operations and the Commandant of the Marine Corps or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Navy.

(5)(A) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(B) The position of regional director within such office or entity, and any other position within such office or entity the primary responsibilities of which are to carry out supervisory functions, may not be held by a member of the armed forces on active duty.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Navy shall have sole responsibility within the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, for the function of research and development.

(2) The Secretary of the Navy may assign to the Office of the Chief of Naval Operations and the Headquarters, Marine Corps, responsibility for those aspects of the function of research and development relating to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Navy to conduct the function specified in paragraph (1).

(4) The Secretary shall—

(A) prescribe the relationship of the office or other entity established or designated under paragraph (3)—

(i) to the Chief of Naval Operations and the Office of the Chief of Naval Operations; and

- (ii) to the Commandant of the Marine Corps and the Headquarters, Marine Corps; and
- (B) ensure that each such office or entity provides the Chief of Naval Operations and the Commandant of the Marine Corps such staff support as each considers necessary to perform his duties and responsibilities.
- (e) The Secretary of the Navy shall ensure that the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, do not duplicate specific functions for which the Secretary has assigned responsibility to another of such offices.
- (f)(1) The total number of members of the armed forces and civilian employees of the Department of the Navy assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 2,866.
- (2) Not more than 1,720 officers of the Navy and Marine Corps on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.
- (3) The total number of general and flag officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 74.
- (4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, or the Headquarters, Marine Corps.

(Added Pub. L. 99-433, title V, Sec. 511(c)(4), Oct. 1, 1986, 100 Stat. 1045; amended Pub. L. 100-180, div. A, title XIII, Sec. 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100-456, div. A, title III, Sec. 325(b), Sept. 29, 1988, 102 Stat. 1955; Pub. L. 101-189, div. A, title VI, Sec. 652(a)(4), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 107-107, div. A, title X, Sec. 1048(a)(28), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107-314, div. A, title V, Sec. 504(d)(2), Dec. 2, 2002, 116 Stat. 2532.)

§ 5015. Under Secretary of the Navy

- (a) There is an Under Secretary of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate.
- (b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Navy may prescribe.

(Added Pub. L. 99-433, title V, Sec. 511(c)(4), Oct. 1, 1986, 100 Stat. 1047.)

§ 5016. Assistant Secretaries of the Navy

- (a) There are four Assistant Secretaries of the Navy. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.
- (b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Navy may prescribe.
- (2) One of the Assistant Secretaries shall be the Assistant Secretary of the Navy for Manpower and Reserve Affairs. He shall

have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Navy.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Navy for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Navy, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Navy and shall advise the Secretary of the Navy on financial management.

(4)(A) One of the Assistant Secretaries shall be the Assistant Secretary of the Navy for Research, Development, and Acquisition. The principal duty of the Assistant Secretary shall be the overall supervision of research, development, and acquisition matters of the Department of the Navy.

(B) The Assistant Secretary shall have a Principal Military Deputy, who shall be a vice admiral of the Navy or a lieutenant general of the Marine Corps on active duty. The Principal Military Deputy shall be appointed from among officers who have significant experience in the areas of acquisition and program management. The position of Principal Military Deputy shall be designated as a critical acquisition position under section 1733 of this title.

(Added Pub. L. 99-433, title V, Sec. 511(c)(4), Oct. 1, 1986, 100 Stat. 1047; amended Pub. L. 100-456, div. A, title VII, Sec. 702(b)(1), Sept. 29, 1988, 102 Stat. 1994; Pub. L. 110-181, div. A, title IX, Sec. 908(b), Jan. 28, 2008, 122 Stat. 278.)

§ 5017. Secretary of the Navy: successors to duties

If the Secretary of the Navy dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347 of title 5, directs another person to perform those duties or until the absence or disability ceases:

- (1) The Under Secretary of the Navy.
- (2) The Assistant Secretaries of the Navy, in the order prescribed by the Secretary of the Navy and approved by the Secretary of Defense.
- (3) The General Counsel of the Department of the Navy.
- (4) The Chief of Naval Operations.
- (5) The Commandant of the Marine Corps.

(Added Pub. L. 99-433, title V, Sec. 511(c)(4), Oct. 1, 1986, 100 Stat. 1047; amended Pub. L. 103-337, div. A, title IX, Sec. 902(b), Oct. 5, 1994, 108 Stat. 2823.)

§ 5018. Administrative Assistant

The Secretary of the Navy may appoint an Administrative Assistant in the Office of the Secretary of the Navy. The Administrative Assistant shall perform such duties as the Secretary may prescribe.

(Added Pub. L. 99-433, title V, Sec. 511(c)(4), Oct. 1, 1986, 100 Stat. 1047.)

§ 5019. General Counsel

(a) There is a General Counsel of the Department of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Navy may prescribe.

(Added Pub. L. 99-433, title V, Sec. 511(c)(4), Oct. 1, 1986, 100 Stat. 1047; amended Pub. L. 100-456, div. A, title VII, Sec. 703(a), Sept. 29, 1988, 102 Stat. 1996.)

§ 5020. Naval Inspector General: detail; duties

(a) There is in the Office of the Secretary of the Navy the Office of the Naval Inspector General. The Naval Inspector General shall be detailed from officers on the active-duty list in the line of the Navy serving in grades above captain.

(b) The Naval Inspector General, when directed, shall inquire into and report upon any matter that affects the discipline or military efficiency of the Department of the Navy. He shall make such inspections, investigations, and reports as the Secretary of the Navy or the Chief of Naval Operations directs.

(c) The Naval Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Navy.

(d) The Naval Inspector General shall periodically propose programs of inspections to the Secretary of the Navy and shall recommend additional inspections and investigations as may appear appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 283, Sec. 5088; Pub. L. 96-513, title V, Sec. 503(7), Dec. 12, 1980, 94 Stat. 2911; renumbered Sec. 5020 and amended Pub. L. 99-433, title V, Sec. 511(c)(5), Oct. 1, 1986, 100 Stat. 1047.)

[§ 5021. Repealed. Pub. L. 101-510, div. A, title IX, Sec. 910(a), Nov. 5, 1990, 104 Stat. 1625]

§ 5022. Office of Naval Research: duties

(a)(1) There is in the Office of the Secretary of the Navy an Office of Naval Research.

(2) Unless appointed to higher grade under another provision of law, an officer, while serving in the Office of Naval Research as Chief of Naval Research, has the rank of rear admiral.

(b) The Office of Naval Research shall perform such duties as the Secretary of the Navy prescribes relating to—

(1) the encouragement, promotion, planning, initiation, and coordination of naval research;

(2) the conduct of naval research in augmentation of and in conjunction with the research and development conducted by the bureaus and other agencies and offices of the Department of the Navy;

(3) the supervision, administration, and control of activities within or for the Department relating to patents, inventions, trademarks, copyrights, and royalty payments, and matters connected therewith; and

(4) the execution of, and management responsibility for, programs for which funds are provided in the basic and applied research and advanced technology categories of the Department of the Navy research, development, test, and evaluation budget in such a manner that will foster the transition of

science and technology to higher levels of research, development, test and evaluation.

(c) Sufficient information relative to estimates of appropriations for research by the several bureaus and offices shall be furnished to the Office of Naval Research to assist it in coordinating naval research and carrying out its other duties.

(d) The Office of Naval Research shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 291, Sec. 5151; renumbered Sec. 5022, Oct. 1, 1986, Pub. L. 99-433, title V, Sec. 511(d), 100 Stat. 1048; amended Nov. 5, 1990, Pub. L. 101-510, div. A, title IX, Sec. 910(b)(1), 104 Stat. 1625; Sept. 23, 1996, Pub. L. 104-201, div. A, title V, Sec. 501(a), 110 Stat. 2510; Oct. 30, 2000, Pub. L. 106-398, Sec. 1[[div. A], title IX, Sec. 904(b)], 114 Stat. 1654, 1654A-225; Pub. L. 107-314, div. A, title V, Sec. 504(f), Dec. 2, 2002, 116 Stat. 2533.)

§ 5023. Office of Naval Research: appropriations; time limit

(a) Sums appropriated for the Office of Naval Research may be used to pay the cost of performing its duties under section 5022 of this title including the cost of—

- (1) administration;
- (2) conduct of research and development work in Government facilities; and
- (3) conduct of research and development work under contracts with individuals, corporations, and educational or scientific institutions.

(b) Sums appropriated for the purposes of this section, if obligated during the fiscal year for which appropriated, remain available for expenditure for four years after the end of that fiscal year. Any balance not spent after that four-year period shall be carried to the surplus fund and covered into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 291, Sec. 5152; renumbered Sec. 5023 and amended Pub. L. 99-433, title V, Sec. 511(d), 514(c)(2), Oct. 1, 1986, 100 Stat. 1048, 1055.)

§ 5024. Naval Research Advisory Committee

(a) The Secretary of the Navy may appoint a Naval Research Advisory Committee consisting of not more than 15 civilians pre-eminent in the fields of science, research, and development work. One member of the Committee must be from the field of medicine. Each member serves for such term as the Secretary specifies.

(b) The Committee shall meet at such times as the Secretary specifies to consult with and advise the Chief of Naval Operations and the Chief of Naval Research.

(c) No law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States applies to members of the Committee solely by reason of their membership on the Committee.

(Aug. 10, 1956, ch. 1041, 70A Stat. 291, Sec. 5153; Pub. L. 97-60, title II, Sec. 205, Oct. 14, 1981, 95 Stat. 1007; renumbered Sec. 5024 and amended Pub. L. 99-433, title V, Sec. 511(d), 514(d)(2), Oct. 1, 1986, 100 Stat. 1048, 1055.)

§ 5025. Financial management

(a) The Secretary of the Navy shall provide that the Assistant Secretary of the Navy for Financial Management shall direct and

manage financial management activities and operations of the Department of the Navy, including ensuring that financial management systems of the Department of the Navy comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Navy and otherwise carry out, with respect to the Department of the Navy, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Navy; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Navy, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Navy (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Navy proposes to conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Navy for Financial Management shall transmit to the Secretary of the Navy a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of Department of the Navy financial management.

(Added Pub. L. 100-456, div. A, title VII, Sec. 702(b)(2), Sept. 29, 1988, 102 Stat. 1994; amended Pub. L. 103-337, div. A, title X, Sec. 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104-106, div. A, title XV, Sec. 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

§ 5026. Consultation with Commandant of the Marine Corps on major decisions directly concerning Marine Corps aviation

The Secretary of the Navy shall ensure that the views of the Commandant of the Marine Corps are given appropriate consideration before a major decision is made by an element of the Department of the Navy outside the Marine Corps on a matter that directly concerns Marine Corps aviation.

(Added Pub. L. 105–261, div. A, title IX, Sec. 935(a), Oct. 17, 1998, 112 Stat. 2109.)

§ 5027. Chief of Legislative Affairs

(a) There is a Chief of Legislative Affairs in the Department of the Navy. An officer assigned to that position shall be an officer in the grade of rear admiral.

(b) The Chief of Legislative Affairs shall perform legislative affairs functions as specified for the Office of the Secretary of the Navy by section 5014(c)(1)(F) of this title.

(Added Pub. L. 107–314, div. A, title V, Sec. 504(d)(1)(A), Dec. 2, 2002, 116 Stat. 2532.)

§ 5028. Director of Small Business Programs

(a) DIRECTOR.—There is a Director of Small Business Programs in the Department of the Navy. The Director is appointed by the Secretary of the Navy.

(b) OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of the Navy is the office that is established within the Department of the Navy under section 15(k) of the Small Business Act (15 U.S.C. 644(k)). The Director of Small Business Programs is the head of such office.

(c) DUTIES AND POWERS.—(1) The Director of Small Business Programs shall, subject to paragraph (2), perform such duties regarding small business programs of the Department of the Navy, and shall exercise such powers regarding those programs, as the Secretary of the Navy may prescribe.

(2) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)), except for the designations of the Director and the Office, applies to the Director of Small Business Programs.

(Added Pub. L. 109–163, div. A, title IX, Sec. 904(d)(1), Jan. 6, 2006, 119 Stat. 3401.)

CHAPTER 505—OFFICE OF THE CHIEF OF NAVAL OPERATIONS

Sec.	
5031.	Office of the Chief of Naval Operations: function; composition.
5032.	Office of the Chief of Naval Operations: general duties.
5033.	Chief of Naval Operations.
[5034.	Repealed.]
5035.	Vice Chief of Naval Operations.
5036.	Deputy Chiefs of Naval Operations.
5037.	Assistant Chiefs of Naval Operations.
5038.	Director for Expeditionary Warfare.

§ 5031. Office of the Chief of Naval Operations: function; composition

(a) There is in the executive part of the Department of the Navy an Office of the Chief of Naval Operations. The function of the Office of the Chief of Naval Operations is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Office of the Chief of Naval Operations is composed of the following:

- (1) The Chief of Naval Operations.
- (2) The Vice Chief of Naval Operations.
- (3) The Deputy Chiefs of Naval Operations.
- (4) The Assistant Chiefs of Naval Operations.
- (5) The Surgeon General of the Navy.
- (6) The Chief of Naval Personnel.
- (7) The Chief of Chaplains of the Navy.
- (8) Other members of the Navy and Marine Corps assigned or detailed to the Office of the Chief of Naval Operations.
- (9) Civilian employees in the Department of the Navy assigned or detailed to the Office of the Chief of Naval Operations.

(c) Except as otherwise specifically prescribed by law, the Office of the Chief of Naval Operations shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Added Pub. L. 99-433, title V, Sec. 512(b), Oct. 1, 1986, 100 Stat. 1048.)

§ 5032. Office of the Chief of Naval Operations: general duties

(a) The Office of the Chief of Naval Operations shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Navy and to the Chief of Naval Operations.

(b) Under the authority, direction, and control of the Secretary of the Navy, the Office of the Chief of Naval Operations shall—

- (1) subject to subsections (c) and (d) of section 5014 of this title, prepare for such employment of the Navy, and for such

recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary of the Navy), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Navy, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Naval Operations;

(2) investigate and report upon the efficiency of the Navy and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Naval Operations, coordinate the action of organizations of the Navy; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Added Pub. L. 99-433, title V, Sec. 512(b), Oct. 1, 1986, 100 Stat. 1049.)

§ 5033. Chief of Naval Operations

(a)(1) There is a Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate. The Chief of Naval Operations shall be appointed for a term of four years, from the flag officers of the Navy. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as the Chief of Naval Operations only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a flag officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade. In the performance of his duties within the Department of the Navy, the Chief of Naval Operations takes precedence above all other officers of the naval service.

(c) Except as otherwise prescribed by law and subject to section 5013(f) of this title, the Chief of Naval Operations performs his duties under the authority, direction, and control of the Secretary of the Navy and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Navy, the Chief of Naval Operations shall—

(1) preside over the Office of the Chief of Naval Operations;

(2) transmit the plans and recommendations of the Office of the Chief of Naval Operations to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Office of the Chief of Naval Operations by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Navy and the Marine Corps as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Navy.

(e)(1) The Chief of Naval Operations shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Naval Operations in the performance of his duties as a member of the Joint Chiefs of Staff, the Chief of Naval Operations shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Navy.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Naval Operations shall keep the Secretary of the Navy fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Added Pub. L. 99-433, title V, Sec. 512(b), Oct. 1, 1986, 100 Stat. 1049; amended Pub. L. 100-456, div. A, title V, Sec. 519(a)(3), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 108-136, div. A, title V, Sec. 501(a), Nov. 24, 2003, 117 Stat. 1456.)

[§ 5034. Repealed. Pub. L. 104-106, div. A, title V, Sec. 502(c), Feb. 10, 1996, 110 Stat. 293]

§ 5035. Vice Chief of Naval Operations

(a) There is a Vice Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate, from officers on the active-duty list in the line of the Navy serving in grades above captain and eligible to command at sea.

(b) The Vice Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade.

(c) The Vice Chief of Naval Operations has such authority and duties with respect to the Department of the Navy as the Chief of Naval Operations, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Vice Chief of Naval Operations in performing such duties have the same effect as those issued by the Chief of Naval Operations.

(d) When there is a vacancy in the office of Chief of Naval Operations or during the absence or disability of the Chief of Naval Operations—

(1) the Vice Chief of Naval Operations shall perform the duties of the Chief of Naval Operations until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Naval Operations or the Vice Chief of Naval Operations is absent or disabled, unless the President directs otherwise, the

most senior officer of the Navy in the Office of the Chief of Naval Operations who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Naval Operations until a successor to the Chief of Naval Operations or the Vice Chief of Naval Operations is appointed or until the absence or disability of the Chief of Naval Operations or Vice Chief of Naval Operations ceases, whichever occurs first.

(Added Pub. L. 99-433, title V, Sec. 512(b), Oct. 1, 1986, 100 Stat. 1050.)

§ 5036. Deputy Chiefs of Naval Operations

(a) There are Deputy Chiefs of Naval Operations in the Office of the Chief of Naval Operations, detailed by the Secretary of the Navy from officers on the active-duty list of the Navy serving in grades above captain. The Secretary of the Navy shall prescribe the number of Deputy Chiefs of Naval Operations under this section and Assistant Chiefs of Naval Operations under section 5037 of this title, for a total of not more than eight positions.

(b) The Deputy Chiefs of Naval Operations are charged, under the direction of the Chief of Naval Operations, with the execution of the functions of their respective divisions. Orders issued by the Deputy Chiefs of Naval Operations in performing the duties assigned them are considered as coming from the Chief of Naval Operations.

(Added Pub. L. 99-433, title V, Sec. 512(b), Oct. 1, 1986, 100 Stat. 1051; amended Pub. L. 108-375, div. A, title V, Sec. 502(a), Oct. 28, 2004, 118 Stat. 1875; Pub. L. 110-181, div. A, title IX, Sec. 902(b)(1), Jan. 28, 2008, 122 Stat. 273.)

§ 5037. Assistant Chiefs of Naval Operations

(a) There are Assistant Chiefs of Naval Operations in the Office of the Chief of Naval Operations, detailed by the Secretary of the Navy from officers on the active-duty list of the Navy and officers on the active-duty list of the Marine Corps. The Secretary of the Navy shall prescribe the number of Assistant Chiefs of Naval Operations in accordance with section 5036(a) of this title.

(b) The Assistant Chiefs of Naval Operations shall perform such duties as the Secretary of the Navy prescribes.

(Added Pub. L. 99-433, title V, Sec. 512(b), Oct. 1, 1986, 100 Stat. 1051; amended Pub. L. 108-375, div. A, title V, Sec. 502(b), Oct. 28, 2004, 118 Stat. 1875; Pub. L. 110-181, div. A, title IX, Sec. 902(b)(2), Jan. 28, 2008, 122 Stat. 273.)

§ 5038. Director for Expeditionary Warfare

(a) One of the Directors within the office of the Deputy Chief of Naval Operations with responsibility for warfare requirements and programs shall be the Director for Expeditionary Warfare who shall be detailed from officers on the active-duty list of the Marine Corps.

(b) An officer assigned to the position of Director for Expeditionary Warfare, while so serving, has the grade of major general.

(c) The principal duty of the Director for Expeditionary Warfare shall be to supervise the performance of all staff responsibilities of the Chief of Naval Operations regarding expeditionary warfare, including responsibilities regarding amphibious lift, mine warfare, naval fire support, and other missions essential to supporting expeditionary warfare.

(d) The Chief of Naval Operations shall transfer duties, responsibilities, and staff from other personnel within the Office of the Chief of Naval Operations as necessary to fully support the Director for Expeditionary Warfare.

(Added Pub. L. 102-484, div. A, title IX, Sec. 935(b)(1), Oct. 23, 1992, 106 Stat. 2478; amended Pub. L. 103-35, title II, Sec. 201(c)(10), May 31, 1993, 107 Stat. 98; Pub. L. 103-160, div. A, title IX, Sec. 944, Nov. 30, 1993, 107 Stat. 1737; Pub. L. 107-107, title IX, Sec. 932, Dec. 28, 2001, 115 Stat. 1200.)

CHAPTER 506—HEADQUARTERS, MARINE CORPS

Sec.	
5041.	Headquarters, Marine Corps: function; composition.
5042.	Headquarters, Marine Corps: general duties.
5043.	Commandant of the Marine Corps.
5044.	Assistant Commandant of the Marine Corps.
5045.	Deputy Commandants.
5046.	Staff Judge Advocate to the Commandant of the Marine Corps.
5047.	Legislative Assistant to the Commandant.

§ 5041. Headquarters, Marine Corps: function; composition

(a) There is in the executive part of the Department of the Navy a Headquarters, Marine Corps. The function of the Headquarters, Marine Corps, is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Headquarters, Marine Corps, is composed of the following:

- (1) The Commandant of the Marine Corps.
- (2) The Assistant Commandant of the Marine Corps.
- (3) The Deputy Commandants.
- (4) Other members of the Navy and Marine Corps assigned or detailed to the Headquarters, Marine Corps.
- (5) Civilian employees in the Department of the Navy assigned or detailed to the Headquarters, Marine Corps.

(c) Except as otherwise specifically prescribed by law, the Headquarters, Marine Corps, shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Added Pub. L. 99-433, title V, Sec. 513(b), Oct. 1, 1986, 100 Stat. 1052; amended Pub. L. 106-398, Sec. 1 [div. A], title IX, Sec. 902(a), Oct. 30, 2000, 114 Stat. 1654, 1654A-224.)

§ 5042. Headquarters, Marine Corps: general duties

(a) The Headquarters, Marine Corps, shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Navy and to the Commandant of the Marine Corps.

(b) Under the authority, direction, and control of the Secretary of the Navy, the Headquarters, Marine Corps, shall—

(1) subject to subsections (c) and (d) of section 5014 of this title, prepare for such employment of the Marine Corps, and for such recruiting, organizing, supplying, equipping (including research and development), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Marine Corps, as will assist in the execution of any power, duty, or function of the Secretary or the Commandant;

(2) investigate and report upon the efficiency of the Marine Corps and its preparation to support military operations by combatant commanders;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Commandant, coordinate the action of organizations of the Marine Corps; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Added Pub. L. 99-433, title V, Sec. 513(b), Oct. 1, 1986, 100 Stat. 1052.)

§ 5043. Commandant of the Marine Corps

(a)(1) There is a Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate. The Commandant shall be appointed for a term of four years from the general officers of the Marine Corps. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Commandant of the Marine Corps only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Commandant of the Marine Corps, while so serving, has the grade of general without vacating his permanent grade.

[(c) Repealed. Pub. L. 104-106, div. A, title V, Sec. 502(c), Feb. 10, 1996, 110 Stat. 293]

(d) Except as otherwise prescribed by law and subject to section 5013(f) of this title, the Commandant performs his duties under the authority, direction, and control of the Secretary of the Navy and is directly responsible to the Secretary.

(e) Subject to the authority, direction, and control of the Secretary of the Navy, the Commandant shall—

(1) preside over the Headquarters, Marine Corps;

(2) transmit the plans and recommendations of the Headquarters, Marine Corps, to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Headquarters, Marine Corps, by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Marine Corps and the Navy as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Navy.

(f)(1) The Commandant shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Commandant in the performance of his duties as a member of the Joint Chiefs of Staff, the Commandant shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Navy.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Commandant shall keep the Secretary of the Navy fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Added Pub. L. 99-433, title V, Sec. 513(b), Oct. 1, 1986, 100 Stat. 1052; amended Pub. L. 100-456, div. A, title V, Sec. 519(a)(3), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 102-190, div. A, title V, Sec. 505(b), Dec. 5, 1991, 105 Stat. 1358; Pub. L. 104-106, div. A, title V, Sec. 502(c), Feb. 10, 1996, 110 Stat. 293; Pub. L. 108-136, div. A, title V, Sec. 501(b), Nov. 24, 2003, 117 Stat. 1456.)

§ 5044. Assistant Commandant of the Marine Corps

(a) There is an Assistant Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate, from officers on the active-duty list of the Marine Corps not restricted in the performance of duty.

(b) The Assistant Commandant of the Marine Corps, while so serving, has the grade of general without vacating his permanent grade.

(c) The Assistant Commandant has such authority and duties with respect to the Marine Corps as the Commandant, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant in performing such duties have the same effect as those issued by the Commandant.

(d) When there is a vacancy in the office of Commandant of the Marine Corps, or during the absence or disability of the Commandant—

(1) the Assistant Commandant of the Marine Corps shall perform the duties of the Commandant until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Assistant Commandant of the Marine Corps or the Assistant Commandant is absent or disabled, unless the President directs otherwise, the most senior officer of the Marine Corps in the Headquarters, Marine Corps, who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Commandant until a successor to the Commandant or the Assistant Commandant is appointed or until the absence or disability of the Commandant or Assistant Commandant ceases, whichever occurs first.

(Added Pub. L. 99-433, title V, Sec. 513(b), Oct. 1, 1986, 100 Stat. 1054.)

§ 5045. Deputy Commandants

There are in the Headquarters, Marine Corps, not more than six Deputy Commandants, detailed by the Secretary of the Navy from officers on the active-duty list of the Marine Corps.

(Added Pub. L. 99-433, title V, Sec. 513(b), Oct. 1, 1986, 100 Stat. 1054; amended Pub. L. 106-398, Sec. 1[[div. A], title IX, Sec. 902(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-224; Pub. L. 107-314, div. A, title IX, Sec. 934, Dec. 2, 2002, 116 Stat. 2626.)

§ 5046. Staff Judge Advocate to the Commandant of the Marine Corps

(a) An officer of the Marine Corps who is a judge advocate and a member of the bar of a Federal court or the highest court of a State or territory and who has had at least eight years of experience in legal duties as a commissioned officer may be detailed as Staff Judge Advocate to the Commandant of the Marine Corps. The Staff Judge Advocate to the Commandant of the Marine Corps, while so serving, has the grade of major general.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Staff Judge Advocate to the Commandant of the Marine Corps, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(c) No officer or employee of the Department of Defense may interfere with—

(1) the ability of the Staff Judge Advocate to the Commandant of the Marine Corps to give independent legal advice to the Commandant of the Marine Corps; or

(2) the ability of judge advocates of the Marine Corps assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.

(Added Pub. L. 99-661, div. A, title V, Sec. 509(a)(1), Nov. 14, 1986, 100 Stat. 3868; amended Pub. L. 103-337, div. A, title V, Sec. 504(b)(4), Oct. 5, 1994, 108 Stat. 2751; Pub. L. 108-375, div. A, title V, Sec. 547(b)(2), Oct. 28, 2004, 118 Stat. 1922; Pub. L. 110-417, [div. A], title V, Sec. 504(a), Oct. 14, 2008, 122 Stat. 4434.)

§ 5047. Legislative Assistant to the Commandant

There is in the Marine Corps a Legislative Assistant to the Commandant. An officer assigned to that position shall be in a grade above colonel.

(Added Pub. L. 107-314, div. A, title V, Sec. 504(d)(3)(A), Dec. 2, 2002, 116 Stat. 2532.)

CHAPTER 507—COMPOSITION OF THE DEPARTMENT OF THE NAVY

Sec.	
5061.	Department of the Navy: composition.
5062.	United States Navy: composition; functions.
5063.	United States Marine Corps: composition; functions.

§ 5061. Department of the Navy: composition

The Department of the Navy is composed of the following:

- (1) The Office of the Secretary of the Navy.
- (2) The Office of the Chief of Naval Operations.
- (3) The Headquarters, Marine Corps.
- (4) The entire operating forces, including naval aviation, of the Navy and of the Marine Corps, and the reserve components of those operating forces.
- (5) All field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Secretary of the Navy.
- (6) The Coast Guard when it is operating as a service in the Navy.

(Added Pub. L. 99-433, title V, Sec. 511(b)(1), Oct. 1, 1986, 100 Stat. 1043.)

§ 5062. United States Navy: composition; functions

(a) The Navy, within the Department of the Navy, includes, in general, naval combat and service forces and such aviation as may be organic therein. The Navy shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It is responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war.

(b) The naval combat forces of the Navy shall include not less than 11 operational aircraft carriers. For purposes of this subsection, an operational aircraft carrier includes an aircraft carrier that is temporarily unavailable for worldwide deployment due to routine or scheduled maintenance or repair.

(c) All naval aviation shall be integrated with the naval service as part thereof within the Department of the Navy. Naval aviation consists of combat and service and training forces, and includes land-based naval aviation, air transport essential for naval operations, all air weapons and air techniques involved in the operations and activities of the Navy, and the entire remainder of the aeronautical organization of the Navy, together with the personnel necessary therefor.

(d) The Navy shall develop aircraft, weapons, tactics, technique, organization, and equipment of naval combat and service

elements. Matters of joint concern as to these functions shall be coordinated between the Army, the Air Force, and the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 277, Sec. 5012; renumbered Sec. 5062 and amended Pub. L. 99-433, title V, Sec. 511(b)(3), (4), Oct. 1, 1986, 100 Stat. 1043; Pub. L. 109-163, div. A, title I, Sec. 126(a), Jan. 6, 2006, 119 Stat. 3159; Pub. L. 109-364, div. A, title X, Sec. 1011(a), Oct. 17, 2006, 120 Stat. 2374.)

§ 5063. United States Marine Corps: composition; functions

(a) The Marine Corps, within the Department of the Navy, shall be so organized as to include not less than three combat divisions and three air wings, and such other land combat, aviation, and other services as may be organic therein. The Marine Corps shall be organized, trained, and equipped to provide fleet marine forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. In addition, the Marine Corps shall provide detachments and organizations for service on armed vessels of the Navy, shall provide security detachments for the protection of naval property at naval stations and bases, and shall perform such other duties as the President may direct. However, these additional duties may not detract from or interfere with the operations for which the Marine Corps is primarily organized.

(b) The Marine Corps shall develop, in coordination with the Army and the Air Force, those phases of amphibious operations that pertain to the tactics, technique, and equipment used by landing forces.

(c) The Marine Corps is responsible, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Marine Corps to meet the needs of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 278, Sec. 5013; renumbered Sec. 5063, Pub. L. 99-433, title V, Sec. 511(b)(3), Oct. 1, 1986, 100 Stat. 1043.)

[CHAPTER 509—REPEALED]

**[§§ 5081 to 5087. Repealed. Pub. L. 99-433, title V, Sec. 512(a),
Oct. 1, 1986, 100 Stat. 1048]**

[§ 5088. Renumbered 5020]

[CHAPTER 511—REPEALED]

**[§§ 5111, 5112. Repealed. Pub. L. 89-718, Sec. 34(a), Nov. 2,
1966, 80 Stat. 1119]**

CHAPTER 513—BUREAUS; OFFICE OF THE JUDGE ADVOCATE GENERAL

- Sec.
5131. Bureaus: names; location.
5132. Bureaus: distribution of business; orders; records; expenses.
5133. Bureau Chiefs: rank; pay and allowances; retirement.
[5134. Repealed.]
5135. Bureau Chiefs: succession to duties.
[5136. Repealed.]
5137. Bureau of Medicine and Surgery: Chief; Deputy Chief.
5138. Bureau of Medicine and Surgery: Dental Corps; Chief; functions.
5139. Appointment of chiropractors in the Medical Service Corps.
[5140. Repealed.]
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5142a. Deputy Chief of Chaplains.
5143. Office of Navy Reserve: appointment of Chief.
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[5145 to 5147. Repealed.]
5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties.
5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General.
5150. Staff Corps of the Navy.
[5151 to 5153. Renumbered.]
[5154. Repealed.]
[5155. Renumbered.]

§ 5131. Bureaus: names; location

There are in the executive part of the Department of the Navy the following bureaus:

- (1) Bureau of Medicine and Surgery.
- (2) Bureau of Naval Personnel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285; Pub. L. 86-174, Sec. 1(1), 2(1), Aug. 18, 1959, 73 Stat. 395; Pub. L. 89-718, Sec. 35(1), Nov. 2, 1966, 80 Stat. 1120.)

§ 5132. Bureaus: distribution of business; orders; records; expenses

(a) Except as otherwise provided by law, the business of the executive part of the Department of the Navy shall be distributed among the bureaus as the Secretary of the Navy considers expedient and proper.

(b) Each bureau shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary.

(c) Under the Secretary, each bureau has custody and charge of its records and accounts.

(d) Each bureau shall furnish to the Secretary estimates for its specific, general, and contingent expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285.)

§ 5133. Bureau Chiefs: rank; pay and allowances; retirement

(a) Unless appointed to a higher grade under another provision of law, an officer of the Navy, while serving as a chief of bureau, has the rank of rear admiral.

(b) Except for an officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title, an officer who is retired while serving as a chief of bureau, or who, after serving at least two and one-half years as chief of bureau, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade of rear admiral, and with retired pay based on that grade. An officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title may, upon retirement, be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list or active-duty list and with retired pay based on that grade.

(c) Except in time of war, any officer of a staff corps who has served as a chief of bureau for a full term is exempt from sea duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285; Pub. L. 86-174, Sec. 2(2), Aug. 18, 1959, 73 Stat. 396; Pub. L. 87-649, Sec. 14c(15), Sept. 7, 1962, 76 Stat. 501; Pub. L. 89-288, Sec. 3, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 89-718, Sec. 35(2)-(4), Nov. 2, 1966, 80 Stat. 1120; Pub. L. 96-513, title V, Sec. 503(9), Dec. 12, 1980, 94 Stat. 2911; Pub. L. 103-337, div. A, title V, Sec. 504(b)(3), (5), Oct. 5, 1994, 108 Stat. 2751.)

[§ 5134. Repealed. Pub. L. 87-649, Sec. 14c(16), Sept. 7, 1962, 76 Stat. 501]**§ 5135. Bureau Chiefs: succession to duties**

(a) When there is a vacancy in the office of chief of a bureau, or during the absence or disability of the chief of a bureau, the deputy chief of that bureau, unless otherwise directed by the President, shall perform the duties of the chief until a successor is appointed or the absence or disability ceases.

(b) When subsection (a) cannot be complied with because of the absence or disability of the deputy chief of the bureau, the heads of the major divisions of the bureau, in the order directed by the Secretary of the Navy, shall perform the duties of the chief, unless otherwise directed by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286.)

[§ 5136. Repealed. Pub. L. 86-174, Sec. 2(3), Aug. 18, 1959, 73 Stat. 396]**§ 5137. Bureau of Medicine and Surgery: Chief; Deputy Chief**

(a) The Chief of the Bureau of Medicine and Surgery shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the active-duty list of the Navy in any corps of the Navy Medical Department. He has the title of Surgeon General. The Surgeon General, while so serving has the grade of vice admiral.

(b) An officer on the active-duty list of the Navy who is qualified to be the Chief of the Bureau of Medicine and Surgery may be detailed as Deputy Chief of the Bureau of Medicine and Surgery.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286; Pub. L. 89–288, Sec. 4, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 96–513, title V, Sec. 503(10), Dec. 12, 1980, 94 Stat. 2912; Pub. L. 104–106, div. A, title V, Sec. 506(b), Feb. 10, 1996, 110 Stat. 296.)

§ 5138. Bureau of Medicine and Surgery: Dental Corps; Chief; functions

(a) An officer of the Dental Corps not below the grade of rear admiral (lower half) shall be detailed as Chief of the Dental Corps.

(b) The Chief of the Dental Corps is entitled to the same privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(c) The dental functions of the Bureau of Medicine and Surgery shall be defined and prescribed by Bureau directives, and if necessary by regulations of the Secretary of the Navy, so that all such functions are under the direction of the Dental Corps. All matters relating to dentistry shall be referred to the Chief of the Dental Corps.

(d) The Chief of the Dental Corps shall—

(1) establish professional standards and policies for dental practice;

(2) initiate and recommend action pertaining to complements, strength, appointments, advancement, training assignment, and transfer of dental personnel; and

(3) serve as the advisor for the Bureau on all matters relating directly to dentistry.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286; Pub. L. 87–649, Sec. 14c(17), Sept. 7, 1962, 76 Stat. 501; Pub. L. 96–513, title III, Sec. 342, Dec. 12, 1980, 94 Stat. 2901; Pub. L. 97–86, title IV, Sec. 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, Sec. 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 109–364, div. A, title V, Sec. 593(a)–(d)(1), Oct. 17, 2006, 120 Stat. 2234, 2235.)

§ 5139. Appointment of chiropractors in the Medical Service Corps

Chiropractors who are qualified under regulations prescribed by the Secretary of the Navy may be appointed as commissioned officers in the Medical Service Corps of the Navy.

(Added Pub. L. 102–484, div. A, title V, Sec. 505(b)(1), Oct. 23, 1992, 106 Stat. 2404.)

[§ 5140. Repealed. Pub. L. 96–513, title III, Sec. 352(a), Dec. 12, 1980, 94 Stat. 2902]

§ 5141. Bureau of Naval Personnel: Chief of Naval Personnel; Deputy Chief of Naval Personnel

(a) The Chief of the Bureau of Naval Personnel shall be known as the Chief of Naval Personnel. The Chief of Naval Personnel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the active-duty list in the line of the Navy not below the grade of commander.

(b) The Deputy Chief of the Bureau of Naval Personnel shall be known as the Deputy Chief of Naval Personnel. An officer on the active-duty list in the line of the Navy not below the grade of commander may be detailed as Deputy Chief of Naval Personnel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 287; Pub. L. 96–513, title V, Sec. 503(11), Dec. 12, 1980, 94 Stat. 2912.)

§ 5142. Chaplain Corps and Chief of Chaplains

(a) The Chaplain Corps is a staff corps of the Navy and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the office of the Chief of Chaplains of the Navy. The Chief of Chaplains shall be appointed by the President, by and with the advice and consent of the Senate, from officers of the Chaplain Corps in the grade of commander or above who are serving on active duty and who have served on active duty in the Chaplain Corps for at least eight years.

(c) An officer appointed as the Chief of Chaplains shall be appointed for a term of four years. However, the President may terminate or extend the appointment at any time.

(d)(1) The Chief of Chaplains shall perform such duties as may be prescribed by the Secretary of the Navy and by law.

(2) The Chief of Chaplains shall, with respect to all duties pertaining to the procurement, distribution, and support of personnel of the Chaplain Corps, report to and be supported by the Chief of Naval Personnel.

(e) The Chief of Chaplains of the Navy is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(Added Pub. L. 96-343, Sec. 11(a), Sept. 8, 1980, 94 Stat. 1130; amended Pub. L. 105-85, div. A, title V, Sec. 504(c)(1), Nov. 18, 1997, 111 Stat. 1725.)

§ 5142a. Deputy Chief of Chaplains

The Secretary of the Navy may detail as the Deputy Chief of Chaplains an officer of the Chaplain Corps in the grade of commander or above who is on active duty and who has served on active duty in the Chaplain Corps for at least eight years.

(Added Pub. L. 96-343, Sec. 11(a), Sept. 8, 1980, 94 Stat. 1130; amended Pub. L. 105-85, div. A, title V, Sec. 504(c)(2), Nov. 18, 1997, 111 Stat. 1725.)

§ 5143. Office of Navy Reserve: appointment of Chief

(a) ESTABLISHMENT OF OFFICE: CHIEF OF NAVY RESERVE.—There is in the executive part of the Department of the Navy, on the staff of the Chief of Naval Operations, an Office of the Navy Reserve, which is headed by a Chief of Navy Reserve. The Chief of Navy Reserve—

(1) is the principal adviser on Navy Reserve matters to the Chief of Naval Operations; and

(2) is the commander of the Navy Reserve Force.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Navy Reserve from flag officers of the Navy (as defined in section 5001(1)) who have had at least 10 years of commissioned service.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Navy Reserve unless the officer—

(A) is recommended by the Secretary of the Navy; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process

established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Navy Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2006, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Navy Reserve if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Navy Reserve is appointed for a term determined by the Chief of Naval Operations, normally four years, but may be removed for cause at any time. An officer serving as Chief of Navy Reserve may be reappointed for one additional term of up to four years.

(2) The Chief of Navy Reserve, while so serving, holds the grade of vice admiral.

(d) BUDGET.—The Chief of Navy Reserve is the official within the executive part of the Department of the Navy who, subject to the authority, direction, and control of the Secretary of the Navy and the Chief of Naval Operations, is responsible for preparation, justification, and execution of the personnel, operation and maintenance, and construction budgets for the Navy Reserve. As such, the Chief of Navy Reserve is the director and functional manager of appropriations made for the Navy Reserve in those areas.

(e) ANNUAL REPORT.—(1) The Chief of Navy Reserve shall submit to the Secretary of Defense, through the Secretary of the Navy, an annual report on the state of the Navy Reserve and the ability of the Navy Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Naval Operations and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Navy Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 104–201, div. A, title XII, Sec. 1212(b)(1), Sept. 23, 1996, 110 Stat. 2691; amended Pub. L. 106–65, div. A, title V, Sec. 554(c), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106–398, Sec. 11[div. A], title V, Sec. 507(b), title X, Sec. 1087(a)(18)], Oct. 30, 2000, 114 Stat. 1654, 1654A–103, 1654A–291; Pub. L. 107–314, div. A, title V, Sec. 501(a), Dec. 2, 2002, 116 Stat. 2529; Pub. L. 108–375, div. A, title V, Sec. 536(a), Oct. 28, 2004, 118 Stat. 1901; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(F), (2), (3)(A), Jan. 6, 2006, 119 Stat. 3233, 3234.)

§ 5144. Office of Marine Forces Reserve: appointment of Commander

(a) ESTABLISHMENT OF OFFICE; COMMANDER, MARINE FORCES RESERVE.—There is in the executive part of the Department of the Navy an Office of the Marine Forces Reserve, which is headed by the Commander, Marine Forces Reserve. The Commander, Marine Forces Reserve, is the principal adviser to the Commandant on Marine Forces Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Commander, Marine Forces Reserve, from general officers of the Marine Corps (as defined in section 5001(2)) who have had at least 10 years of commissioned service.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Commander, Marine Forces Reserve, unless the officer—

(A) is recommended by the Secretary of the Navy; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Commander, Marine Forces Reserve, shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2006, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Commander, Marine Forces Reserve, if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Commander, Marine Forces Reserve, is appointed for a term determined by the Commandant of the Marine Corps, normally four years, but may be removed for cause at any time. An officer serving as Commander, Marine Forces Reserve, may be reappointed for one additional term of up to four years.

(2) The Commander, Marine Forces Reserve, while so serving, has the grade of lieutenant general.

(d) ANNUAL REPORT.—(1) The Commander, Marine Forces Reserve, shall submit to the Secretary of Defense, through the Secretary of the Navy, an annual report on the state of the Marine Corps Reserve and the ability of the Marine Corps Reserve to meet its missions. The report shall be prepared in conjunction with the Commandant of the Marine Corps and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Commander, Marine Forces Reserve, under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 104–201, div. A, title XII, 1212(c)(1), Sept. 23, 1996, 110 Stat. 2692; Pub. L. 106–65, div. A, title V, Sec. 554(d), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106–398, Sec. 1[[div. A], title V, Sec. 507(c), title X, Sec. 1087(a)(19)], Oct. 30, 2000, 114 Stat. 1654, 1654A–103, 1654A–291; Pub. L. 107–314, div. A, title V, Sec. 501(a), Dec. 2, 2002, 116 Stat. 2529; Pub. L. 108–375, div. A, title V, Sec. 536(a), Oct. 28, 2004, 118 Stat. 1901.)

[§§ 5145 to 5147. Repealed. Pub. L. 89-718, Sec. 35(5), Nov. 2, 1966, 80 Stat. 1120]

§ 5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties

(a) The Judge Advocate General's Corps is a Staff Corps of the Navy, and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the Office of the Judge Advocate General of the Navy. The Judge Advocate General shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. He shall be appointed from judge advocates of the Navy or the Marine Corps who are members of the bar of a Federal court or the highest court of a State and who have had at least eight years of experience in legal duties as commissioned officers. The Judge Advocate General, while so serving, has the grade of vice admiral or lieutenant general, as appropriate.

(c) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(d) The Judge Advocate General of the Navy, under the direction of the Secretary of the Navy, shall—

(1) perform duties relating to legal matters arising in the Department of the Navy as may be assigned to him;

(2) perform the functions and duties and exercise the powers prescribed for the Judge Advocate General in chapter 47 of this title;

(3) receive, revise, and have recorded the proceedings of boards for the examination of officers of the naval service for promotion and retirement; and

(4) perform such other duties as may be assigned to him.

(e) No officer or employee of the Department of Defense may interfere with—

(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Navy or the Chief of Naval Operations; or

(2) the ability of judge advocates of the Navy assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 289; Pub. L. 87-649, Sec. 14c(20), Sept. 7, 1962, 76 Stat. 501; Pub. L. 90-179, Sec. 2(1), Dec. 8, 1967, 81 Stat. 546; Pub. L. 96-513, title III, Sec. 343, Dec. 12, 1980, 94 Stat. 2901; Pub. L. 103-337, div. A, title V, Sec. 504(b)(1), Oct. 5, 1994, 108 Stat. 2750; Pub. L. 108-375, div. A, title V, Sec. 574(b)(1), Oct. 28, 2004, 118 Stat. 1922; Pub. L. 109-163, div. A, title V, Sec. 508(b), title X, Sec. 1057(a)(2), Jan. 6, 2006, 119 Stat. 3229, 3440; Pub. L. 110-181, div. A, title V, Sec. 543(b), Jan. 28, 2008, 122 Stat. 115.)

§ 5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General

(a)(1) There is a Deputy Judge Advocate General of the Navy who is appointed by the President, by and with the advice and consent of the Senate, from among judge advocates of the Navy and Marine Corps who have the qualifications prescribed for the Judge Advocate General. If an officer appointed as the Deputy Judge Advocate General holds a lower regular grade, the officer shall be appointed in the regular grade of rear admiral or major general, as appropriate.

(2) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Deputy Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(b) An officer of the Judge Advocate General's Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving, a judge advocate who holds a grade lower than rear admiral (lower half) shall hold the grade of rear admiral (lower half), if he is appointed to that grade by the President, by and with the advice and consent of the Senate. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of rear admiral (lower half). If he is retired as a rear admiral (lower half), he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

(c) A judge advocate of the Marine Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving, a judge advocate who holds a grade lower than brigadier general shall hold the grade of brigadier general, if he is appointed to that grade by the President, by and with the advice and consent of the Senate. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of brigadier general. If he is retired as a brigadier general, he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

(d) When there is a vacancy in the Office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Deputy Judge Advocate General shall perform

the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

(e) When subsection (d) cannot be complied with because of the absence or disability of the Deputy Judge Advocate General, the Assistant Judge Advocates General, in the order directed by the Secretary of the Navy, shall perform the duties of the Judge Advocate General.

(Aug. 10, 1956, ch. 1041, 70A Stat. 290; Pub. L. 85–861, Sec. 33(a)(28), Sept. 2, 1958, 72 Stat. 1566; Pub. L. 87–649, Sec. 14c(21), Sept. 7, 1962, 76 Stat. 501; Pub. L. 89–718, Sec. 36, Nov. 2, 1966, 80 Stat. 1120; Pub. L. 90–179, Sec. 2(2), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–623, Sec. 2(9), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–513, title V, Sec. 503(13), Dec. 12, 1980, 94 Stat. 2912; Pub. L. 97–86, title IV, Sec. 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, Sec. 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–661, div. A, title V, Sec. 508(b), Nov. 14, 1986, 100 Stat. 3867; Pub. L. 103–337, div. A, title V, Sec. 504(b)(2), Oct. 5, 1994, 108 Stat. 2751.)

§ 5150. Staff corps of the Navy

(a) The staff corps of the Navy are—

- (1) the Medical Corps;
- (2) the Dental Corps;
- (3) the Judge Advocate General's Corps;
- (4) the Chaplain Corps; and

(5) such other staff corps as may be established by the Secretary of the Navy under subsection (b).

(b)(1) The Secretary of the Navy may establish staff corps of the Navy in addition to the Medical Corps, the Dental Corps, the Judge Advocate General's Corps, and the Chaplain Corps. The Secretary may designate commissioned officers in, and may assign members to, any such staff corps.

(2) Subject to subsection (c), the Secretary of the Navy may provide for the appointment of the chief of any staff corps established under this subsection.

(c) The Secretary of the Navy, whenever the needs of the service require, may convene a selection board under section 611(a) of this title to select an officer in the Nurse Corps or in the Medical Service Corps (if such corps has been established under subsection (a)) for promotion to the grade of rear admiral, in the case of an officer in the Nurse Corps, or rear admiral (lower half), in the case of an officer in the Medical Service Corps. An officer promoted pursuant to such a selection shall be appointed by the Secretary to the position of Director of the Nurse Corps or Director of the Medical Service Corps, respectively, for a term of four years, to serve at the pleasure of the Secretary. For the purpose of computing the total number of flag officers in the staff corps of the Navy under section 526 of this title, an officer so appointed shall be considered an additional number in grade.

(Added Pub. L. 96–513, title III, Sec. 351, Dec. 12, 1980, 94 Stat. 2902, Sec. 5155; amended Pub. L. 97–22, Sec. 6(a), July 10, 1981, 95 Stat. 129; Pub. L. 97–86, title IV, Sec. 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; renumbered Sec. 5150, Pub. L. 99–433, title V, Sec. 514(a)(2), Oct. 1, 1986, 100 Stat. 1054; Pub. L. 99–661, div. A, title XIII, Sec. 1343(a)(23), Nov. 14, 1986, 100 Stat. 3994; Pub. L. 100–26, Sec. 3(7), Apr. 21, 1987, 101 Stat. 274; Pub. L. 102–190, div. A, title X, Sec. 1061(a)(22)(A), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 107–314, div. A, title V, Sec. 504(a)(2), Dec. 2, 2002, 116 Stat. 2531.)

[§ 5151. Renumbered 5022]

[§ 5152. Renumbered 5023]

[§ 5153. Renumbered 5024]

[§ 5154. Repealed. Pub. L. 89-718, Sec. 35(5), Nov. 2, 1966, 80 Stat. 1120]

[§ 5155. Renumbered 5150]

[CHAPTER 515—REPEALED]

- [§§ 5201 to 5204. Repealed. Pub. L. 99-433, title V, Sec. 513(a), Oct. 1, 1986, 100 Stat. 1051]**
- [§ 5205. Repealed. Pub. L. 87-123, Sec. 5(3), Aug. 3, 1961, 75 Stat. 264]**
- [§ 5206. Repealed. Pub. L. 96-513, title III, Sec. 344(b), Dec. 12, 1980, 94 Stat. 2901]**

[CHAPTER 516—REPEALED]

- [§§ 5221, 5222. Repealed. Pub. L. 95-82, title VI, Sec. 611(a), Aug. 1, 1977, 91 Stat. 378]**

[CHAPTER 517—REPEALED]

- [§§ 5231 to 5234. Repealed. Pub. L. 96-513, title III, Sec. 331, Dec. 12, 1980, 94 Stat. 2896]**

[CHAPTER 519—REPEALED]

- [§§ 5251, 5252. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]**

PART II—PERSONNEL

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[531. Repealed.]	
533. Distribution in Grade	5441
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- [§§ 5401 to 5409. Repealed. Pub. L. 96-513, title III, Sec. 311(a), Dec. 12, 1980, 94 Stat. 2889]
- [§§ 5410, 5411. Repealed. Pub. L. 90-130, Sec. 1(16), Nov. 8, 1967, 81 Stat. 376]
- [§ 5412. Repealed. Pub. L. 96-513, title III, Sec. 311(a), Dec. 12, 1980, 94 Stat. 2889]
- [§§ 5413, 5414. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]
- [§§ 5415 to 5417. Repealed. Pub. L. 96-513, title III, Sec. 311(a), 312, Dec. 12, 1980, 94 Stat. 2889]

CHAPTER 533—DISTRIBUTION IN GRADE

Sec.

5441. Prescribed number; vacancies.
[5442 to 5449. Repealed.]
5450. Regular Navy: retired flag officers on active duty.
5451. Suspension: preceding sections.
[5452 to 5458. Repealed.]

§ 5441. Prescribed number; vacancies

In this chapter, the term “prescribed number” or “number . . . prescribed” as applied to a grade, means the number of officers of a described corps, designation, or other category that shall be maintained in the grade concerned. Except as otherwise specifically provided, the actual number of officers in a grade may not exceed the prescribed number. Vacancies occur whenever, and to the extent that, the actual number falls below the prescribed number.

(Aug. 10, 1956, ch. 1041, 70A Stat. 299; Pub. L. 96-513, title III, Sec. 313(a), Dec. 12, 1980, 94 Stat. 2889; Pub. L. 101-189, div. A, title XVI, Sec. 1622(e)(8), Nov. 29, 1989, 103 Stat. 1605.)

- [§§ 5442 to 5444. Repealed. Pub. L. 101-510, div. A, title IV, Sec. 403(b)(2)(A), Nov. 5, 1990, 104 Stat. 1545]
- [§ 5445. Repealed. Pub. L. 96-513, title III, Sec. 313(d)(1), Dec. 12, 1980, 94 Stat. 2892]
- [§ 5446. Repealed. Pub. L. 101-510, div. A, title IV, Sec. 403(b)(2)(A), Nov. 5, 1990, 104 Stat. 1545]
- [§§ 5447 to 5449. Repealed. Pub. L. 96-513, title III, Sec. 313(d)(2)-(4), Dec. 12, 1980, 94 Stat. 2892]

§ 5450. Regular Navy: retired flag officers on active duty

Except in time of war or national emergency, not more than ten retired flag officers of the Regular Navy may be on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 312; Pub. L. 96-513, title V, Sec. 503(21), Dec. 12, 1980, 94 Stat. 2912.)

§ 5451. Suspension: preceding sections

The President, during a war or national emergency, may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

(Aug. 10, 1956, ch. 1041, 70A Stat. 312; Pub. L. 94-273, Sec. 2(3), Apr. 21, 1976, 90 Stat. 375; Pub. L. 96-513, title V, Sec. 503(22), Dec. 12, 1980, 94 Stat. 2913; Pub. L. 102-190, div. A, title X, Sec. 1061(a)(21), Dec. 5, 1991, 105 Stat. 1473.)

[§ 5452. Repealed. Pub. L. 96-513, title III, Sec. 373(b), Dec. 12, 1980, 94 Stat. 2903]

[§ 5453. Repealed. Pub. L. 90-130, Sec. 1(17)(F), Nov. 8, 1967, 81 Stat. 377]

[§ 5454. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§ 5455. Repealed. Pub. L. 97-22, Sec. 10(b)(6)(A), July 10, 1981, 95 Stat. 137]

[§§ 5456 to 5458. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

CHAPTER 535—GRADE AND RANK OF OFFICERS

- Sec.
5501. Navy: grades above chief warrant officer, W-5.
5502. Marine Corps: grades above chief warrant officer, W-5.
5503. Navy and Marine Corps: warrant officer grades.
[5504 to 5507. Repealed.]
5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps.

§ 5501. Navy: grades above chief warrant officer, W-5

The commissioned grades in the Navy above the grade of chief warrant officer, W-5, are the following:

- (1) Admiral.
- (2) Vice admiral.
- (3) Rear admiral.
- (4) Rear admiral (lower half).
- (5) Captain.
- (6) Commander.
- (7) Lieutenant commander.
- (8) Lieutenant.
- (9) Lieutenant (junior grade).
- (10) Ensign.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Pub. L. 96-513, title III, Sec. 301, Dec. 12, 1980, 94 Stat. 2887; Pub. L. 97-86, title IV, Sec. 405(a), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, Sec. 514(a)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102-190, div. A, title XI, Sec. 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506.)

§ 5502. Marine Corps: grades above chief warrant officer, W-5

The commissioned grades in the Marine Corps above the grade of chief warrant officer, W-5, are:

- (1) General.
- (2) Lieutenant general.
- (3) Major general.
- (4) Brigadier general.
- (5) Colonel.
- (6) Lieutenant colonel.
- (7) Major.
- (8) Captain.
- (9) First lieutenant.
- (10) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Pub. L. 102-190, div. A, title XI, Sec. 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506.)

§ 5503. Navy and Marine Corps: warrant officer grades

The warrant officer grades in the Navy and the Marine Corps are:

- (1) Chief warrant officer, W-5.
- (2) Chief warrant officer, W-4.

- (3) Chief warrant officer, W-3.
- (4) Chief warrant officer, W-2.
- (5) Warrant officer, W-1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Pub. L. 102-190, div. A, title XI, Sec. 1131(9), Dec. 5, 1991, 105 Stat. 1506.)

[§§ 5504, 5505. Repealed. Pub. L. 96-513, title III, Sec. 314, Dec. 12, 1980, 94 Stat. 2892]

[§ 5506. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1673(d)(1), Oct. 5, 1994, 108 Stat. 3016]

[§ 5507. Repealed. Pub. L. 87-649, Sec. 14c(26), Sept. 7, 1962, 76 Stat. 501]

§ 5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps

Except for an officer entitled to a rank higher than his grade, line and staff corps officers of the Navy serving in the same grade and officers of the Marine Corps serving in the corresponding grade rank among themselves according to their respective dates of rank in grade whether or not they are on an active-duty list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 317; Pub. L. 90-179, Sec. 4, Dec. 8, 1967, 81 Stat. 547; Pub. L. 96-513, title V, Sec. 503(27), Dec. 12, 1980, 94 Stat. 2913.)

CHAPTER 537—ENLISTMENTS

Sec.

[5531 to 5539. Repealed.]

5540. Expiration: rights of member.

[§§ 5531 to 5535. Repealed. Pub. L. 90-235, Sec. 2(a)(3), (b), Jan. 2, 1968, 81 Stat. 756]

[§ 5536. Repealed. Pub. L. 85-861, Sec. 36B(13), Sept. 2, 1958, 72 Stat. 1571]

[§§ 5537 to 5539. Repealed. Pub. L. 90-235, Sec. 2(a)(3), Jan. 2, 1968, 81 Stat. 756]

§ 5540. Expiration: rights of member

(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States.

(b) Each member retained under this section—

(1) shall be discharged not later than 30 days after his arrival in the United States; and

(2) except in time of war is entitled to an increase in basic pay of 25 percent.

(c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 320.)

CHAPTER 539—ORIGINAL APPOINTMENTS

Sec.

[5571 to 5581. Repealed.]

5582. Regular Navy: transfers, line and staff corps.

[5583, 5584. Repealed.]

5585. Regular Marine Corps: order of filling vacancies in grade of second lieutenant.

[5586. Repealed.]

5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty.

5587a. Regular Marine Corps: judge advocates.

[5588. Repealed.]

5589. Regular Navy and Regular Marine Corps: officers designated for limited duty.

[5590 to 5595. Repealed.]

5596. Navy and Marine Corps: temporary appointments of officers designated for limited duty.

[5597 to 5601. Repealed.]

[§§ 5571, 5572. Repealed. Pub. L. 96-513, title III, Sec. 321, Dec. 12, 1980, 94 Stat. 2892]

[§ 5573. Repealed. Pub. L. 96-513, title III, Sec. 322, Dec. 12, 1980, 94 Stat. 2892]

[§§ 5573a to 5580. Repealed. Pub. L. 96-513, title III, Sec. 321, Dec. 12, 1980, 94 Stat. 2892]

[§ 5581. Repealed. Pub. L. 96-513, title III, Sec. 373(c), Dec. 12, 1980, 94 Stat. 2903]

§ 5582. Regular Navy: transfers, line and staff corps

(a) A regular officer of the Navy in a staff corps in a grade not above lieutenant commander may be appointed in the line of the Navy to the same grade.

(b) A regular officer in the line of the Navy in a grade not above lieutenant commander may be appointed to the same grade in a staff corps under regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 324; Pub. L. 96-513, title III, Sec. 373(d), Dec. 12, 1980, 94 Stat. 2903.)

[§§ 5583, 5584. Repealed. Pub. L. 96-513, title III, Sec. 321, Dec. 12, 1980, 94 Stat. 2892]

§ 5585. Regular Marine Corps: order of filling vacancies in grade of second lieutenant

Vacancies on the active-duty list of the Marine Corps in the grade of second lieutenant shall be filled, so far as practicable, first, from members of the graduating class of the Naval Academy; second, from meritorious noncommissioned officers of the Regular Marine Corps; and third, from other persons.

(Aug. 10, 1956, ch. 1041, 70A Stat. 324; Pub. L. 96-513, title V, Sec. 503(29), Dec. 12, 1980, 94 Stat. 2913.)

[§ 5586. Repealed. Pub. L. 96-513, title III, Sec. 321, Dec. 12, 1980, 94 Stat. 2892]

§ 5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty

(a) Persons may be originally appointed in the line of the Navy as regular officers designated for engineering duty, aeronautical engineering duty, or special duty.

(b) With the approval of the Secretary, a regular officer in the line of the Navy may, upon his application, be designated for engineering duty, aeronautical engineering duty, or special duty.

(c) The types of engineering duty for which officers may be designated include ship engineering and ordnance engineering. The types of aeronautical engineering duty for which officers may be designated include aeronautical engineering and aviation maintenance. The types of special duty for which officers may be designated include communications, law, naval intelligence, photography, public affairs, psychology, geophysics, cryptography, and hydrography.

(d) Officers designated for engineering duty, aeronautical engineering duty, or special duty shall perform sea or shore duty appropriate to their special qualifications but may not succeed to command except on shore and then only as authorized by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 325; Pub. L. 90-179, Sec. 5(2), Dec. 8, 1967, 81 Stat. 547; Pub. L. 90-386, Sec. 1(5), July 5, 1968, 82 Stat. 293; Pub. L. 96-513, title III, Sec. 324, Dec. 12, 1980, 94 Stat. 2893.)

§ 5587a. Regular Marine Corps: judge advocates

With the approval of the Secretary of the Navy, any regular officer on the active-duty list of the Marine Corps who is qualified under section 827(b) of this title may, upon his application, be designated as a judge advocate.

(Added Pub. L. 90-179, Sec. 5(3), Dec. 8, 1967, 81 Stat. 548; amended Pub. L. 96-513, title V, Sec. 503(30), Dec. 12, 1980, 94 Stat. 2913.)

[§ 5588. Repealed. Pub. L. 87-123, Sec. 5(8), Aug. 3, 1961, 75 Stat. 265]

§ 5589. Regular Navy and Regular Marine Corps: officers designated for limited duty

(a) Original appointments as regular officers of the Navy in a grade below lieutenant commander in the line and in staff corps established by the Secretary of the Navy under section 5150(b) of this title and designated by the Secretary for the purposes of this section may be made from—

- (1) warrant officers;
- (2) chief petty officers; and
- (3) first-class petty officers;

in the Regular Navy, for the performance of duty in the technical fields indicated by their warrants or ratings.

(b) Original appointments as regular officers of the Marine Corps in a grade below major may be made from—

- (1) warrant officers;
- (2) master sergeants; and
- (3) technical sergeants;

in the Regular Marine Corps, for the performance of duty in the technical fields in which they are proficient.

(c)(1) An officer described in paragraph (2) may be given an original appointment as a regular officer of the Navy or the Marine Corps, as the case may be, in the grade, and with the date of rank in that grade, in which the officer is serving on the day before such original appointment.

(2) This subsection applies to an officer of the Navy and Marine Corps who—

- (A) is on the active-duty list;
- (B) holds a permanent enlisted or warrant officer grade;
- (C) is designated for limited duty under subsection (a) of section 5596 of this title; and
- (D) is serving in the grade of lieutenant commander or commander, or in the grade of major or lieutenant colonel, under a temporary appointment under subsection (d) of section 5596 of this title.

(d) To be eligible for an appointment under this section a member must have the qualifications specified in section 532(a) of this title and have completed at least 10 years of active naval service, excluding active duty for training in a reserve component.

(e) Each officer appointed under this section is known as an officer designated for limited duty. He may not suffer any reduction in the pay and allowances to which he was entitled at the time of his appointment because of his former permanent status.

(f) Any officer designated for limited duty, upon his application and upon determination by the Secretary of the Navy that he is qualified, may—

- (1) if he is in the line of the Navy, be designated for engineering duty, aeronautical engineering duty, or special duty, or be assigned to unrestricted performance of duty;
- (2) if he is in a staff corps of the Navy, be assigned to unrestricted performance of duty in that corps; or
- (3) if he is in the Marine Corps, be assigned to unrestricted performance of duty.

When an officer is so designated or assigned, his status as an officer designated for limited duty terminates.

(g) The Secretary shall prescribe regulations for the appointment, designation, and assignment of officers under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 326; Pub. L. 87-123, Sec. 5(10), Aug. 3, 1961, 75 Stat. 265; Pub. L. 96-513, title III, Sec. 325, Dec. 12, 1980, 94 Stat. 2893; Pub. L. 99-433, title V, Sec. 514(c)(3), Oct. 1, 1986, 100 Stat. 1055; Pub. L. 103-337, div. A, title V, Sec. 502, Oct. 5, 1994, 108 Stat. 2748.)

[§ 5590. Repealed. Pub. L. 96-513, title III, Sec. 373(e), Dec. 12, 1980, 94 Stat. 2903]

[§§ 5591 to 5595. Repealed. Pub. L. 96-513, title III, Sec. 323, Dec. 12, 1980, 94 Stat. 2893]

§ 5596. Navy and Marine Corps: temporary appointments of officers designated for limited duty

(a) Under such regulations as he may prescribe, the Secretary of the Navy may make temporary appointments of officers designated for limited duty in the Regular Navy in grades not above lieutenant and in the Regular Marine Corps in grades not above captain from sources authorized under section 5589 of this title. Such appointments shall be made by warrant if in the grade of warrant officer, W-1, and by commission if in a higher grade.

(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person receiving a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

(c) The following members of the naval service are ineligible for temporary appointments under this section:

(1) Retired members.

(2) Members of the Navy Reserve and the Marine Corps Reserve ordered to active duty for training.

(3) Members of the Navy Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Navy Reserve or the Marine Corps Reserve.

(4) Members of the Navy Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

(d) Officers designated for limited duty under subsection (a) may be temporarily appointed by the Secretary of the Navy in a higher grade not above commander in the Regular Navy or lieutenant colonel in the Regular Marine Corps under such regulations as the Secretary may prescribe. Regulations prescribed under this section shall to the greatest extent practicable conform to the procedures prescribed in chapter 36 of this title for selection for promotion and promotion to higher permanent grades.

(e) The Secretary of the Navy may terminate any appointment made under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 328; Pub. L. 96-513, title III, Sec. 326, Dec. 12, 1980, 94 Stat. 2894; Pub. L. 102-190, div. A, title XI, Sec. 1113(c), (d)(2)(A), Dec. 5, 1991, 105 Stat. 1502; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(G), Jan. 6, 2006, 119 Stat. 3233.)

[§§ 5597 to 5599. Repealed. Pub. L. 96-513, title III, Sec. 327, Dec. 12, 1980, 94 Stat. 2894]

[§ 5600. Repealed. Pub. L. 104-106, div. A, title XV, Sec. 1501(c)(26), Feb. 10, 1996, 110 Stat. 499]

[§ 5601. Repealed. Pub. L. 89-609, Sec. 1(10), Sept. 30, 1966, 80 Stat. 853]

[CHAPTER 541—REPEALED]

[§§ 5651 to 5664. Repealed. Pub. L. 96-513, title III, Sec. 332, Dec. 12, 1980, 94 Stat. 2897]

[§ 5665. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(b)(1), Oct. 5, 1994, 108 Stat. 2963]

[§ 5666. Repealed. Pub. L. 96-513, title III, Sec. 332, Dec. 12, 1980, 94 Stat. 2897]

[CHAPTER 543—REPEALED]

[§§ 5701 to 5711. Repealed. Pub. L. 96-513, title III, Sec. 333, Dec. 12, 1980, 94 Stat. 2897]

CHAPTER 544—TEMPORARY APPOINTMENTS

Sec.
5721. Temporary promotions of certain Navy lieutenants.

§ 5721. Temporary promotions of certain Navy lieutenants

(a) PROMOTION AUTHORITY FOR CERTAIN OFFICERS WITH CRITICAL SKILLS.—An officer in the line of the Navy in the grade of lieutenant who—

(1) has a skill in which the Navy has a critical shortage of personnel (as determined by the Secretary of the Navy); and

(2) is serving in a position (as determined by the Secretary of the Navy) which (A) is designated to be held by a lieutenant commander, and (B) requires that an officer serving in such position have the skill possessed by such officer,

may be temporarily promoted to the grade of lieutenant commander under regulations to be prescribed by the Secretary of the Navy. Appointments under this section shall be made by the President, by and with the advice and consent of the Senate.

(b) STATUS OF OFFICERS APPOINTED.—(1) An appointment under this section does not change the position on the active-duty list or the permanent, probationary, or acting status of the officer so appointed, prejudice the officer in regard to other promotions or appointments, or abridge the rights or benefits of the officer.

(2) For the purposes of section 523 of this title, an officer holding an appointment under this section is considered as serving in the grade of lieutenant commander.

(c) BOARD RECOMMENDATION REQUIRED.—A temporary promotion under this section may be made only upon the recommenda-

tion of a board of officers convened by the Secretary of the Navy for the purpose of recommending officers for such promotions.

(d) ACCEPTANCE AND EFFECTIVE DATE OF APPOINTMENT.—Each appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date such appointment is made, and a member so appointed is entitled to the pay and allowances of the grade of lieutenant commander from the date the appointment is made.

(e) TERMINATION OF APPOINTMENT.—Unless sooner terminated, an appointment under this section terminates—

(1) on the date the officer who received the appointment is promoted to the permanent grade of lieutenant commander; or

(2) on the date the officer is detached from a position described in subsection (a)(2), unless the officer is on a promotion list to the permanent grade of lieutenant commander, in which case the appointment terminates on the date the officer is promoted to that grade.

(f) LIMITATION ON NUMBER OF ELIGIBLE POSITIONS.—An appointment under this section may only be made for service in a position designated by the Secretary of the Navy for purposes of this section. The number of positions so designated may not exceed 325.

(Added Pub. L. 96-513, title III, Sec. 334, Dec. 12, 1980, 94 Stat. 2897; amended Pub. L. 98-94, title IV, Sec. 403, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98-525, title V, Sec. 514, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-661, div. A, title V, Sec. 503, Nov. 14, 1986, 100 Stat. 3864; Pub. L. 100-180, div. A, title V, Sec. 501(a), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101-189, div. A, title V, Sec. 512(a), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 102-484, div. A, title V, Sec. 507, Oct. 23, 1992, 106 Stat. 2405; Pub. L. 103-160, div. A, title V, Sec. 508(a), Nov. 30, 1993, 107 Stat. 1647; Pub. L. 104-106, div. A, title V, Sec. 508(a), (b), (d), Feb. 10, 1996, 110 Stat. 296, 297; Pub. L. 104-201, div. A, title V, Sec. 503, Sept. 23, 1996, 110 Stat. 2511; Pub. L. 107-314, div. A, title X, Sec. 1041(a)(20), Dec. 2, 2002, 116 Stat. 2645.)

[CHAPTER 545—REPEALED]

- [§§ 5751 to 5758. Repealed. Pub. L. 96-513, title III, Sec. 333, Dec. 12, 1980, 94 Stat. 2897]
- [§ 5759. Repealed. Pub. L. 87-123, Sec. 5(17), Aug. 3, 1961, 75 Stat. 266]
- [§§ 5760 to 5773. Repealed. Pub. L. 96-513, title III, Sec. 333, Dec. 12, 1980, 94 Stat. 2897]
- [§ 5774. Repealed. Pub. L. 90-130, Sec. 1(19)(T), Nov. 8, 1967, 81 Stat. 379]
- [§ 5775. Repealed. Pub. L. 87-649, Sec. 14c(293), Sept. 7, 1962, 76 Stat. 501]
- [§§ 5776 to 5793. Repealed. Pub. L. 96-513, title III, Sec. 333, Dec. 12, 1980, 94 Stat. 2897]

[CHAPTER 547—REPEALED]

- [§§ 5861, 5862. Repealed. Pub. L. 96-513, title III, Sec. 333, Dec. 12, 1980, 94 Stat. 2897]
- [§ 5863. Repealed. Pub. L. 85-861, Sec. 36B(14), Sept. 2, 1958, 72 Stat. 1571]
- [§§ 5864, 5865. Repealed. Pub. L. 96-513, title III, Sec. 333, Dec. 12, 1980, 94 Stat. 2897]
- [§ 5866. Repealed. Pub. L. 85-861, Sec. 36B(15), Sept. 2, 1958, 72 Stat. 1571]
- [§ 5867. Repealed. Pub. L. 96-513, title III, Sec. 333, Dec. 12, 1980, 94 Stat. 2897]

[CHAPTER 549—REPEALED]

- [§§ 5891 to 5906. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(b)(2), Oct. 5, 1994, 108 Stat. 2963]
- [§ 5907. Repealed. Pub. L. 87-649, Sec. 14c(33), Sept. 7, 1962, 76 Stat. 501]
- [§§ 5908 to 5912. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(b)(2), Oct. 5, 1994, 108 Stat. 2963]

CHAPTER 551—OFFICERS IN COMMAND

Sec.	
[5941.	Repealed.]
5942.	Aviation commands: eligibility.
5943.	Naval shipyards.
5944.	Marine Corps officers: limitation on power to command.
5945.	Staff corps officers: limitation on power to command.
5946.	Precedence accorded commanding officers.
5947.	Requirement of exemplary conduct.
5948.	Consular powers: senior officer present afloat.
5949.	Policy as to leave and liberty.
[5950.	Repealed.]
5951.	Continuation of authority after loss of vessel or aircraft.
5952.	Marine Corps organizations on vessels: authority of officers.
[5953 to 5955.	Repealed.]

[§ 5941. Repealed. Pub. L. 90-235, Sec. 5(b)(1), Jan. 2, 1968, 81 Stat. 761]

§ 5942. Aviation commands: eligibility

(a) To be eligible to command an aircraft carrier or an aircraft tender, an officer must be an officer in the line of the Navy who is designated as a naval aviator or naval flight officer and who is otherwise qualified.

(b) To be eligible to command a naval aviation school, a naval air station, or a naval aviation unit organized for flight tactical purposes, an officer must be an officer in the line of the Navy designated as a naval aviator or naval flight officer.

(c) To be eligible to command a Marine Corps aviation school, a Marine Corps air station, or a Marine Corps aviation unit organized for flight tactical purposes, an officer must be an officer of the Marine Corps designated as a naval aviator or naval flight officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371; Pub. L. 91-198, Sec. 1(1), Feb. 26, 1970, 84 Stat. 15.)

§ 5943. Naval shipyards

Commanders of naval shipyards may be selected by the President from officers of the Navy not below the grade of commander.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371.)

§ 5944. Marine Corps officers: limitation on power to command

Officers of the Marine Corps may not command vessels or naval shipyards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371.)

§ 5945. Staff corps officers: limitation on power to command

An officer in a staff corps may command only such activities as are appropriate to his corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371; Pub. L. 90-130, Sec. 1(21), Nov. 8, 1967, 81 Stat. 380.)

§ 5946. Precedence accorded commanding officers

The commanding officer of a vessel or of a naval station takes precedence over all officers under his command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

§ 5947. Requirement of exemplary conduct

All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

§ 5948. Consular powers: senior officer present afloat

In any foreign port where there is no resident consul of the United States, or on the high seas, the senior officer present afloat has the powers of a consul in relation to mariners of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

§ 5949. Policy as to leave and liberty

The commanding officer of a vessel shall favor the faithful and obedient in granting leave and liberty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

[§ 5950. Repealed. Pub. L. 90-235, Sec. 5(b)(1), Jan. 2, 1968, 81 Stat. 761]**§ 5951. Continuation of authority after loss of vessel or aircraft**

If the crew of any naval vessel or naval aircraft are separated from their vessel or aircraft because of its wreck, loss, or destruction, all the command and authority given to the officers of the vessel or aircraft remain in full force until the crew are discharged or reassigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

§ 5952. Marine Corps organizations on vessels: authority of officers

When an organization of the Marine Corps is embarked in any vessel, not as part of the authorized complement of the vessel, the authority of the officers of that organization is the same as though the organization were serving at a naval station. However, this section does not impair the paramount authority of the commanding officer of a vessel over the vessel and all persons embarked in it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

[§§ 5953, 5954. Repealed. Pub. L. 90-235, Sec. 5(a)(2), (b)(1),
Jan. 2, 1968, 81 Stat. 761]

[§ 5955. Repealed. Pub. L. 96-513, title III, Sec. 361(a), Dec.
12, 1980, 94 Stat. 2902]

CHAPTER 553—SPECIAL ASSIGNMENTS AND DETAILS

- Sec.
[5981. Repealed.]
[5982. Repealed.]
5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries.
[5984. Repealed.]
5985. Nautical Schools: detail of naval officers as superintendents or instructors.
5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture.
[5987. Repealed.]

[§ 5981. Repealed. Pub. L. 91–482, Sec. 1(a), Oct. 21, 1970, 84 Stat. 1082]

[§ 5982. Repealed. Pub. L. 96–513, title III, Sec. 361(b), Dec. 12, 1980, 94 Stat. 2902]

§ 5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries

Upon the request of the Secretary of State, the Secretary of the Navy may assign enlisted members of the naval service to serve as custodians under the supervision of the principal officer at any embassy, legation, or consulate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374.)

[§ 5984. Repealed. Pub. L. 90–235, Sec. 4(b)(1), Jan. 2, 1968, 81 Stat. 760]

§ 5985. Nautical Schools: detail of naval officers as superintendents or instructors

The President may detail officers of the Navy as superintendents or instructors of institutions receiving benefits under chapter 515 of title 46 when in his opinion it can be done without detriment to the naval service. Officers so detailed shall be recalled from an institution if it is discontinued or if the good of the naval service requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374; Pub. L. 99–145, title XIII, Sec. 1303(a)(21), Nov. 8, 1985, 99 Stat. 739; Pub. L. 109–304, Sec. 17(a)(5), Oct. 6, 2006, 120 Stat. 1706.)

§ 5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture

(a) To promote a knowledge of naval engineering and naval architecture, the President, upon the application of any established scientific school or college in the United States, the Commonwealths or possessions, may detail a qualified officer of the Navy as a professor in that school or college. The number of officers detailed under this section may not exceed 25 at any one time.

(b) The President may prescribe regulations for detailing such officers and may recall them when the public interest requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

[§ 5987. Repealed. Pub. L. 90-235, Sec. 4(a)(2), Jan. 2, 1968, 81 Stat. 759]

CHAPTER 555—ADMINISTRATION

- Sec.
6011. Navy Regulations.
6012. Additional regulations for Marine Corps.
6013. Enlisted grades and ratings: authority to establish.
6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy.
[6015 to 6018. Repealed.]
6019. Citizenship of officers of vessels.
[6020. Repealed.]
6021. Aviation duties: number of personnel assigned.
6022. Aviation training facilities.
[6023. Repealed.]
6024. Aviation designations: naval flight officer.
[6025, 6026. Repealed.]
6027. Medical Department: composition.
[6028. Repealed.]
6029. Dental services: responsibilities of senior dental officer.
[6030. Repealed.]
6031. Chaplains: divine services.
6032. Indebtedness to Marine Corps Exchanges: payment from appropriated funds in certain cases.
[6033, 6034. Repealed.]
6035. Female members: congressional review period for assignment to duty on submarines or for reconfiguration of submarines.
6036. Fatality reviews.

§ 6011. Navy Regulations

United States Navy Regulations shall be issued by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375; Pub. L. 97-60, title II, Sec. 204(a)(2), Oct. 14, 1981, 95 Stat. 1007.)

§ 6012. Additional regulations for Marine Corps

The President may prescribe military regulations for the discipline of the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

§ 6013. Enlisted grades and ratings: authority to establish

The Secretary of the Navy may establish such enlisted grades and ratings as are necessary for the proper administration of the Navy and the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

§ 6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy

Under regulations prescribed by the Secretary of the Navy, enlisted members of the Marine Corps are eligible for transfer to the Hospital Corps of the Navy, and enlisted members of the Hospital Corps are eligible for transfer to the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

[§ 6015. Repealed. Pub. L. 103–160, div. A, title V, Sec. 541(a), Nov. 30, 1993, 107 Stat. 1659]

[§ 6016. Repealed. Pub. L. 85–861, Sec. 36B(16), Sept. 2, 1958, 72 Stat. 1571]

[§ 6017. Repealed. Pub. L. 103–337, div. A, title XVI, Sec. 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006]

[§ 6018. Repealed. Pub. L. 96–513, title III, Sec. 372, Dec. 12, 1980, 94 Stat. 2903]

§ 6019. Citizenship of officers of vessels

The officers of vessels of the United States shall in all cases be citizens of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

[§ 6020. Repealed. Pub. L. 87–123, Sec. 5(23), Aug. 3, 1961, 75 Stat. 266]

§ 6021. Aviation duties: number of personnel assigned

The number of officers and enlisted members of the Navy and the Marine Corps detailed to duty involving flying and to other duties in connection with aircraft shall be in accordance with the requirements of naval aviation as determined by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

§ 6022. Aviation training facilities

The President may maintain facilities to provide flight training for 16,000 members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

[§ 6023. Repealed. Pub. L. 92–168, Sec. 2(1), Nov. 24, 1971, 85 Stat. 489]

§ 6024. Aviation designations: naval flight officer

Any officer of the naval service may be designated a naval flight officer if he has successfully completed the course prescribed for naval flight officers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377; Feb. 26, 1970, Pub. L. 91–198, Sec. 1(2), 84 Stat. 15.)

[§ 6025. Repealed. Pub. L. 92–168, Sec. 2(2), Nov. 24, 1971, 85 Stat. 489]

[§ 6026. Repealed. Pub. L. 92–310, title II, Sec. 204(a), June 6, 1972, 86 Stat. 202]

§ 6027. Medical Department: composition

The Medical Corps and Dental Corps, and such other staff corps as the Secretary of the Navy may establish under section 5150(b) of this title and designate to be in the Medical Department of the Navy, are in the Medical Department of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377; Pub. L. 96–513, title III, Sec. 353, Dec. 12, 1980, 94 Stat. 2902; Pub. L. 99–433, title V, Sec. 514(c)(3), Oct. 1, 1986, 100 Stat. 1055.)

[§ 6028. Repealed. Pub. L. 96-513, title III, Sec. 352(b), Dec. 12, 1980, 94 Stat. 2902]

§ 6029. Dental services: responsibilities of senior dental officer

(a) The Secretary of the Navy shall prescribe regulations for dental services on ships and at shore stations. Such services shall be under the senior dental officer, who is responsible to the commanding officer of the ship or station for all professional, technical, and administrative matters concerning dental services.

(b) This section does not impose any administrative requirements that would interfere with the proper functioning of battle organizations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377.)

[§ 6030. Repealed Pub. L. 90-130, Sec. 1(22), Nov. 8, 1967, 81 Stat. 380]

§ 6031. Chaplains: divine services

(a) An officer in the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member.

(b) The commanders of vessels and naval activities to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

(c) All persons in the Navy and in the Marine Corps are enjoined to behave themselves in a reverent and becoming manner during divine service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 378; Pub. L. 86-140, Aug. 7, 1959, 73 Stat. 288.)

§ 6032. Indebtedness to Marine Corps Exchanges: payment from appropriated funds in certain cases

Under regulations prescribed by the Secretary of the Navy, appropriations for the pay of the Marine Corps are available to pay any indebtedness to Marine Corps Exchanges of members of the Marine Corps who are discharged, who desert, or who are sentenced to prison.

(Aug. 10, 1956, ch. 1041, 70A Stat. 378.)

[§ 6033. Repealed Pub. L. 90-235, Sec. 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

[§ 6034. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(j)(8), Oct. 5, 1994, 108 Stat. 3005]

§ 6035. Female members: congressional review period for assignment to duty on submarines or for reconfiguration of submarines

(a) No change in the Department of the Navy policy limiting service on submarines to males, as in effect on May 10, 2000, may take effect until—

(1) the Secretary of Defense submits to Congress written notice of the proposed change; and

(2) a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) expires following the date on which the notice is received.

(b) No funds available to the Department of the Navy may be expended to reconfigure any existing submarine, or to design any new submarine, to accommodate female crew members until—

(1) the Secretary of Defense submits to Congress written notice of the proposed reconfiguration or design; and

(2) a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) expires following the date on which the notice is received.

(c) For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die.

(Added Pub. L. 106–398, Sec. 1 [[div. A], title V, Sec. 573(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136.)

§ 6036. Fatality reviews

(a) REVIEW OF FATALITIES.—The Secretary of the Navy shall conduct a multidisciplinary, impartial review (referred to as a “fatality review”) in the case of each fatality known or suspected to have resulted from domestic violence or child abuse against any of the following.

(1) A member of the naval service on active duty.

(2) A current or former dependent of a member of the naval service on active duty.

(3) A current or former intimate partner who has a child in common or has shared a common domicile with a member of the naval service on active duty.

(b) MATTERS TO BE INCLUDED.—The report of a fatality review under subsection (a) shall, at a minimum, include the following:

(1) An executive summary.

(2) Data setting forth victim demographics, injuries, autopsy findings, homicide or suicide methods, weapons, police information, assailant demographics, and household and family information.

(3) Legal disposition.

(4) System intervention and failures, if any, within the Department of Defense.

(5) A discussion of significant findings.

(6) Recommendations for systemic changes, if any, within the Department of the Navy and the Department of Defense.

(c) OSD GUIDANCE.—The Secretary of Defense shall prescribe guidance, which shall be uniform for the military departments, for the conduct of reviews by the Secretary under subsection (a).

(Added Pub. L. 108–136, div. A, title V, Sec. 576(b)(1), Nov. 24, 2003, 117 Stat. 1487.)

CHAPTER 557—RATIONS

Sec.	
6081.	Navy ration: persons entitled to.
6082.	Rations.
6083.	Fixing cost on certain vessels and stations.
6084.	Enlisted members assigned to mess: basic allowance for subsistence paid to mess.
6085.	Flight rations.
6086.	Subsistence in hospital messes: hospital ration.
6087.	Sale of meals by general messes.

§ 6081. Navy ration: persons entitled to

(a) Each enlisted member of the naval service is entitled to a Navy ration for each day that he is on active duty, including each day that he is on leave.

(b) Each midshipman is entitled to a Navy ration for each day that he is on active duty, including each day that he is on leave.

(c) The Secretary of the Navy may prescribe regulations stating the conditions under which the ration shall be allowed under subsection (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 379; Pub. L. 87-649, Sec. 5(c), Sept. 7, 1962, 76 Stat. 494; Pub. L. 105-85, div. A, title VI, Sec. 602(b)(2), Nov. 18, 1997, 111 Stat. 1772.)

§ 6082. Rations

(a) The President may prescribe the components and quantities of the Navy ration. The President may direct the issuance of equivalent articles in place of the prescribed components of the ration if the President determines that economy and the health and comfort of the members of the naval service require such action.

(b) An enlisted member of the naval service on active duty is entitled to one ration daily. If an emergency ration is issued, it is in addition to the regular ration.

(c) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick and injured in hospitals shall be provided under regulations prescribed by the Secretary of the Navy.

(d) The Secretary of the Navy may increase the quantity of daily rations for members of the naval service on a vessel or at a station that has an authorized complement of less than 150 members if the President determines that the vessel or station is operating under conditions that warrant an increase in rations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 379; Pub. L. 101-510, div. A, title V, Sec. 557(a), Nov. 5, 1990, 104 Stat. 1570.)

§ 6083. Fixing cost on certain vessels and stations

If the Secretary of the Navy considers that it is undesirable to administer the mess on any ship or at any station under the quantity allowance prescribed in section 6082 of this title, he may fix the cost of each ration for that mess.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

§ 6084. Enlisted members assigned to mess: basic allowance for subsistence paid to mess

Under such regulations as the Secretary of the Navy prescribes, the basic allowance for subsistence of enlisted members of the naval service assigned to duty with and subsisting in an officers' or other mess, afloat or ashore, may be paid to the mess to which they are assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

§ 6085. Flight rations

An aircraft flight ration chargeable to the proper Navy or Marine Corps appropriation may be furnished to members of the naval service and to civilian employees of the Department of the Navy while engaged in flight operations. The flight ration is supplementary to any ration or subsistence allowance to which the members or employees are otherwise entitled. However, the flight ration may not be furnished without charge to any person in a travel status or to any person to whom a per diem allowance is granted in place of subsistence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

§ 6086. Subsistence in hospital messes: hospital ration

(a) Enlisted members of the naval service on duty in hospitals and enlisted members of the naval service, including retired members and members of the Fleet Reserve and the Fleet Marine Corps Reserve, when sick in hospitals, may be subsisted in hospital messes. When subsistence is furnished under this subsection, the appropriation chargeable with the maintenance of the hospital mess shall be credited at the rate prescribed by the Secretary of the Navy as the value of the hospital ration.

(b) Under such regulations as the Secretary prescribes, officers in the Nurse Corps may be subsisted in hospital messes. Each officer so subsisted shall pay for her subsistence at the rate fixed by the regulations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

§ 6087. Sale of meals by general messes

Under such regulations as the Secretary of the Navy prescribes, meals may be sold by general messes afloat and ashore.

(Aug. 10, 1956, ch. 1041, 70A Stat. 381.)

**CHAPTER 559—MISCELLANEOUS PROHIBITIONS AND
PENALTIES**

Sec.
[6111, 6112. Repealed.]
6113. Loans: Supply Corps officers.
[6114 to 6116. Repealed.]

**[§ 6111. Repealed. Pub. L. 87-649, Sec. 14c(35), Sept. 7, 1962,
76 Stat. 501]**

**[§ 6112. Repealed. Pub. L. 87-649, Sec. 14c(36), Sept. 7, 1962,
76 Stat. 501]**

§ 6113. Loans: Supply Corps officers

Except as otherwise provided by law, an officer in the Supply Corps on active duty may not advance or lend any sum of money, public or private, or any article or commodity and may not extend credit to any officer of the naval service on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 381.)

**[§ 6114. Repealed. Pub. L. 90-235, Sec. 6(a)(7), Jan. 2, 1968, 81
Stat. 762]**

**[§ 6115. Repealed. Pub. L. 85-861, Sec. 36B(17), Sept. 2, 1958,
72 Stat. 1571]**

**[§ 6116. Repealed. Pub. L. 90-235, Sec. 6(a)(2), Jan. 2, 1968, 81
Stat. 761]**

CHAPTER 561—MISCELLANEOUS RIGHTS AND BENEFITS

- Sec.
6141. Presentation of United States flag upon retirement.
[6142 to 6150. Repealed.]
6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments.
6152. Emergency shore duty: advance of funds.
6153. Shore patrol duty: payment of expenses.
6154. Mileage books: commutation tickets.
6155. Uniforms, accouterments, and equipment: sale at cost.
6156. Uniform: sale to former members of the naval service.
[6157 to 6159. Repealed.]
6160. Pension to persons serving ten years.
6161. Settlement of accounts: remission or cancellation of indebtedness of members.

§ 6141. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Navy or Marine Corps from active duty for retirement or transfer to the Fleet Reserve or the Fleet Marine Corps Reserve, the Secretary of the Navy shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 105–261, div. A, title VI, Sec. 644(b)(1), Oct. 17, 1998, 112 Stat. 2048; amended Pub. L. 106–65, div. A, title VI, Sec. 652(e), Oct. 5, 1999, 113 Stat. 666.)

[§§ 6142 to 6147. Repealed. Pub. L. 87–649, Sec. 14c(38–43), Sept. 7, 1962, 76 Stat. 501]

[§ 6148. Repealed. Pub. L. 99–661, div. A, title VI, Sec. 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

[§ 6149. Repealed. Pub. L. 88–132, Sec. 5(h)(3), Oct. 2, 1963, 77 Stat. 214]

[§ 6150. Repealed. Pub. L. 86–155, Sec. 9(a)(1), Aug. 11, 1959, 73 Stat. 337]

§ 6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments

(a) Unless otherwise entitled to a higher retired grade and subject to sections 689 and 1370 of this title, each member, other than a retired member, of the Navy or the Marine Corps shall, when retired, be advanced on the retired list to the highest officer grade

in which he served satisfactorily under a temporary appointment as determined by the Secretary of the Navy.

(b) Each member (other than a former member of the Fleet Reserve or the Fleet Marine Corps Reserve) who is advanced on the retired list under this section is (unless otherwise entitled to higher retired pay) entitled to retired pay determined in accordance with the following table. References in the table are to sections of this title.

Column 1 Take	Column 2 Multiply by
Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.

(c) Each former member of the Fleet Reserve or the Fleet Marine Corps Reserve who is advanced on the retired list under this section is entitled to retired pay determined in accordance with the following table. References in the table are to sections of this title.

Column 1 Take	Column 2 Multiply by
Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the number of years of service creditable for his retainer pay at the time of retirement.

(d) A member who is advanced on the retired list under this section from the grade of warrant officer, W-1, or from an enlisted grade to a commissioned grade, and who applies to the Secretary within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted grade, as the case may be. A member who is restored to his former grade under this subsection is thereafter considered for all purposes as a warrant officer, W-1, or an enlisted member, as the case may be.

(e) Retired pay computed under subsection (b) or (c), if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 385; Pub. L. 85-422, Sec. 11(a)(6)(A), May 20, 1958, 72 Stat. 131; Pub. L. 85-861, Sec. 1(138), (139)(A), Sept. 2, 1958, 72 Stat. 1507, 1508; Pub. L. 88-132, Sec. 5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 96-342, title VIII, Sec. 813(d)(13), Sept. 8, 1980, 94 Stat. 1108; Pub. L. 96-512, title V, Sec. 503(45), 513(17), Dec. 12, 1980, 94 Stat. 2914, 2932; Pub. L. 98-94, title IX, Sec. 922(a)(9), 923(c)(1), Sept. 24, 1983, 97 Stat. 641, 643; Pub. L. 99-348, title II, Sec. 203(c), July 1, 1986, 100 Stat. 696; Pub. L. 104-201, div. A, title V, Sec. 521(d), Sept. 23, 1996, 110 Stat. 2517.)

§ 6152. Emergency shore duty: advance of funds

Under such regulations as the President approves, the Secretary of the Navy may, to meet necessary expenses, advance funds to members of the naval service detailed on emergency shore duty. The funds advanced may not exceed the reasonable estimate of expenses to be incurred for which reimbursement is authorized.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

§ 6153. Shore patrol duty: payment of expenses

An officer, midshipman, or cadet of the naval service who is assigned to shore patrol duty away from his vessel or other duty station may be paid his actual services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

§ 6154. Mileage books: commutation tickets

The Secretary of the Navy may buy such mileage books, commutation tickets, and other similar transportation tickets as he considers necessary, and he may furnish them to persons ordered to perform travel on official business. Payment for those tickets before the travel is performed is not an advance of public money within the meaning of subsections (a) and (b) of section 3324 of title 31.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386; Pub. L. 97-258, Sec. 3(b)(8), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98-525, title XIV, Sec. 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626.)

§ 6155. Uniforms, accouterments, and equipment: sale at cost

Under such regulations as the Secretary of the Navy prescribes, uniforms, accouterments, and equipment shall be sold by the United States at cost to officers and midshipmen of the naval service and, when the Coast Guard is operating as a service in the Navy, to officers of the Coast Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

§ 6156. Uniform: sale to former members of the naval service

(a) Under such regulations as the Secretary of the Navy prescribes, exterior articles of uniform may be sold to a person who has been discharged from the naval service honorably or under honorable conditions. This section does not modify section 772 or 773 of this title.

(b) Money received from sales under this section shall be covered into the Treasury to the credit of the appropriation out of which the articles were purchased.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

[§ 6157. Repealed. Pub. L. 87-651, title I, Sec. 123(b), Sept. 7, 1962, 76 Stat. 514]

[§ 6158. Repealed. Pub. L. 90-235, Sec. 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§ 6159. Repealed. Pub. L. 91-482, Sec. 1(a), Oct. 21, 1970, 84 Stat. 1082]

§ 6160. Pension to persons serving ten years

(a) Every disabled person who has served in the Navy or Marine Corps as an enlisted member or petty officer, or both, for ten or more years, and has not been discharged for misconduct, may apply to the Secretary of the Navy for aid.

(b) Upon receipt of an application under subsection (a), the Secretary of the Navy may convene a board of not less than three naval officers (one of whom shall be a surgeon) to examine into the

condition of the applicant, and to recommend a suitable amount for his relief, and for a specified time. If the Secretary of the Navy approves the recommendation, he shall so certify to the Secretary of Veterans Affairs, who shall pay a pension in such amount monthly to the applicant.

(c) No naval pension under this section shall be paid at a rate in excess of the rate payable to a veteran of World War I for permanent and total non-service-connected disability, unless the applicant's disability is service-connected, in which case the naval pension payable to him shall not exceed the rate of disability compensation payable for total disability to a veteran of any war, or of peacetime service, as the case may be. In the case of any initial award of naval pension granted before July 14, 1943, where the person granted the naval pension is also entitled to pension or compensation under laws administered by the Secretary of Veterans Affairs, such naval pension shall not exceed one-fourth of such pension or compensation.

(Added Pub. L. 85-56, title XXII, Sec. 2201(31)(C), June 17, 1957, 71 Stat. 161; amended Pub. L. 85-857, Sec. 13(v)(4), Sept. 2, 1958, 72 Stat. 1268; Pub. L. 99-145, title XIII, Sec. 1301(c)(1), Nov. 8, 1985, 99 Stat. 736; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 101-510, div. A, title XIV, Sec. 1484(j)(4), Nov. 5, 1990, 104 Stat. 1719.)

§ 6161. Settlement of accounts: remission or cancellation of indebtedness of members

(a) IN GENERAL.—The Secretary of the Navy may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving on active duty as a member of the naval service, but only if the Secretary considers such action to be in the best interest of the United States.

(b) RETROACTIVE APPLICABILITY TO CERTAIN DEBTS.—The authority in subsection (a) may be exercised with respect to any debt covered by that subsection that is incurred on or after October 7, 2001.

(c) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 86-511, Sec. 1(a), June 11, 1960, 74 Stat. 207; amended Pub. L. 109-163, div. A, title VI, Sec. 683(b)(1), Jan. 6, 2006, 119 Stat. 3322; Pub. L. 109-364, div. A, title VI, Sec. 673(b)(1), (2), (e)(2), Oct. 17, 2006, 120 Stat. 2271, 2272; Pub. L. 110-181, div. A, title X, Sec. 1063(c)(7)(B), Jan. 28, 2008, 122 Stat. 323.)

CHAPTER 563—HOSPITALIZATION AND MEDICAL CARE

- Sec.
6201. Members of the naval service in other United States hospitals.
6202. Insane members of the naval service.
6203. Emergency medical treatment: reimbursement for expense.

§ 6201. Members of the naval service in other United States hospitals

(a) When appropriate naval hospital facilities are unavailable, the Secretary of the Navy may provide for the care and treatment of members of the naval service, entitled to treatment in naval hospitals, in other United States hospitals, if the agencies controlling the other hospitals consent. Expenses incident to such care and treatment are chargeable to the same appropriation as would be chargeable for care and treatment in a naval hospital.

(b) The deduction authorized by section 4812 of the Revised Statutes (24 U.S.C. 16) shall be made from accounts of members hospitalized under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387; Pub. L. 85-861, Sec. 36B(19), Sept. 2, 1958, 72 Stat. 1571; Pub. L. 96-513, title V, Sec. 513(14), Dec. 12, 1980, 94 Stat. 2932.)

§ 6202. Insane members of the naval service

A member of the naval service who becomes insane may be placed in the hospital for the insane that, in the opinion of the Secretary of the Navy, is most convenient and will provide the most beneficial treatment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387.)

§ 6203. Emergency medical treatment: reimbursement for expense

The Secretary of the Navy shall prescribe regulations for reimbursing members of the naval service for expenses of emergency or necessary medical service, including hospitalization and medicines, when the member was in a duty status at the time he received the service and the service was not available from a Federal source. For the purpose of this section, a member on leave or liberty is in a duty status.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387.)

CHAPTER 565—BANDS

- Sec.
6221. United States Navy Band; officer in charge.
6222. United States Marine Band; United States Marine Drum and Bugle Corps:
composition; appointment and promotion of members.
[6224. Repealed.]

§ 6221. United States Navy Band; officer in charge

(a) There is a Navy band known as the United States Navy Band.

(b)(1) An officer of the Navy designated for limited duty under section 5589 or 5596 of this title who is serving in a grade above lieutenant may be detailed by the Secretary of the Navy as Officer in Charge of the United States Navy Band.

(2) While serving as Officer in Charge of the United States Navy Band, an officer shall hold the grade of captain if appointed to that grade by the President, by and with the advice and consent of the Senate. Such an appointment may be made notwithstanding section 5596(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Sept. 7, 1962, Pub. L. 87-649, Sec. 14c(44), 76 Stat. 501; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 513(16), 94 Stat. 2932; Pub. L. 107-107, div. A, title V, Sec. 510(a), Dec. 28, 2001, 115 Stat. 1091.)

§ 6222. United States Marine Band; United States Marine Drum and Bugle Corps: composition; appointment and promotion of members

(a) UNITED STATES MARINE BAND.—The band of the Marine Corps shall be composed of one director, two assistant directors, and other personnel in such numbers and grades as the Secretary of the Navy determines to be necessary.

(b) UNITED STATES MARINE DRUM AND BUGLE CORPS.—The drum and bugle corps of the Marine Corps shall be composed of one commanding officer and other personnel in such numbers and grades as the Secretary of the Navy determines to be necessary.

(c) APPOINTMENT AND PROMOTION.—(1) The Secretary of the Navy shall prescribe regulations for the appointment and promotion of members of the Marine Band and members of the Marine Drum and Bugle Corps.

(2) The President may from time to time appoint members of the Marine Band and members of the Marine Drum and Bugle Corps to grades not above the grade of captain. The authority of the President to make appointments under this paragraph may be delegated only to the Secretary of Defense.

(3) The President, by and with the advice and consent of the Senate, may from time to time appoint any member of the Marine Band or of the Marine Drum and Bugle Corps to a grade above the grade of captain.

(d) RETIREMENT.—Unless otherwise entitled to higher retired grade and retired pay, a member of the Marine Band or Marine Drum and Bugle Corps who holds, or has held, an appointment under this section is entitled, when retired, to be retired in, and with retired pay based on, the highest grade held under this section in which the Secretary of the Navy determines that such member served satisfactorily.

(e) REVOCATION OF APPOINTMENT.—The Secretary of the Navy may revoke any appointment of a member of the Marine Band or Marine Drum and Bugle Corps. When a member's appointment to a commissioned grade terminates under this subsection, such member is entitled, at the option of such member—

- (1) to be discharged from the Marine Corps; or
- (2) to revert to the grade and status such member held at the time of appointment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Pub. L. 85-861, Sec. 1(140), Sept. 2, 1958, 72 Stat. 1508; Pub. L. 87-649, Sec. 14c(45), Sept. 7, 1962, 76 Stat. 501; Pub. L. 91-197, Feb. 24, 1970, 84 Stat. 15; Pub. L. 96-513, title V, Sec. 513(18), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 109-364, div. A, title V, Sec. 599(a), Oct. 17, 2006, 120 Stat. 2238.)

[§ 6223. Repealed. Pub. L. 110-181, div. A, title V, Sec. 590(b)(1), Jan. 28, 2008, 122 Stat. 138]

[§ 6224. Repealed. Pub. L. 87-649, Sec. 14c(46), Sept. 7, 1962, 76 Stat. 501]

CHAPTER 567—DECORATIONS AND AWARDS

Sec.	
6241.	Medal of honor.
6242.	Navy cross.
6243.	Distinguished-service medal.
6244.	Silver star medal.
6245.	Distinguished flying cross.
6246.	Navy and Marine Corps Medal.
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§ 6241. Medal of honor

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who, while a member of the naval service, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; Pub. L. 88-77, Sec. 2(1), July 25, 1963, 77 Stat. 93; Pub. L. 104-106, div. A, title XV, Sec. 1503(b)(2), Feb. 10, 1996, 110 Stat. 512.)

§ 6242. Navy cross

The President may award a Navy cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Navy or Marine Corps, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; Pub. L. 88-77, Sec. 2(2), July 25, 1963, 77 Stat. 94.)

§ 6243. Distinguished-service medal

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389.)

§ 6244. Silver star medal

The President may award a silver star medal of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Navy or Marine Corps, is cited for gallantry in action that does not warrant a medal of honor or Navy cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; Pub. L. 88-77, Sec. 2(3), July 25, 1963, 77 Stat. 94.)

§ 6245. Distinguished flying cross

The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

§ 6246. Navy and Marine Corps Medal

(a) The President may award a medal called the “Navy and Marine Corps Medal” of appropriate design with accompanying ribbon, together with a rosette or other device to be worn in place thereof—

(1) to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by heroism not involving actual conflict with an enemy; or

(2) to any person to whom the Secretary of the Navy, before August 7, 1942, awarded a letter of commendation for heroism, and who applies for that medal, regardless of the date of the act of heroism.

(b) The authority in subsection (a) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390; Pub. L. 105-85, div. A, title V, Sec. 574(b), Nov. 18, 1997, 111 Stat. 1758.)

§ 6247. Additional awards

Not more than one medal of honor, Navy cross, distinguished-service medal, silver star medal, distinguished flying cross, or Navy and Marine Corps Medal may be awarded to a person. However, for each succeeding act or service that would otherwise justify the award of such a medal or cross, the President may award a suitable bar, emblem, or insignia to be worn with the decoration and corresponding rosette or other device.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

§ 6248. Limitations of time

(a) Except as provided in section 6246 of this title or subsection (b), no medal of honor, Navy cross, distinguished-service medal, silver star medal, Navy and Marine Corps Medal, or bar, emblem, or insignia in place thereof may be awarded to a person unless—

(1) the award is made within five years after the date of the act or service justifying the award; and

(2) a statement setting forth the act or distinguished service and recommending official recognition of it was made by his superior through official channels within three years from the date of that act or service.

(b) If the Secretary of the Navy determines that—

(1) a statement setting forth the act or distinguished service and recommending official recognition of it was made by the person's superior through official channels within three years from the date of that act or service and was supported by sufficient evidence within that time; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on; a medal of honor, Navy cross, distinguished-service medal, silver star medal, Navy and Marine Corps Medal, or bar, emblem, or insignia in place thereof, as the case may be, may be awarded to the person within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390; Pub. L. 86-582, Sec. 1(2), July 5, 1960, 74 Stat. 320.)

§ 6249. Limitation of honorable service

No medal, cross, or bar, or associated emblem or insignia may be awarded or presented to any person or to his representative if his service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

§ 6250. Posthumous awards

If a person who distinguishes himself dies before an award to which he is entitled is made, the award may be made and the medal, cross, or bar, or associated emblem or insignia may be presented, within five years from the date of the act or service justifying the award, to his representative as designated by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

§ 6251. Delegation of power to award

The President may delegate, under such conditions as he prescribes, to flag and general officers who are commanders-in-chief or

commanding on important independent duty, his authority to award the Navy cross, the distinguished-service medal, the silver star medal, or the Navy and Marine Corps Medal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

§ 6252. Regulations

The President may prescribe regulations for the administration of the preceding sections of this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

§ 6253. Replacement

The Secretary of the Navy may replace without charge any medal of honor, Navy cross, distinguished-service medal, silver star medal, or Navy and Marine Corps Medal, or any associated bar, emblem, or insignia awarded under this chapter that is stolen, lost, or destroyed or becomes unfit for use without fault or neglect on the part of the person to whom it was awarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391; Pub. L. 107–107, div. A, title V, Sec. 553(b)(2), Dec. 28, 2001, 115 Stat. 1116.)

§ 6254. Availability of appropriations

The Secretary of the Navy may spend from appropriations for the pay of the Navy or the Marine Corps, as appropriate, amounts necessary to provide and replace medals of honor, Navy crosses, distinguished-service medals, silver star medals, and Navy and Marine Corps Medals, and associated bars, emblems, and insignia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

§ 6255. Commemorative or special medals: facsimiles and ribbons

Under regulations prescribed by the Secretary of the Navy, members of the naval service may wear, in place of commemorative or special medals awarded to them, miniature facsimiles of such medals and ribbons symbolic of the awards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

§ 6256. Medal of honor: duplicate medal

A person awarded a medal of honor shall, upon written application of that person, be issued, without charge, one duplicate medal of honor with ribbons and appurtenances. Such duplicate medal of honor shall be marked, in such manner as the Secretary of the Navy may determine, as a duplicate or for display purposes only.

(Added Pub. L. 107–107, div. A, title V, Sec. 553(b)(1)(A), Dec. 28, 2001, 115 Stat. 1116.)

§ 6257. Medal of honor: presentation of Medal of Honor Flag

The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 6241 of this title. Presentation of the flag shall be made at the same time as the presentation of the medal under section 6241 or 6250 of this title. In the case of a posthumous presentation of the medal, the

flag shall be presented to the person to whom the medal is presented.

(Added Pub. L. 107–248, title VIII, Sec. 8143(c)(2)(A), Oct. 23, 2002, 116 Stat. 1570; amended Pub. L. 107–314, div. A, title X, Sec. 1062(a)(16), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 109–364, div. A, title V, Sec. 555(a), Oct. 17, 2006, 120 Stat. 2217.)

§ 6258. Korea Defense Service Medal

(a) The Secretary of the Navy shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Navy or Marine Corps served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

(b) In this section, the term “KDSM eligibility period” means the period beginning on July 28, 1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

(c) The Secretary of the Navy shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.

(Added Pub. L. 107–314, div. A, title V, Sec. 543(c)(1), Dec. 2, 2002, 116 Stat. 2549, Sec. 6257; renumbered Sec. 6258, Pub. L. 108–375, div. A, title X, Sec. 1084(d)(30), Oct. 28, 2004, 118 Stat. 2063.)

CHAPTER 569—DISCHARGE OF ENLISTED MEMBERS

Sec.

[6291. Repealed.]

6292. Minors enlisted upon false statement of age.

[6293 to 6298. Repealed.]

[§ 6291. Repealed. Pub. L. 90-235, Sec. 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

§ 6292. Minors enlisted upon false statement of age

(a) The Secretary of the Navy, under regulations prescribed by him, may discharge or release from the naval service, with pay and allowances and form of discharge certificate appropriate for his service after enlistment, any enlisted member who, as the result of a false statement of age on his application for enlistment, was enlisted while under the minimum statutory or administrative age limit. A member so discharged or released is entitled to transportation in kind and subsistence from the place of discharge to his home.

(b) Appropriations available for pay and allowances, subsistence, and transportation of enlisted members of the naval service are available for payments under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

[§ 6293. Repealed. Pub. L. 90-235, Sec. 3(a)(2), Jan. 2, 1968, 81 Stat. 757]

[§ 6294. Repealed. Pub. L. 96-513, title III, Sec. 373(g), Dec. 12, 1980, 94 Stat. 2903]

[§§ 6295 to 6298. Repealed. Pub. L. 90-235, Sec. 3(a)(2), (b)(1), 8(3), Jan. 2, 1968, 81 Stat. 757, 758, 764]

CHAPTER 571—VOLUNTARY RETIREMENT

- Sec.
6321. Officers: 40 years.
6322. Officers: 30 years.
6323. Officers: 20 years.
6324. Officers: creditable service.
6325. Officers: retired grade and pay.
6326. Enlisted members: 30 years.
6327. Officers and enlisted members of the Navy Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay.
6328. Computation of years of service: voluntary retirement.
6329. Officers not to be retired for misconduct.
6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay.
6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay.
6332. Conclusiveness of transfers.
6333. Computation of retired and retainer pay.
6334. Higher grade after 30 years of service: warrant officers and enlisted members.
6335. Restoration to former grade: warrant officers and enlisted members.
6336. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.

§ 6321. Officers: 40 years

(a) Each officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W-1, or above who applies for retirement after completing 40 or more years of active service shall be retired by the Secretary of the Navy.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 393.)

§ 6322. Officers: 30 years

(a) An officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W-1, or above who applies for retirement after completing 30 or more years of active service may, in the discretion of the Secretary of the Navy, be retired.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Pub. L. 96-342, title VIII, Sec. 813(d)(1), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96-513, Sec. 513(17), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 99-348, title II, Sec. 203(b)(1), July 1, 1986, 100 Stat. 696.)

§ 6323. Officers: 20 years

(a)(1) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned offi-

cer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

(2)(A) The Secretary of Defense may authorize the Secretary of the Navy, during the period specified in subparagraph (B), to reduce the requirement under paragraph (1) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary) of not less than eight years.

(B) The period specified in this subparagraph is the period beginning on the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013.

(b) For the purposes of this section—

(1) an officer's years of active service are computed by adding all his active service in the armed forces; and

(2) his years of service as a commissioned officer are computed by adding all his active service in the armed forces under permanent or temporary appointments in grades above warrant officer, W-1.

(c) The retired grade of an officer retired under this section is the grade determined under section 1370 of this title.

(d) A warrant officer who retires under this section may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay.

(e) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay computed under section 6333 of this title.

(f) Officers of the Navy Reserve and the Marine Corps Reserve who were transferred to the Retired Reserve from an honorary retired list under section 213(b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485), or are transferred to the Retired Reserve under section 6327 of this title, may be retired under this section, notwithstanding their retired status, if they are otherwise eligible.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Pub. L. 85-861, Sec. 1(142), Sept. 2, 1958, 72 Stat. 1509; Pub. L. 88-132, Sec. 5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 96-342, title VIII, Sec. 813(d)(2), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96-513, title V, Sec. 503(47)(A), 513(17), Dec. 12, 1980, 94 Stat. 2914, 2932; Pub. L. 99-348, title II, Sec. 203(b)(2), July 1, 1986, 100 Stat. 696; Pub. L. 101-510, div. A, title V, Sec. 523(b), Nov. 5, 1990, 104 Stat. 1562; Pub. L. 103-160, div. A, title V, Sec. 561(c), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105-261, div. A, title V, Sec. 561(e), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106-398, Sec. 1[[div. A], title V, Sec. 571(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134; Pub. L. 109-163, div. A, title V, Secs. 502(b), 515(b)(1)(H), Jan. 6, 2006, 119 Stat. 3225, 3233; Pub. L. 109-364, div. A, title X, Sec. 1071(a)(33), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 111-383, div. A, title V, Sec. 506(b), Jan. 7, 2011, 124 Stat. 4210.)

§ 6324. Officers: creditable service

For the purpose of this chapter, service as a nurse in the armed forces before April 16, 1947, is considered as commissioned service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Pub. L. 86-197, Sec. 1(6), Aug. 25, 1959, 73 Stat. 426; Pub. L. 89-609, Sec. 1(15), Sept. 30, 1966, 80 Stat. 853; Pub. L. 90-130, Sec. 1(23)(A), Nov. 8, 1967, 81 Stat. 380.)

§ 6325. Officers: retired grade and pay

(a) Except as provided in subsection (b) or section 1370 of this title, each officer who is retired under section 6321 or 6322 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which he was serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(b) Each officer who is retired while serving in the grade of admiral, vice admiral, general, or lieutenant general by virtue of an appointment under section 601 of this title or who is retired while serving in a grade to which he was appointed or promoted under section 603 of this title or promoted under section 602 (as in effect before February 1, 1992) or section 5721 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade he would hold if he had not received such an appointment; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(c) A warrant officer who retires under section 6321, 6322, or 6323 of this title may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Pub. L. 85-422, Sec. 11(a)(6)(B), May 20, 1958, 72 Stat. 131; Pub. L. 85-861, Sec. 1(143), Sept. 2, 1958, 72 Stat. 1509; Pub. L. 88-132, Sec. 5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 95-377, Sec. 7, Sept. 19, 1978, 92 Stat. 721; Pub. L. 96-342, title VIII, Sec. 813(d)(3), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96-513, title V, Sec. 503(47)(B), 513(17), Dec. 12, 1980, 94 Stat. 2914, 2932; Pub. L. 97-22, Sec. 10(b)(8), July 10, 1981, 95 Stat. 137; Pub. L. 99-348, title I, Sec. 104(c)(2), title II, Sec. 203(b)(3), July 1, 1986, 100 Stat. 691, 696; Pub. L. 102-484, div. A, title X, Sec. 1052(39), Oct. 23, 1992, 106 Stat. 2501.)

§ 6326. Enlisted members: 30 years

(a) Each enlisted member of the Regular Navy or the Regular Marine Corps who applies for retirement after completing 30 or more years of active service in the armed forces shall be retired by the President.

(b) For the purpose of subsection (a), “enlisted member” includes a member of the Regular Navy or the Regular Marine Corps who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(c) Each person retired under this section—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 395; Pub. L. 85-422, Sec. 6(9), May 20, 1958, 72 Stat. 129; Pub. L. 85-861, Sec. 36B(20), Sept. 2, 1958, 72 Stat. 1571; Pub. L. 88-132, Sec. 5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90-207, Sec. 3(3), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96-342, title VIII, Sec. 813(d)(4), Sept. 8, 1980, 94 Stat. 1105; Pub. L. 96-513, title V, Sec. 513(17), (19), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 99-348, title II, Sec. 203(b)(4), July 1, 1986, 100 Stat. 696.)

§ 6327. Officers and enlisted members of the Navy Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay

(a) A member of the Navy Reserve or the Marine Corps Reserve may be transferred to the Retired Reserve upon his request if he has completed—

(1) at least 30 years of active service in the armed forces, other than active duty for training; or

(2) at least 20 years of active service in the armed forces other than active duty for training, the last 10 of which he served in the 11-year period immediately preceding his transfer to the Retired Reserve.

(b) Each member who is transferred to the Retired Reserve under subsection (a) is entitled, when not on active duty, to retired pay at the rate of 50 percent of the basic pay of the grade in which retired.

(c) This section applies only to persons who were members of the Navy Reserve or the Marine Corps Reserve on January 1, 1953.

(d) This section terminates on January 1, 1973. However, its termination will not affect any accrued rights to retired pay.

(e) A member who is eligible for retirement under this section, and who is also eligible for retirement under another provision or for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title, is entitled to elect which of these benefits he is to receive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 395; Pub. L. 85-583, Sec. 1(1), Aug. 1, 1958, 72 Stat. 480; Pub. L. 88-132, Sec. 5(h)(5), Oct. 2, 1963, 77 Stat. 214; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(I), (3)(B), Jan. 6, 2006, 119 Stat. 3233, 3234.)

§ 6328. Computation of years of service: voluntary retirement

(a) ENLISTED MEMBERS.—Time required to be made up under section 972(a) of this title after February 10, 1996, may not be counted in computing years of service under this chapter.

(b) OFFICERS.—Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this chapter any time identified with respect to that officer under that section.

(c) TIME SPENT IN SEAMAN TO ADMIRAL PROGRAM.—The months of active service in pursuit of a baccalaureate-level degree under the Seaman to Admiral (STA-21) program of the Navy of officer candidates selected for the program on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010 shall be excluded in computing the years of service of an officer who was appointed to the grade of ensign in the Navy upon completion of the program to determine the eligibility of the officer for retirement, unless the officer becomes subject to involuntary separation or retirement due to physical disability. Such active service shall be counted in computing the years of active service of the officer for all other purposes.

(Added Pub. L. 104-106, div. A, title V, Sec. 561(d)(3)(A), Feb. 10, 1996, 110 Stat. 322; amended Pub. L. 107-107, div. A, title X, Sec. 1048(c)(13), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 111-84, div. A, title V, Sec. 505, Oct. 28, 2009, 123 Stat. 2277.)

§ 6329. Officers not to be retired for misconduct

No officer of the Navy or the Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396.)

§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

(a) The Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under this section.

(b) An enlisted member of the Regular Navy or the Navy Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

(c)(1) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay computed under section 6333 of this title.

(2) A member may recompute his retainer pay under section 1402 or 1402a of this title, as appropriate, to reflect active duty after transfer.

(3) If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent.

(d)(1) For the purposes of subsection (c), each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(2) In determining a member's eligibility for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)—

(A) a completed minority enlistment of the member is counted as four years of active service, if creditable to the member for such purpose before December 31, 1977; and

(B) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term, if creditable to the member for such purpose before December 31, 1977.

(3)(A) Subject to subparagraph (B), in determining a member's years of active service for the computation of retainer pay under subsection (c)—

(i) a completed minority enlistment of the member is counted as four years of active service; and

(ii) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term.

(B) In the case of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section after

December 30, 1977, service attributable under subparagraph (A) to time which, after December 31, 1977, is not actually served by the member may not be counted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396; Pub. L. 85-583, Sec. 1(2), (3), Aug. 1, 1958, 72 Stat. 480; Pub. L. 90-207, Sec. 3(4), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96-342, title VIII, Sec. 813(d)(5), Sept. 8, 1980, 94 Stat. 1105; Pub. L. 96-513, title V, Sec. 513(17), (19), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 98-94, title IX, Sec. 923(c)(3), Sept. 24, 1983, 97 Stat. 643; Pub. L. 99-348, title II, Sec. 203(b)(6), title III, Sec. 305(a)(1), July 1, 1986, 100 Stat. 696, 704; Pub. L. 101-189, div. A, title VI, Sec. 652(a)(5), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(J), Jan. 6, 2006, 119 Stat. 3233.)

§ 6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay

(a) When he has completed 30 years of service, or when he is found not physically qualified in an examination under section 6485 of this title, a member of the Fleet Reserve or the Fleet Marine Corps Reserve shall be transferred—

(1) to the retired list of the Regular Navy or the Regular Marine Corps, as appropriate, if he was a member of the Regular Navy or the Regular Marine Corps at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve; or

(2) to the appropriate Retired Reserve, if he was a member of the Navy Reserve or the Marine Corps Reserve at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) For the purpose of subsection (a), a member's years of service are computed by adding—

(1) the years of service credited to him upon his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve;

(2) his years of active and inactive service in the armed forces before his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve not credited to him upon that transfer; and

(3) his years of service, active and inactive, in the Fleet Reserve or the Fleet Marine Corps Reserve.

(c) Unless otherwise entitled to higher pay, each member transferred to the retired list or the Retired Reserve under this section is entitled to retired pay at the same rate as the retainer pay to which he was entitled at the time of his transfer to the retired list or the Retired Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 397; Pub. L. 85-583, Sec. 1(4-6), Aug. 1, 1958, 72 Stat. 480; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(K), Jan. 6, 2006, 119 Stat. 3233.)

§ 6332. Conclusiveness of transfers

When a member of the naval service is transferred by the Secretary of the Navy—

(1) to the Fleet Reserve;

(2) to the Fleet Marine Corps Reserve;

(3) from the Fleet Reserve to the retired list of the Regular Navy or the Retired Reserve; or

(4) from the Fleet Marine Corps Reserve to the retired list of the Regular Marine Corps or the Retired Reserve;

the transfer is conclusive for all purposes. Each member so transferred is entitled, when not on active duty, to retainer pay or retired pay from the date of transfer in accordance with his grade

and number of years of creditable service as determined by the Secretary. The Secretary may correct any error or omission in his determination as to a member's grade and years of creditable service. When such a correction is made, the member is entitled, when not on active duty, to retainer pay or retired pay in accordance with his grade and number of years of creditable service, as corrected, from the date of transfer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 397; Pub. L. 85-583, Sec. 1(7), Aug. 1, 1958, 72 Stat. 480; Pub. L. 85-861, Sec. 33(a)(33), Sept. 2, 1958, 72 Stat. 1566.)

§ 6333. Computation of retired and retainer pay

(a) The monthly retired pay or retainer pay of a member entitled to such pay under this chapter or under section 6970 or 6383 of this title is computed in accordance with the following table.

Formula	For sections	Column 1 Take	Column 2 Multiply by
A	6325(a) 6326	Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the years of service that may be credited to the member under section 1405.
B	6323 6325(b) 6970 6383	Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.
C	6330	Retainer pay base computed under section 1406(d) or 1407.	Retainer pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.

(b)(1) Retired pay or retainer pay computed under this section, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(2) References in the table in subsection (a) are to sections of this title.

(c) In the case of a Reserve enlisted member whose grade upon transfer to the Fleet Reserve or Fleet Marine Corps Reserve is determined under section 6336 of this title and who first became a member of a uniformed service before September 8, 1980, the retainer pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the grade in which the member is so transferred (determined based upon the rates of basic pay applicable on the date of the member's transfer), and that amount shall be used for the purposes of the table in subsection (a) rather than the amount computed under section 1406(d) of this title.

(Added Pub. L. 98-94, title IX, Sec. 922(a)(10)(A), Sept. 24, 1983, 97 Stat. 641; amended Pub. L. 99-348, title II, Sec. 203(a), July 1, 1986, 100 Stat. 695; Pub. L. 103-337, div. A, title VI, Sec. 635(b), Oct. 5, 1994, 108 Stat. 2789; Pub. L. 104-106, div. A, title XV, Sec. 1503(b)(3), Feb.

10, 1996, 110 Stat. 512; Pub. L. 104-201, div. A, title V, Sec. 532(d)(2), Sept. 23, 1996, 110 Stat. 2520; Pub. L. 109-163, div. A, title V, Sec. 509(d)(2), Jan. 6, 2006, 119 Stat. 3231; Pub. L. 110-181, div. A, title VI, Sec. 646(a), Jan. 28, 2008, 122 Stat. 160.)

§ 6334. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each member of the naval service covered by subsection (b) who, after December 4, 1987, is retired with less than 30 years of active service or is transferred to the Fleet Reserve or Fleet Marine Corps Reserve is entitled, when his active service plus his service on the retired list or his service in the Fleet Reserve or the Fleet Marine Corps Reserve totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Navy.

(b) This section applies to—

- (1) warrant officers of the naval service;
- (2) enlisted members of the Regular Navy and Regular Marine Corps; and
- (3) reserve enlisted members of the Navy and Marine Corps who, at the time of retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, are serving on active duty.

(c) An enlisted member of the naval service who is advanced on the retired list under this section is entitled to recompute his retired or retainer pay under formula A of the following table, and a warrant officer of the naval service so advanced is entitled to recompute his retired pay under formula B of that table. The amount recomputed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

Formula	Column 1 Take	Column 2 Multiply by
A	Retired pay base as computed under section 1406(d) or 1407 of this title.	The retired pay multiplier prescribed in section 1409 of this title for the number of years creditable for his retainer or retired pay at the time of retirement. ¹
B	Retired pay base as computed under section 1406(d) of this title.	The retired pay multiplier prescribed in section 1409 of this title for the number of years credited to him under section 1405 of this title.

¹In determining the retired pay multiplier, credit each full month of service that is in addition to the number of full years of service creditable to the member as $\frac{1}{12}$ of a year and disregard any remaining fractional part of a month.

(Added Pub. L. 100-180, div. A, title V, Sec. 512(b), Dec. 4, 1987, 101 Stat. 1089; amended Pub. L. 101-189, div. A, title XVI, Sec. 1622(g), Nov. 29, 1989, 103 Stat. 1605.)

§ 6335. Restoration to former grade: warrant officers and enlisted members

Each retired warrant officer or enlisted member of the naval service who has been advanced on the retired list to a higher commissioned grade under section 6334 of this title, and who applies to the Secretary of the Navy within three months after his ad-

vancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

(Added Pub. L. 100–180, div. A, title V, Sec. 512(b), Dec. 4, 1987, 101 Stat. 1090.)

§ 6336. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A member of the Navy Reserve or Marine Corps Reserve described in subsection (b) who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title shall be transferred in the highest enlisted grade in which the member served on active duty satisfactorily, as determined by the Secretary of the Navy.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve is serving on active duty in a grade lower than the highest enlisted grade held by the member while on active duty; and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Navy.

(c) This section applies with respect to enlisted members of the Navy Reserve and Marine Corps Reserve who are transferred to the Fleet Reserve or the Fleet Marine Corps Reserve after September 30, 1996.

(Added Pub. L. 104–201, div. A, title V, Sec. 532(b)(1), Sept. 23, 1996, 110 Stat. 2519; amended Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(L), Jan. 6, 2006, 119 Stat. 3233.)

CHAPTER 573—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH

- Sec.
6371. Mandatory retirement: Superintendent of the United States Naval Academy; waiver authority.
[6372 to 6382. Repealed.]
6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired pay.
[6384 to 6388. Repealed.]
6389. Navy Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service.
[6390 to 6403. Repealed.]
6404. Treatment of fractions of years of service in computing retired pay and separation pay.
[6405 to 6407. Repealed.]
6408. Navy and Marine Corps; warrant officers, W-1: limitation on dismissal.
[6409, 6410. Repealed.]

§ 6371. Mandatory retirement: Superintendent of the United States Naval Academy; waiver authority

(a) MANDATORY RETIREMENT.—Upon the termination of the detail of an officer to the position of Superintendent of the United States Naval Academy, the Secretary of the Navy shall retire the officer under any provision of chapter 571 of this title under which the officer is eligible to retire.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer not retire, and a written notification of the intent of the President to nominate the officer for reassignment.

(Added Pub. L. 106–65, div. A, title V, Sec. 532(a)(2)(A), Oct. 5, 1999, 113 Stat. 603; amended Pub. L. 108–375, div. A, title V, Sec. 541(a)(2), (c)(2)(A), Oct. 28, 2004, 118 Stat. 1902, 1904.)

[§§ 6372 to 6374. Repealed. Pub. L. 96–513, title III, Sec. 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6375. Repealed. Pub. L. 87–123, Sec. 5(26), Aug. 3, 1961, 75 Stat. 266]

[§§ 6376 to 6382. Repealed. Pub. L. 96–513, title III, Sec. 335, Dec. 12, 1980, 94 Stat. 2898]

§ 6383. Regular Navy and Regular Marine Corps; officers designated for limited duty; retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired pay

(a) MANDATORY RETIREMENT.—(1) Except as provided in subsection (k), each regular officer of the Navy who is an officer designated for limited duty and who is serving in a grade below the grade of commander and each regular officer of the Marine Corps who is an officer designated for limited duty shall be retired on the last day of the month following the month in which he completes 30 years of active naval service, exclusive of active duty for training in a reserve component.

(2) Except as provided in subsection (k), each regular officer of the Navy designated for limited duty who is serving in the grade of commander, has failed of selection for promotion to the grade of captain for the second time, and is not on a list of officers recommended for promotion to the grade of captain shall—

(A) if eligible for retirement as a commissioned officer under any provision of law, be retired under that provision of law on the date requested by the officer and approved by the Secretary of the Navy, except that the date of retirement may not be later than the first day of the seventh month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed for promotion to the grade of captain for a second time; or

(B) if not eligible for retirement as a commissioned officer, be retired on the date requested by the officer and approved by the Secretary of the Navy after the officer becomes eligible for retirement as a commissioned officer, except that the date of retirement may not be later than the first day of the seventh calendar month beginning after the month in which the officer becomes eligible for retirement as a commissioned officer.

(3) Except as provided in subsection (k), if not retired earlier, a regular officer of the Navy designated for limited duty who is serving in the grade of commander and is not on a list of officers recommended for promotion to the grade of captain shall be retired on the last day of the month following the month in which the officer completes 35 years of active naval service, exclusive of active duty for training in a reserve component.

(4) Except as provided in subsection (k), each regular officer of the Navy designated for limited duty who is serving in the grade of captain shall, if not retired sooner, be retired on the last day of the month following the month in which the officer completes 38 years of active naval service, exclusive of active duty for training in a reserve component.

(b) LIEUTENANT COMMANDERS AND MAJORS WHO TWICE FAIL OF SELECTION FOR PROMOTION.—Except as provided in subsections (f) and (k), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant commander who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of major who is an

officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel, respectively, for the second time and whose name is not on a promotion list shall be retired, if eligible to retire, or be discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel for the second time.

(c) RETIRED GRADE AND RETIRED PAY.—Each officer retired under subsection (a) or (b)—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade determined under section 1370 of this title; and

(2) is entitled to retired pay computed under section 6333 of this title.

(d) NAVY LIEUTENANTS AND MARINE CORPS CAPTAINS WHO TWICE FAIL OF SELECTION FOR PROMOTION.—Except as provided in subsections (f) and (k), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant who is an officer designated for limited duty, and each regular officer on the active duty list of the Marine Corps serving in the grade of captain who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time and whose name is not on a list of officers recommended for promotion shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

(e) OFFICERS IN PAY GRADES O-2 AND O-1 WHO TWICE FAIL OF SELECTION FOR PROMOTION OR ARE FOUND NOT QUALIFIED FOR PROMOTION.—(1) Each regular officer on the active-duty list of the Navy serving in the grade of lieutenant (junior grade) who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of first lieutenant who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant (in the case of an officer of the Navy) or captain (in the case of an officer of the Marine Corps) for the second time shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant or captain, respectively, for the second time.

(2) Each regular officer on the active-duty list of the Navy serving in the grade of ensign who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of second lieutenant who is an officer

designated for limited duty, who is found not qualified for promotion to the grade of lieutenant (junior grade) (in the case of an officer of the Navy) or first lieutenant (in the case of an officer of the Marine Corps) shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the officer was found not qualified for promotion.

(f) 18-YEAR RETIREMENT SANCTUARY.—If an officer subject to discharge under subsection (b), (d), or (e) is (as of the date on which the officer is to be discharged) not eligible for retirement under any provision of law but is within two years of qualifying for retirement under section 6323 of this title, the officer shall be retained on active duty as an officer designated for limited duty until becoming qualified for retirement under that section and shall then be retired under that section, unless the officer is sooner retired or discharged under another provision of law or the officer reverts to a warrant officer grade pursuant to subsection (h).

(g) REENLISTMENT FOR LDOs APPOINTED FROM ENLISTED GRADES.—(1) An officer subject to discharge under subsection (b), (d), or (e) who is described in paragraph (2) may, upon the officer's request and in the discretion of the Secretary of the Navy, be enlisted in a grade prescribed by the Secretary upon the officer's discharge pursuant to such subsection.

(2) An officer described in this paragraph is an officer who—

(A) is not eligible for retirement under any provision of law;

(B) is not covered by subsection (f); and

(C) was in an enlisted grade when first appointed as an officer designated for limited duty.

(h) REVERSION TO WARRANT OFFICER GRADE FOR LDOs APPOINTED FROM WARRANT OFFICER GRADES.—An officer subject to discharge under subsection (b), (d), or (e) (including an officer otherwise subject to retention under subsection (f)) who is not eligible for retirement under any provision of law and who had the permanent status of a warrant officer when first appointed as an officer designated for limited duty may, at the officer's option, revert to the warrant officer grade and status that the officer would hold if the officer had not been appointed as an officer designated for limited duty.

(i) DETERMINATION OF GRADE AND STATUS OF OFFICERS REVERTING TO PRIOR STATUS.—In any computation to determine the grade and status to which an officer may revert under this section, all active service as an officer designated for limited duty or as a temporary or reserve officer is included.

(j) SEPARATION PAY FOR OFFICERS DISCHARGED.—An officer discharged under this section is entitled, if eligible therefor, to separation pay under section 1174(a)(1) of this title.

(k) SELECTIVE RETENTION BOARDS FOR LDOs.—Under such regulations as he may prescribe, whenever the needs of the service require, the Secretary of the Navy may defer the retirement under subsection (a) or (b) or the discharge under subsection (b) or (d) of any officer designated for limited duty upon recommendation of a board of officers convened under section 611(b) of this title and

with the consent of the officer concerned. An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 20 years active commissioned service, if in the grade of lieutenant or captain, beyond 24 years active commissioned service, if in the grade of lieutenant commander or major, or beyond 28 years active commissioned service, if in the grade of lieutenant colonel, or beyond age 62, whichever is earlier.

(l) **APPLICABILITY OF SECTION ONLY TO PERMANENT LDOs.**— This section does not apply to officers designated for limited duty under section 5596 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 405; Pub. L. 85–422, Sec. 11(a)(6)(D), May 20, 1958, 72 Stat. 131; Pub. L. 86–616, Sec. 5(2), July 12, 1960, 74 Stat. 390; Pub. L. 87–509, Sec. 4(b), June 28, 1962, 76 Stat. 121; Pub. L. 88–132, Sec. 5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 96–342, title VIII, Sec. 813(d)(7), Sept. 8, 1980, 94 Stat. 1106; Pub. L. 96–513, title III, Sec. 336, title V, Sec. 513(17), Dec. 12, 1980, 94 Stat. 2898, 2932; Pub. L. 98–94, title IX, Sec. 922(a)(11), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title V, Sec. 529(c), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 99–348, title II, Sec. 203(b)(7), July 1, 1986, 100 Stat. 696; Pub. L. 101–510, div. A, title V, Sec. 501(f)(2), Nov. 5, 1990, 104 Stat. 1551; Pub. L. 102–484, div. A, title V, Sec. 504(c), (d), Oct. 23, 1992, 106 Stat. 2403, 2404; Pub. L. 103–160, div. A, title V, Sec. 561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103–337, div. A, title V, Sec. 503, Oct. 5, 1994, 108 Stat. 2749; Pub. L. 105–261, div. A, title V, Sec. 504(c), (d), Oct. 17, 1998, 112 Stat. 2004.)

[§§ 6384 to 6388. Repealed. Pub. L. 96–513, title III, Sec. 335, Dec. 12, 1980, 94 Stat. 2898]

§ 6389. Navy Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service

(a) Subject to section 12645 of this title, an officer in an active status in the Navy Reserve in the permanent grade of lieutenant or lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of captain or first lieutenant, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list may, in the discretion of the Secretary of the Navy, be eliminated from an active status or released from active duty and placed on the reserve active-status list.

(b) An officer who is to be eliminated from an active status under subsection (a) shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if he requests it, shall be so transferred. If he is not so transferred, he shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Navy Reserve or the Marine Corps Reserve.

(c)(1) An officer in an active status in the Navy Reserve in the permanent grade of lieutenant commander or commander, and an officer in an active status in the Marine Corps Reserve in the permanent grade of major or lieutenant colonel, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve. If he is not so transferred, he shall be discharged from the Navy Reserve or the Marine Corps Reserve if he has completed a period of total commissioned service equal to that specified below for the permanent grade in which he is serving:

Grade		Total commissioned service
Navy	Marine Corps	
Commander	Lieutenant colonel	28 years.
Lieutenant commander	Major	20 years.

(2) Notwithstanding the first sentence of paragraph (1), the Secretary may defer the retirement or discharge of such number of officers serving in the grade of lieutenant commander as are necessary to maintain the authorized officer strength of the Ready Reserve, but the duration of such deferment for any individual officer may not be in excess of five years.

(3) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of an officer serving in the permanent grade of lieutenant commander or commander in the Navy Reserve or in the permanent grade of major or lieutenant colonel in the Marine Corps Reserve for a period of time which does not exceed the amount of service in an active status which was credited to the officer at the time of his original appointment or thereafter under any provision of law, if the officer can complete at least 20 years of service as computed under section 12732 of this title during the period of such deferment.

(4) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of such number of officers serving in the permanent grade of commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Navy Reserve as are necessary to provide for mobilization requirements.

(d) For the purposes of subsection (c), the total commissioned service of an officer who has served continuously in the Navy Reserve or the Marine Corps Reserve following appointment therein in the permanent grade of ensign or second lieutenant, as the case may be, shall be computed from June 30 of the fiscal year in which he accepted the appointment. Each other officer is considered to have for this purpose as much total commissioned service as the years of active commissioned service of any regular officer on the active-duty list of the Navy not restricted in the performance of duty, or any regular officer on the active-duty list of the Marine Corps not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as an ensign on the active-duty list of the Navy or as a second lieutenant on the active-duty list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer. However, the total commissioned service that the other officer is considered to have may not be less than the actual number of years he has served as a commissioned officer in a grade above chief warrant officer, W-5.

(Added Pub. L. 85-861, Sec. 1(144)(A), Sept. 2, 1958, 72 Stat. 1509; amended Pub. L. 86-559, Sec. 1(46), June 30, 1960, 74 Stat. 274; Pub. L. 96-513, title III, Sec. 337(a), Dec. 12, 1980, 94 Stat. 2900; Pub. L. 97-86, title IV, Sec. 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title V, Sec. 528(c), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 99-145, title V, Sec. 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102-190, div. A, title XI, Sec. 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103-337, div. A, title XVI, Sec. 1628, 1673(c)(1), Oct. 5, 1994, 108 Stat. 2962, 3016; Pub. L. 104-106, div. A, title XV, Sec. 1501(c)(25), Feb. 10, 1996, 110 Stat. 499; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(M), (3)(C), Jan. 6, 2006, 119 Stat. 3233, 3234.)

[§ 6390. Repealed. Pub. L. 96-513, title III, Sec. 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6391. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

[§ 6393. Repealed. Pub. L. 96-513, title III, Sec. 373(h), Dec. 12, 1980, 94 Stat. 2903]

[§§ 6394 to 6396. Repealed. Pub. L. 96-513, title III, Sec. 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6397. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

[§ 6398. Repealed. Pub. L. 96-513, title III, Sec. 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6399. Repealed. Pub. L. 90-130, Sec. 1(24)(G), Nov. 8, 1967, 81 Stat. 382]

[§§ 6400 to 6402. Repealed. Pub. L. 96-513, title III, Sec. 335, Dec. 12, 1980, 94 Stat. 2898]

[§ 6403. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

§ 6404. Treatment of fractions of years of service in computing retired pay and separation pay

In determining the total number of years of service to be used as a multiplier in computing retired pay and separation pay on discharge under this chapter, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 415; Pub. L. 96-513, title V, Sec. 503(50), Dec. 12, 1980, 94 Stat. 2915; Pub. L. 98-94, title IX, Sec. 923(c)(4), Sept. 24, 1983, 97 Stat. 643.)

[§ 6405. Repealed. Pub. L. 90-235, Sec. 4(a)(12), Jan. 2, 1968, 81 Stat. 760]

[§ 6406. Repealed. Pub. L. 91-482, Sec. 1(a), Oct. 21, 1970, 84 Stat. 1082]

[§ 6407. Repealed. Pub. L. 96-513, title III, Sec. 335, Dec. 12, 1980, 94 Stat. 2898]

§ 6408. Navy and Marine Corps; warrant officers, W-1: limitation on dismissal

(a) No officer who holds the grade of warrant officer, W-1, may be dismissed from the Navy or the Marine Corps except in time of war, by order of the President.

(b) The President may drop from the rolls of the Navy or the Marine Corps any officer who holds the grade of warrant officer, W-1, who—

(1) has been absent without authority for at least three months; or

(2) is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 416.)

[§ 6409. Repealed. Pub. L. 90-235, Sec. 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

[§ 6410. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

CHAPTER 575—RECALL TO ACTIVE DUTY

Sec.

[6481, 6482. Repealed.]

6483. Retired members: grade.

6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty.

6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.

6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty.

[6487, 6488. Repealed.]

[§ 6481. Repealed. Pub. L. 96-513, title III, Sec. 362(a), Dec. 12, 1980, 94 Stat. 2903]

[§ 6482. Repealed. Pub. L. 98-525, title V, Sec. 533(f)(1), Oct. 19, 1984, 98 Stat. 2528]

§ 6483. Retired members: grade

An officer who has been advanced on the retired list or in the Retired Reserve under former section 6150 of this title to a grade above captain in the Navy or above colonel in the Marine Corps, when recalled to active duty, may, in the discretion of the Secretary of the Navy, be recalled either in the grade he holds on the retired list or in the Retired Reserve or in the grade from which he was advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417; Pub. L. 85-422, Sec. 6(5), May 20, 1958, 72 Stat. 129; Pub. L. 88-132, Sec. 5(m), Oct. 2, 1963, 77 Stat. 215; Pub. L. 90-623, Sec. 2(10), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96-513, title III, Sec. 363, Dec. 12, 1980, 94 Stat. 2903.)

§ 6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty

When on active duty, retired enlisted members of the Navy or the Marine Corps are eligible for promotion to higher enlisted grades or ratings. When released from active duty, they shall, unless entitled to a higher grade under another provision of law, retain the grades or ratings they hold at the time of their release.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

§ 6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall

(a) A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent—

(1) in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;

(2) in time of national emergency declared by the President; or

(3) when otherwise authorized by law.

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417; Pub. L. 95-79, title VIII, Sec. 805, July 30, 1977, 91 Stat. 333.)

§ 6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty

(a) Except as provided in subsection (b), the Secretary of the Navy may, at any time, release any member of the Fleet Reserve or the Fleet Marine Corps Reserve from active duty.

(b) In time of war or national emergency declared by Congress or by the President after January 1, 1953, a member of the Fleet Reserve or the Fleet Marine Corps Reserve, without his consent, may be released from active duty other than from active duty for training only if—

(1) a board of officers convened at his request by an authority designated by the Secretary recommends the release and the recommendation is approved;

(2) the member does not request that a board be convened;

or

(3) his release is otherwise authorized by law.

This subsection does not apply during a period of demobilization or reduction in strength of the Navy or the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

[§§ 6487, 6488. Repealed. Pub. L. 96-513, title III, Sec. 362(b), (c), Dec. 12, 1980, 94 Stat. 2903]

CHAPTER 577—DEATH BENEFITS; CARE OF THE DEAD

Sec.

[6521. Repealed.]

6522. Disposition of effects.

**[§ 6521. Repealed. Pub. L. 85-861, Sec. 36B(21), Sept. 2, 1958,
72 Stat. 1571]**

§ 6522. Disposition of effects

(a) If money or other personal property of a deceased member of the naval service is in the custody of the Department of the Navy, the Secretary of the Navy shall keep it in safe custody and make a diligent effort to determine and locate the heirs or next of kin of the deceased member. Property remaining unclaimed two years after the death of the member shall be sold, and the proceeds, together with any of his money held in custody, shall be covered into the Treasury.

(b) Within five years after the date the money and proceeds are covered into the Treasury, any claim that is presented therefor supported by competent proof shall be certified to Congress for consideration.

(c) The Secretary shall prescribe regulations for the administration of this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 419.)

PART III—EDUCATION AND TRAINING

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CHAPTER 601—OFFICER PROCUREMENT PROGRAMS

Sec.

[6901 to 6910. Repealed.]

6911. Aviation cadets: grade; procurement; transfer.

6912. Aviation cadets: benefits.

6913. Aviation cadets: appointment as reserve officers.

[6914. Repealed.]

6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade.

[[§§ 6901 to 6906. Repealed. Pub. L. 88-647, title III, Sec. 301(17), Oct. 13, 1964, 78 Stat. 1072]

[§ 6907. Repealed. Pub. L. 87-100, Sec. 1(1), July 21, 1961, 75 Stat. 218]

[§ 6908. Repealed. Pub. L. 88-647, title III, Sec. 301(17), Oct. 13, 1964, 78 Stat. 1072]

[§ 6909. Repealed. Pub. L. 96-513, title III, Sec. 329, Dec. 12, 1980, 94 Stat. 2896]

[§ 6910. Repealed. Pub. L. 88-647, title III, Sec. 301(17), Oct. 13, 1964, 78 Stat. 1072]

§ 6911. Aviation cadets: grade; procurement; transfer

(a) The grade of aviation cadet is a special enlisted grade in the naval service. Under such regulations as the Secretary of the Navy prescribes, citizens in civil life may be enlisted as, and enlisted members of the naval service with their consent may be designated as, aviation cadets.

(b) Except in time of war or emergency declared by Congress, 20 percent of the aviation cadets procured in each fiscal year shall be procured from qualified enlisted members of the Regular Navy and the Regular Marine Corps.

(c) No person may be enlisted or designated as an aviation cadet unless—

(1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will accept a commission as an ensign in the Navy Reserve or a second lieutenant in the Marine Corps Reserve, and will serve on active duty as such for at least three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(d) Under such regulations as the Secretary prescribes, an aviation cadet may be transferred to another enlisted grade or rating in the naval service, released from active duty, or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 426; Pub. L. 85-578, July 31, 1958, 72 Stat. 456; Pub. L. 96-513, title III, Sec. 373(f), Dec. 12, 1980, 94 Stat. 2903; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(N), Jan. 6, 2006, 119 Stat. 3233.)

§ 6912. Aviation cadets: benefits

Except as provided in section 402(a) and (b) of title 37, aviation cadets or their beneficiaries are entitled to the same allowances, pensions, gratuities, and other benefits as are provided for enlisted members in pay grade E-4. While on active duty, an aviation cadet is entitled to uniforms, clothing, and equipment at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 426; Pub. L. 85-861, Sec. 1(147)(A), Sept. 2, 1958, 72 Stat. 1513; Pub. L. 87-649, Sec. 6(f)(6), Sept. 7, 1962, 76 Stat. 494.)

§ 6913. Aviation cadets: appointment as reserve officers

(a) An aviation cadet who fulfills the requirements of section 2003 of this title may be appointed an ensign in the Navy Reserve or a second lieutenant in the Marine Corps Reserve and designated a naval aviator.

(b) Aviation cadets who complete their training at approximately the same time are considered for all purposes to have begun their commissioned service on the same date, and the decision of the Secretary of the Navy in this regard is conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 427; Pub. L. 96-513, title V, Sec. 513(20), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(O), Jan. 6, 2006, 119 Stat. 3233.)

[§ 6914. Repealed. Pub. L. 96-513, title III, Sec. 374, Dec. 12, 1980, 94 Stat. 2904]**§ 6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade**

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the Navy Reserve and the Marine Corps Reserve may be designated as student aviation pilots.

(b) A member who is not a qualified civilian aviator may not be designated as a student aviation pilot unless he agrees in writing, with the consent of his parent or guardian if he is a minor, to serve on active duty for a period of two years after successfully completing flight training, unless sooner released. Such a student aviation pilot may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(c) If he is a qualified civilian aviator, a student aviation pilot may be given a brief refresher course in flight training.

(d) While he is in flight training, a student aviation pilot shall have uniforms and equipment issued to him at Government expense.

(e) Under regulations prescribed by the Secretary, a student aviation pilot of the Navy Reserve or the Marine Corps Reserve may be designated an aviation pilot upon successfully completing flight training.

(f) In time of peace, an aviation pilot who is obligated under subsection (b) to serve on active duty for a period of two years may serve, with his consent, for an additional period of not more than two years.

(g) An aviation pilot of the Navy Reserve or the Marine Corps Reserve may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(h) An aviation pilot of the Navy Reserve or the Marine Corps Reserve may, if qualified under regulations prescribed by the Secretary, be appointed an ensign in the Navy Reserve or a second lieutenant in the Marine Corps Reserve, as appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 427; Pub. L. 87-649, Sec. 14c(51), Sept. 7, 1962, 76 Stat. 501; Pub. L. 96-513, title V, Sec. 513(21), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(P), Jan. 6, 2006, 119 Stat. 3233.)

CHAPTER 602—TRAINING GENERALLY

Sec.	
6931.	Recruit basic training; separate housing for male and female recruits.
6932.	Recruit basic training; privacy.

§ 6931. Recruit basic training: separate housing for male and female recruits

(a) PHYSICALLY SEPARATE HOUSING.—(1) The Secretary of the Navy shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2), the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) ALTERNATIVE SEPARATE HOUSING.—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Navy shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) CONSTRUCTION PLANNING.—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Navy shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) BASIC TRAINING DEFINED.—In this section, the term “basic training” means the initial entry training programs of the Navy and Marine Corps that constitute the basic training of new recruits.

(Added Pub. L. 105–261, div. A, title V, Sec. 521(b)(1), Oct. 17, 1998, 112 Stat. 2010.)

§ 6932. Recruit basic training: privacy

The Secretary of the Navy shall require that access by recruit division commanders and other training personnel to a living area in which Navy recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to recruit division commanders and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the

chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added Pub. L. 105-261, div. A, title V, Sec. 522(b)(1), Oct. 17, 1998, 112 Stat. 2012.)

CHAPTER 603—UNITED STATES NAVAL ACADEMY

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6980.	

§ 6951. Location

The United States Naval Academy shall be located at Annapolis, Maryland.

(Aug. 10, 1956, ch. 1041, 70A Stat. 428.)

§ 6951a. Superintendent

(a) There is a Superintendent of the United States Naval Academy. The immediate governance of the Naval Academy is under the Superintendent.

(b) The Superintendent shall be detailed to that position by the President. As a condition for detail to that position, an officer shall acknowledge that upon termination of that detail the officer shall

be retired pursuant to section 6371(a) of this title, unless such retirement is waived under section 6371(b) of this title.

(c) An officer who is detailed to the position of Superintendent shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Navy shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.

(Added Pub. L. 106-65, div. A, title V, Sec. 532(a)(2)(B), Oct. 5, 1999, 113 Stat. 603; amended Pub. L. 108-375, div. A, title V, Sec. 541(b)(2), Oct. 28, 2004, 118 Stat. 1903.)

§ 6952. Civilian teachers: number; compensation

(a) The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at the Naval Academy as he considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Navy may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(d) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 428; Pub. L. 106-65, div. A, title XI, Sec. 1107(b), Oct. 5, 1999, 113 Stat. 778.)

§ 6953. Midshipmen: appointment

Midshipmen at the Naval Academy shall be appointed by the President alone. An appointment is conditional until the midshipman is admitted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 429; Pub. L. 97-60, title II, Sec. 203(b)(1), Oct. 14, 1981, 95 Stat. 1006.)

§ 6954. Midshipmen: number

(a) The authorized strength of the Brigade of Midshipmen (determined for any year as of the day before the last day of the academic year) is 4,400 or such lower number as may be prescribed by the Secretary of the Navy under subsection (h). Subject to that limitation, midshipmen are selected as follows:

(1) 65 selected in order of merit as established by competitive examination from the children of members of the armed

forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a "missing status" as defined in section 551(2) of title 37, and children of civilian employees who are in "missing status" as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Navy.

(2) Five nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten from each State, five of whom are nominated by each Senator from that State.

(4) Five nominated by each Representative in Congress.

(5) Five from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Three from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Three from Guam, nominated by the Delegate in Congress from Guam.

(9) Two from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) Two from the Commonwealth of the Northern Mariana Islands, nominated by the Delegate in Congress from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition there may be appointed each year at the Academy midshipmen as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age; however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Navy from enlisted members of the Regular Navy and the Regular Marine Corps.

(3) 85 nominated by the Secretary of the Navy from enlisted members of the Navy Reserve and the Marine Corps Reserve.

(4) 20 nominated by the Secretary of the Navy, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Naval Reserve Officer's Training corps.

(5) 150 selected by the Secretary of the Navy in order of merit (prescribed pursuant to section 6956 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as midshipmen at the Academy children of persons who have been awarded the medal of honor for acts performed while in the armed forces.

(d) The Superintendent of the Naval Academy may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of midshipmen at the Naval Academy to exceed the authorized number.

(e) The Secretary of the Navy may limit the number of midshipmen appointed under subsection (b)(5). When he does so, if the total number of midshipmen, upon admission of a new class at the Academy, will be more than 3,737, no appointments may be made under subsection (b)(2) or (3) of this section or section 6956 of this title.

(f) The Superintendent of the Naval Academy shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(g) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of the Brigade of Midshipmen, the Secretary of the Navy may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(h)(1) Beginning with the 2003–2004 academic year, the Secretary of the Navy may prescribe annual increases in the midshipmen strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 midshipmen or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the midshipmen strength limit is 4,400.

(2) Any increase in the midshipmen strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under section 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the midshipmen strength limit and the new midshipmen strength limit, as so increased, and the amount of the increase in Senior Navy Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

(3) The amount of an increase under paragraph (1) in the midshipmen strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of midshipmen enrolled in the Navy Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

(4) In this subsection, the term "midshipmen strength limit" means the authorized maximum strength of the Brigade of Midshipmen.

(Aug. 10, 1956, ch. 1041, 70A Stat. 429; Pub. L. 87-651, title I, Sec. 124, Sept. 7, 1962, 76 Stat. 514; Pub. L. 87-663, Sec. 1(3), Sept. 14, 1962, 76 Stat. 547; Pub. L. 88-276, Sec. 2, Mar. 3, 1964, 78 Stat. 150; Pub. L. 89-650, Sec. 1(1)-(3), Oct. 13, 1966, 80 Stat. 896; Pub. L. 90-374, July 5, 1968, 82 Stat. 283; Pub. L. 90-623, Sec. 2(8), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 91-405, title II, Sec. 204(c), Sept. 22, 1970, 84 Stat. 852; Pub. L. 92-365, Sec. 1(2), Aug. 7, 1972, 86 Stat. 505; Pub. L. 93-171, Sec. 2(1)-(3), Nov. 29, 1973, 87 Stat. 690; Pub. L. 94-106, title VIII, Sec. 803(b)(1), Oct. 7, 1975, 89 Stat. 538; Pub. L. 96-600, Sec. 2(b), Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97-60, title II, Sec. 203(b)(2), Oct. 14, 1981, 95 Stat. 1006; Pub. L. 97-295, Sec. 1(44), Oct. 12, 1982, 96 Stat. 1298; Pub. L. 98-94, title X, Sec. 1005(a)(2), (b)(2), Sept. 24, 1983, 97 Stat. 660; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101-510, div. A, title V, Sec. 532(b)(1), Nov. 5, 1990, 104 Stat. 1563; Pub. L. 103-160, div. A, title V, Sec. 531, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 103-337, div. A, title XVI, Sec. 1673(c), Oct. 5, 1994, 108 Stat. 3016; Pub. L. 104-106, div. A, title V, Sec. 532(b), Feb. 10, 1996, 110 Stat. 314; Pub. L. 105-85, div. A, title X, Sec. 1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106-65, div. A, title V, Sec. 531(b)(2), Oct. 5, 1999, 113 Stat. 602; Pub. L. 106-398, Sec. 1 [(div. A), title V, Sec. 531(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-109; Pub. L. 107-107, div. A, title X, Sec. 1048(g)(1), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 107-314, div. A, title V, Sec. 532(b), Dec. 2, 2002, 116 Stat. 2545; Pub. L. 108-136, div. A, title V, Sec. 524(b), title X, Sec. 1031(a)(55), Nov. 24, 2003, 117 Stat. 1464, 1603; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(Q), Jan. 6, 2006, 119 Stat. 3233; Pub. L. 110-229, title VII, Sec. 718(b), May 8, 2008, 122 Stat. 869; Pub. L. 110-417, [div. A], title V, Sec. 540(b), Oct. 14, 2008, 122 Stat. 4454; Pub. L. 111-84, div. A, title V, Sec. 527(b), Oct. 28, 2009, 123 Stat. 2288.)

§ 6955. Midshipmen: allotment upon redistricting of Congressional Districts

If as a result of redistricting a State the domicile of a midshipman, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of midshipmen otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a midshipman or when he is finally separated from the Naval Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 430.)

§ 6956. Midshipmen: nomination and selection to fill vacancies

(a) If the annual quota of midshipmen from—

(1) enlisted members of the Regular Navy and the Regular Marine Corps;

(2) enlisted members of the Navy Reserve and the Marine Corps Reserve; or

(3) at large by the President;

is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(b) If it is determined that, upon the admission of a new class to the Academy, the number of midshipmen at the Academy will be below the authorized number, the Secretary may fill the vacancies by nominating additional midshipmen from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this subsection shall be from qualified alternates under clauses (2) through (8) of section 6954(a) of this title, and the remainder shall be from qualified candidates who competed for appointment under any other provision of law. An appointment of a nominee under this subsection is an additional appointment and is not in place of an appointment otherwise authorized by law.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the appointment of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 430; Pub. L. 88-276, Sec. 3, Mar. 3, 1964, 78 Stat. 151; Pub. L. 90-374, July 5, 1968, 82 Stat. 283; Pub. L. 93-171, Sec. 2(4), Nov. 29, 1973, 87 Stat. 690; Pub. L. 94-106, title VIII, Sec. 803(b)(2), Oct. 7, 1975, 89 Stat. 538; Pub. L. 97-60, title II, Sec. 206, Oct. 14, 1981, 95 Stat. 1007; Pub. L. 101-510, div. A, title V, Sec. 532(b)(2), title XIII, Sec. 1322(a)(14), Nov. 5, 1990, 104 Stat. 1563, 1671; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(R), Jan. 6, 2006, 119 Stat. 3233.)

§ 6957. Selection of persons from foreign countries

(a)(1) The Secretary of the Navy may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the midshipmen under section 6954 of this title.

(2) The Secretary of the Navy, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Navy may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Navy shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a midshipman appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a midshipman is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Navy shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a midshipman appointed from the United States.

(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a midshipman under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.

(c)(1) Except as the Secretary of the Navy determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a midshipman at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a midshipman at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 6958(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 431; Sept. 24, 1983, Pub. L. 98-94, title X, Sec. 1004(b)(1), 97 Stat. 658; Nov. 18, 1997, Pub. L. 105-85, div. A, title V, Secs. 541(b), 543(b), 111 Stat. 1740, 1743; Oct. 5, 1999, Pub. L. 106-65, div. A, title V, Sec. 534(b), 113 Stat. 605; Oct. 30, 2000, Pub. L. 106-398, Sec. 1[[div. A], title V, Sec. 532(b)], 114 Stat. 1654, 1654A-110; Dec. 28, 2001, Pub. L. 107-107, div. A, title V, Sec. 533(b)(1), (2), 115 Stat. 1106.)

§ 6957a. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Navy may permit a student enrolled at a military academy of a foreign country to receive instruction at the Naval Academy in exchange for a midshipman receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 6957 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 100 midshipmen and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Naval Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and

emoluments of a midshipman by reason of attendance at the Naval Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged midshipman in that foreign country.

(3) The Naval Academy shall bear all costs of the exchange program from funds appropriated for the Academy and such additional funds as may be available to the Academy from a source other than appropriated funds to support cultural immersion, regional awareness, or foreign language training activities in connection with the exchange program.

(4) Expenditures in support of the exchange program from funds appropriated for the Naval Academy may not exceed \$1,000,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 6957 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Naval Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added Pub. L. 105–85, div. A, title V, Sec. 542(b)(1), Nov. 18, 1997, 111 Stat. 1741; amended Pub. L. 106–65, div. A, title V, Sec. 535(b), Oct. 5, 1999, 113 Stat. 605; Pub. L. 109–364, div. A, title V, Sec. 531(b), Oct. 17, 2006, 120 Stat. 2199.)

§ 6957b. Foreign and cultural exchange activities

(a) ATTENDANCE AUTHORIZED.—The Secretary of the Navy may authorize the Naval Academy to permit students, officers, and other representatives of a foreign country to attend the Naval Academy for periods of not more than two weeks if the Secretary determines that the attendance of such persons contributes significantly to the development of foreign language, cross cultural interactions and understanding, and cultural immersion of midshipmen.

(b) COSTS AND EXPENSES.—The Secretary may pay the travel, subsistence, and similar personal expenses of persons incurred to attend the Naval Academy under subsection (a).

(c) EFFECT OF ATTENDANCE.—Persons attending the Naval Academy under subsection (a) are not considered to be students enrolled at the Naval Academy and are in addition to persons receiving instruction at the Naval Academy under section 6957 or 6957a of this title.

(d) SOURCE OF FUNDS; LIMITATION.—(1) The Naval Academy shall bear the costs of the attendance of persons under subsection (a) from funds appropriated for the Naval Academy and from such additional funds as may be available to the Naval Academy from a source, other than appropriated funds, to support cultural immer-

sion, regional awareness, or foreign language training activities in connection with their attendance.

(2) Expenditures from appropriated funds in support of activities under this section may not exceed \$40,000 during any fiscal year.

(Added Pub. L. 110-417, [div. A], title V, Sec. 541(b)(1), Oct. 14, 2008, 122 Stat. 4455.)

§ 6958. Midshipmen: qualifications for admission

(a) Each candidate for admission to the Naval Academy—

(1) must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the calendar year in which he enters the Academy; and

(2) shall be examined according to such regulations as the Secretary of the Navy prescribes, and if rejected at one examination may not be examined again for admission to the same class unless recommended by the Academic Board.

(b) Each candidate for admission nominated under clauses (3) through (9) of section 6954(a) of this title must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(c) Each candidate nominated under clause (2) or (3) of section 6954(b) of this title—

(1) must be a citizen of the United States;

(2) must have passed the required physical examination;

and

(3) shall be appointed in the order of merit from candidates who have, in competition with each other, passed the required mental examination.

(d) To be admitted to the Naval Academy, an appointee must take and subscribe to an oath prescribed by the Secretary of the Navy. If a candidate for admission refuses to take and subscribe to the prescribed oath, the candidate's appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 431; Pub. L. 87-663, Sec. 1(4), Sept. 14, 1962, 76 Stat. 547; Pub. L. 93-171, Sec. 2(5), Nov. 29, 1973, 87 Stat. 690; Pub. L. 101-510, div. A, title V, Sec. 532(b)(3), Nov. 5, 1990, 104 Stat. 1563; Pub. L. 102-190, div. A, title V, Sec. 512, Dec. 5, 1991, 105 Stat. 1360; Pub. L. 104-201, div. A, title V, Sec. 555(c), Sept. 23, 1996, 110 Stat. 2527; Pub. L. 105-85, div. A, title V, Sec. 541(a), Nov. 18, 1997, 111 Stat. 1740.)

§ 6959. Midshipmen: agreement for length of service

(a) Each midshipman shall sign an agreement with respect to the midshipman's length of service in the armed forces. The agreement shall provide that the midshipman agrees to the following:

(1) That the midshipman will complete the course of instruction at the Naval Academy.

(2) That upon graduation from the Naval Academy the midshipman—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Navy, the Regular Marine Corps, or the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the midshipman is permitted to resign as a

regular officer before completion of the commissioned service obligation of the midshipman, the midshipman—

(A) will accept an appointment as a commissioned officer in the Navy Reserve or the Marine Corps Reserve or as a Reserve in the Air Force for service in the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the midshipman.

(4) That if an appointment described in paragraph (2) or (3) is tendered and the midshipman participates in a program under section 2121 of this title, the midshipman will fulfill any unserved obligation incurred under this section on active duty, regardless of the type of appointment held, upon completion of, and in addition to, any service obligation incurred under section 2123 of this title for participation in such program.

(b)(1) The Secretary of the Navy may transfer to the Navy Reserve or the Marine Corps Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a midshipman who breaches an agreement under subsection (a). The period of time for which a midshipman is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A midshipman who is transferred to the Navy Reserve or Marine Corps Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a midshipman shall be considered to have breached an agreement under subsection (a) if the midshipman is separated from the Naval Academy under circumstances which the Secretary determines constitute a breach by the midshipman of the midshipman's agreement to complete the course of instruction at the Naval Academy and accept an appointment as a commissioned officer upon graduation from the Naval Academy.

(c) The Secretary of the Navy shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, "commissioned service obligation", with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a midshipman who is not a citizen or national of the United States.

(2) In the case of a midshipman who is a minor and who has parents or a guardian, the midshipman may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(f) A midshipman or former midshipman who does not fulfill the terms of the agreement as specified under subsection (a), or the alternative obligation imposed under subsection (b), shall be subject to the repayment provisions of section 303a(e) of title 37.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432; Pub. L. 88-276, Sec. 5(a), Mar. 3, 1964, 78 Stat. 153; Pub. L. 88-647, title III, Sec. 301(19), Oct. 13, 1964, 78 Stat. 1072; Pub. L. 98-525, title V, Sec. 541(b), 542(c), Oct. 19, 1984, 98 Stat. 2529; Pub. L. 99-145, title V, Sec. 512(b), Nov. 8, 1985, 99 Stat. 624; Pub. L. 101-189, div. A, title V, Sec. 511(c), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 104-106, div. A, title V, Sec. 531(b), Feb. 10, 1996, 110 Stat. 314; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(S), title VI, Sec. 687(c)(10), Jan. 6, 2006, 119 Stat. 3233, 3335; Pub. L. 111-84, div. A, title X, Sec. 1073(a)(29), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111-383, div. A, title V, Sec. 554(b), Jan. 7, 2011, 124 Stat. 4221.)

§ 6960. Midshipmen: clothing and equipment; uniform allowance

The Secretary of the Navy may prescribe the amount to be credited to a midshipman, upon original admission to the Naval Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a midshipman is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in as much of his clothing and equipment of a distinctively military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

§ 6961. Midshipmen: dismissal for best interests of the service

(a) Whenever the Superintendent of the Naval Academy believes that the continued presence of any midshipman at the Academy is contrary to the best interest of the service, he shall report in writing to the Secretary of the Navy a full statement of the facts upon which his belief is based. If the Secretary determines from the report that the Superintendent's belief is well founded, the Secretary shall serve a copy of the report on the midshipman. Within such time as the Secretary considers reasonable, the midshipman shall show cause in writing why he should not be dismissed from the Academy. The Secretary, after consideration of any cause so shown, and with the written approval of the President, may dismiss the midshipman from the Academy and from the naval service.

(b) The truth of any issue of fact raised under subsection (a), except as to the record of demerits, shall be determined by a court of inquiry convened by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

§ 6962. Midshipmen: discharge for unsatisfactory conduct or inaptitude

(a) The Superintendent of the Naval Academy shall submit to the Secretary of the Navy in writing a full report of the facts—

(1) whenever the Superintendent determines that the conduct of a midshipman is unsatisfactory; or

(2) whenever the Academic Board unanimously determines that midshipman possesses insufficient aptitude to become a commissioned officer in the naval service.

(b) A midshipman upon whom a report is made under subsection (a) shall be given an opportunity to examine the report and submit a written statement thereon. If the Secretary believes, on the basis of the report and statement, that the determination of the Superintendent or of the Academic Board is reasonable and well founded, he may discharge the midshipman from the Naval Academy and from the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

§ 6963. Midshipmen: discharge for deficiency

Midshipmen found deficient at any examination shall, unless the Academic Board recommends otherwise, be discharged from the Naval Academy and from the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

§ 6964. Hazing: definition; prohibition

(a) In this chapter, the term “hazing” means any unauthorized assumption of authority by a midshipman whereby another midshipman suffers or is exposed to any cruelty, indignity, humiliation, hardship, or oppression, or the deprivation or abridgement of any right.

(b) The Superintendent of the Naval Academy shall prescribe regulations, to be approved by the Secretary of the Navy, to prevent hazing.

(c) Hazing is an offense that may be dealt with as an offense against good order and discipline or as a violation of the regulations of the Naval Academy. However, no midshipman may be dismissed for a single act of hazing except by sentence of a court-martial.

(d) The finding and sentence of a court-martial of a midshipman for hazing shall be reviewed in the manner prescribed for general court-martial cases.

(e) A midshipman who is sentenced to imprisonment for hazing may not be confined with persons who have been convicted of crimes or misdemeanors.

(f) A midshipman who is dismissed from the Academy for hazing may not be reappointed as a midshipman or be appointed as a commissioned officer in the Army, Navy, Air Force, or Marine Corps until two years after the graduation of the class of which he was a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433; Pub. L. 99-145, title XIII, Sec. 1301(c)(2), Nov. 8, 1985, 99 Stat. 736; Pub. L. 101-189, div. A, title XVI, Sec. 1622(e)(8), Nov. 29, 1989, 103 Stat. 1605.)

§ 6965. Failure to report violation: dismissal

(a) Each officer stationed at the Naval Academy, each midshipman officer, each midshipman petty officer, and each civilian member of the teaching staff of the Academy shall report promptly to the Superintendent of the Naval Academy any fact that tends

to show the commission of hazing or any violation of an Academy regulation by a midshipman.

(b) An officer of the naval service who fails to make a report required by subsection (a) shall be tried by court-martial and if convicted shall be dismissed from the naval service.

(c) A civilian member of the teaching staff of the Academy who fails to make a report required by subsection (a) shall, with the approval of the Secretary of the Navy, be dismissed by the Superintendent.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

§ 6966. Course of study

(a) The course at the Naval Academy is four years.

(b) The Secretary of the Navy shall arrange the course so that classes will not be held on Sunday.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

§ 6967. Degree on graduation

Under regulations prescribed by the Secretary of the Navy, the Superintendent of the Naval Academy may confer the degree of bachelor of science upon graduates of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

§ 6968. Board of Visitors

(a) A Board of Visitors to the Naval Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Navy, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal af-

fairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434; Pub. L. 96-579, Sec. 13(b), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 104-106, div. A, title X, Sec. 1061(e)(2), title XV, Sec. 1502(a)(12), Feb. 10, 1996, 110 Stat. 443, 503; Pub. L. 106-65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 6969. Band: composition

(a) The Naval Academy Band shall be composed of one leader, one second leader, and such enlisted members of the Navy as may be assigned.

(b) In determining years of service for the purpose of retirement, and in determining eligibility for reenlistment bonus, the members who are assigned as leader and second leader shall be treated as if they had not been so assigned.

(c) The enlisted members assigned to the Naval Academy Band shall be distributed in grade substantially the same as in the United States Navy Band.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435; Pub. L. 87-649, Sec. 14c(52), Sept. 7, 1962, 76 Stat. 501.)

§ 6970. Permanent professors: promotion

(a) PROMOTION.—An officer serving as a permanent professor may be recommended for promotion to the grade of captain or colonel, as the case may be, under regulations prescribed by the Secretary of the Navy. The regulations shall include a competitive selection board process to identify those permanent professors best qualified for promotion. An officer so recommended shall be promoted by appointment to the higher grade by the President, by and with the advice and consent of the Senate.

(b) EFFECTIVE DATE OF PROMOTION.—If made, the promotion of an officer under subsection (a) shall be effective not earlier than three years after the selection of the officer as a permanent professor as described in that subsection.

(Added Pub. L. 110-181, div. A, title V, Sec. 508(a)(1)(B), Jan. 28, 2008, 122 Stat. 97.)

§ 6970a. Permanent professors: retirement for years of service; authority for deferral

(a) RETIREMENT FOR YEARS OF SERVICE.—(1) Except as provided in subsection (b), an officer of the Navy or Marine Corps serving as a permanent professor at the Naval Academy in the grade of commander or lieutenant colonel who is not on a list of officers recommended for promotion to the grade of captain or colonel, as the case may be, shall, if not earlier retired, be retired on

the first day of the month after the month in which the officer completes 28 years of active commissioned service.

(2) Except as provided in subsection (b), an officer of the Navy or Marine Corps serving as a permanent professor at the Naval Academy in the grade of captain or colonel who is not on a list of officers recommended for promotion to the grade of rear admiral (lower half) or brigadier general, as the case may be, shall, if not earlier retired, be retired on the first day of the month after the month in which the officer completes 30 years of active commissioned service.

(b) CONTINUATION ON ACTIVE DUTY.—(1) An officer subject to retirement under subsection (a) may have his retirement deferred and be continued on active duty by the Secretary of the Navy.

(2) Subject to section 1252 of this title, the Secretary of the Navy shall determine the period of any continuation on active duty under this section.

(c) ELIGIBILITY FOR PROMOTION.—A permanent professor at the Naval Academy in the grade of commander or lieutenant colonel who is continued on active duty as a permanent professor under subsection (b) remains eligible for consideration for promotion to the grade of captain or colonel, as the case may be.

(d) RETIRED GRADE AND RETIRED PAY.—Each officer retired under this section—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade determined under section 1370 of this title; and

(2) is entitled to retired pay computed under section 6333 of this title.

(Added Pub. L. 109–163, div. A, title V, Sec. 509(b)(1), Jan. 6, 2006, 119 Stat. 3229, Sec. 6970; renumbered Sec. 6970a, Pub. L. 110–181, div. A, title V, Sec. 508(a)(1)(A), Jan. 28, 2008, 122 Stat. 97.)

§ 6971. Midshipmen's store, trade shops, dairy, and laundry: nonappropriated fund instrumentality and accounts

(a) OPERATION AS NONAPPROPRIATED FUND INSTRUMENTALITY.—The Superintendent of the Naval Academy shall operate the Naval Academy activities referred to in subsection (b) as a nonappropriated fund instrumentality under the jurisdiction of the Navy.

(b) COVERED ACTIVITIES.—The nonappropriated fund instrumentality required under subsection (a) shall consist of the following Naval Academy activities:

- (1) The midshipmen's store.
- (2) The barber shop.
- (3) The cobbler shop.
- (4) The tailor shop.
- (5) The dairy (if any).
- (6) The laundry.

(c) NONAPPROPRIATED FUND ACCOUNTS.—The Superintendent of the Naval Academy shall administer a separate nonappropriated fund account for each of the Naval Academy activities included in the nonappropriated fund instrumentality required under subsection (a).

(d) CREDITING OF REVENUE.—The Superintendent shall credit all revenue received from a Naval Academy activity referred to in subsection (b) to the account administered with respect to that activity under subsection (c), and amounts so credited shall be available for operating expenses of that activity.

(e) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435; Pub. L. 89–718, Sec. 38, Nov. 2, 1966, 80 Stat. 1120; Pub. L. 103–337, div. A, title III, Sec. 376, Oct. 5, 1994, 108 Stat. 2736; Pub. L. 104–201, div. A, title III, Sec. 370(a), Sept. 23, 1996, 110 Stat. 2498; Pub. L. 105–85, div. B, title XXVIII, Sec. 2871(c)(1), Nov. 18, 1997, 111 Stat. 2015.)

§ 6972. Chapel: crypt and window spaces

The crypt and window spaces of the Naval Academy Chapel may be used only for memorials to officers of the Navy who have successfully commanded a fleet or squadron in battle or who have received the thanks of Congress for conspicuously distinguished services in time of war. No memorial to an officer may be accepted for, or installed in, the crypt or window spaces until at least five years after the death of that officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435.)

§ 6973. Gifts, bequests, and loans of property: acceptance for benefit and use of Naval Academy

(a) The Secretary of the Navy may accept, hold, administer, and spend any gift or bequest of personal property, and may accept, hold, and administer any loan of personal property other than money, that is made on the condition that it be used for the benefit of, or for use in connection with, the Naval Academy or the Naval Academy Museum, its collection, or its services. Gifts and bequests of money and the proceeds from the sales of property received as gifts shall be deposited in the Treasury in the fund called “United States Naval Academy Gift and Museum Fund”. The Secretary may disburse funds deposited under this subsection for the benefit or use of the Naval Academy (including the Naval Academy Museum) subject to the terms of the gift or bequest.

(b) The Secretary shall prescribe written guidelines to be used for determinations of whether the acceptance of money, any personal property, or any loan of personal property under subsection (a) would reflect unfavorably on the ability of the Department of the Navy or any officer or employee of the Department of the Navy to carry out responsibilities or duties in a fair and objective manner, or would compromise either the integrity or the appearance of the integrity of any program of the Department of the Navy or any officer or employee of the Department of the Navy who is involved in any such program.

(c) For the purpose of Federal income, estate, and gift taxes, property that is accepted under this section is considered as a gift or bequest to or for the use of the United States.

(d) Upon the request of the Secretary of the Navy, the Secretary of the Treasury may invest, reinvest, or retain investments of money or securities comprising any part of the United States Naval Academy Gift and Museum Fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from those

securities shall be deposited to the credit of the United States Naval Academy Gift and Museum Fund and may be disbursed as provided in this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 436; Pub. L. 106–398, Sec. 1 [[div. A], title IX, Sec. 942(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–241.)

§ 6974. United States Naval Academy Museum Fund: references to Fund

Any reference in a law, regulation, document, paper, or other record of the United States to the United States Naval Academy Museum Fund formerly maintained under this section shall be deemed to refer to the United States Naval Academy Gift and Museum Fund maintained under section 6973 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 436; Pub. L. 106–398, Sec. 1 [[div. A], title IX, Sec. 942(d)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–242.)

§ 6975. Acceptance of guarantees with gifts for major projects

(a) ACCEPTANCE AUTHORITY.—Subject to subsection (c), the Secretary of the Navy may accept from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the Naval Academy.

(b) OBLIGATION AUTHORITY.—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Navy may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress or, if earlier, the expiration of 14 days following the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) PROHIBITION ON COMMINGLING OF FUNDS.—The Secretary of the Navy may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) DEFINITIONS.—In this section:

(1) MAJOR PROJECT.—The term “major project” means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least \$1,000,000.

(2) QUALIFIED GUARANTEE.—The term “qualified guarantee”, with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in

cash or securities that, as determined by the Secretary of the Navy, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor's other gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Naval Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term “qualified account control agreement”, with respect to a guarantee of a donor, means an agreement among the donor, the Secretary of the Navy, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Naval Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term “major United States commercial bank” means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Navy to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term “major United States investment manage-

ment firm” means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Navy to qualify the firm as a major investment management firm.

(Added Pub. L. 106-65, div. B, title XXVIII, Sec. 2871(b)(1), Oct. 5, 1999, 113 Stat. 873; amended Pub. L. 106-398, Sec. 1[[div. A], title X, Sec. 1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A-291; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(56), Nov. 24, 2003, 117 Stat. 1603.)

§ 6976. Operation of Naval Academy dairy farm

(a) DISCRETION REGARDING CONTINUED OPERATION.—(1) Subject to paragraph (2), the Secretary of the Navy may terminate or reduce the dairy or other operations conducted at the Naval Academy dairy farm located in Gambrills, Maryland.

(2) Notwithstanding the termination or reduction of operations at the Naval Academy dairy farm under paragraph (1), the real property containing the dairy farm (consisting of approximately 875 acres)—

(A) may not be declared to be excess real property to the needs of the Navy or transferred or otherwise disposed of by the Navy or any Federal agency; and

(B) shall be maintained in its rural and agricultural nature.

(b) LEASE AUTHORITY.—(1) Subject to paragraph (2), to the extent that the termination or reduction of operations at the Naval Academy dairy farm permit, the Secretary of the Navy may lease the real property containing the dairy farm, and any improvements and personal property thereon, to such persons and under such terms as the Secretary considers appropriate. In leasing any of the property, the Secretary may give a preference to persons who will continue dairy operations on the property.

(2) Any lease of property at the Naval Academy dairy farm shall be subject to a condition that the lessee maintain the rural and agricultural nature of the leased property.

(c) LEASE PROCEEDS.—All money received from a lease entered into under subsection (b) shall be retained by the Superintendent of the Naval Academy and shall be available to cover expenses related to the property described in subsection (a), including reimbursing nonappropriated fund instrumentalities of the Naval Academy.

(d) EFFECT OF OTHER LAWS.—Nothing in section 6971 of this title shall be construed to require the Secretary of the Navy or the Superintendent of the Naval Academy to operate a dairy farm for the Naval Academy in Gambrills, Maryland, or any other location.

(Added Pub. L. 105-85, div. B, title XXVIII, Sec. 2871(a)(1), Nov. 18, 1997, 111 Stat. 2014; amended Pub. L. 106-65, div. B, title XXVIII, Sec. 2814, Oct. 5, 1999, 113 Stat. 851.)

§ 6977. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Navy may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Navy shall prescribe regulations for the administration of this section.

(Added Pub. L. 105–261, div. A, title X, Sec. 1063(b)(1), Oct. 17, 1998, 112 Stat. 2130.)

§ 6978. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds

(a) AUTHORITY.—In the case of a Naval Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Navy may designate funds appropriated to the Department of the Navy and available for that program to be treated as nonappropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds. Appropriated funds so designated shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

(b) COVERED PROGRAMS.—In this section, the term “Naval Academy mixed-funded athletic or recreational extracurricular program” means an athletic or recreational extracurricular program of the Naval Academy to which each of the following applies:

(1) The program is not considered a morale, welfare, or recreation program.

(2) The program is supported through appropriated funds.

(3) The program is supported by a nonappropriated fund instrumentality.

(4) The program is not a private organization and is not operated by a private organization.

(Added Pub. L. 108-375, div. A, title V, Sec. 544(b)(1), Oct. 28, 2004, 118 Stat. 1906.)

§ 6979. Midshipmen: charges and fees for attendance; limitation

(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Naval Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to midshipmen for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Naval Academy in the amount of a charge or fee authorized under this subsection.

(Added Pub. L. 108-375, div. A, title V, Sec. 545(b)(1), Oct. 28, 2004, 118 Stat. 1908.)

§ 6980. Policy on sexual harassment and sexual violence

(a) REQUIRED POLICY.—Under guidance prescribed by the Secretary of Defense, the Secretary of the Navy shall direct the Superintendent of the Naval Academy to prescribe a policy on sexual harassment and sexual violence applicable to the midshipmen and other personnel of the Naval Academy.

(b) MATTERS TO BE SPECIFIED IN POLICY.—The policy on sexual harassment and sexual violence prescribed under this section shall include specification of the following:

(1) Programs to promote awareness of the incidence of rape, acquaintance rape, and other sexual offenses of a criminal nature that involve midshipmen or other Academy personnel.

(2) Procedures that a midshipman should follow in the case of an occurrence of sexual harassment or sexual violence, including—

(A) if the midshipman chooses to report an occurrence of sexual harassment or sexual violence, a specification of the person or persons to whom the alleged offense should be reported and the options for confidential reporting;

(B) a specification of any other person whom the victim should contact; and

(C) procedures on the preservation of evidence potentially necessary for proof of criminal sexual assault.

(3) Procedures for disciplinary action in cases of alleged criminal sexual assault involving a midshipman or other Academy personnel.

(4) Any other sanction authorized to be imposed in a substantiated case of sexual harassment or sexual violence involving a midshipman or other Academy personnel in rape, acquaintance rape, or any other criminal sexual offense, whether forcible or nonforcible.

(5) Required training on the policy for all midshipmen and other Academy personnel, including the specific training re-

quired for personnel who process allegations of sexual harassment or sexual violence involving Academy personnel.

(c) ANNUAL ASSESSMENT.—(1) The Secretary of Defense, through the Secretary of the Navy, shall direct the Superintendent to conduct at the Academy during each Academy program year an assessment, to be administered by the Department of Defense, to determine the effectiveness of the policies, training, and procedures of the Academy with respect to sexual harassment and sexual violence involving Academy personnel.

(2) For the assessment at the Academy under paragraph (1) with respect to an Academy program year that begins in an odd-numbered calendar year, the Secretary of the Navy shall conduct a survey, to be administered by the Department of Defense, of Academy personnel—

(A) to measure—

(i) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have been reported to officials of the Academy; and

(ii) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have not been reported to officials of the Academy; and

(B) to assess the perceptions of Academy personnel of—

(i) the policies, training, and procedures on sexual harassment and sexual violence involving Academy personnel;

(ii) the enforcement of such policies;

(iii) the incidence of sexual harassment and sexual violence involving Academy personnel; and

(iv) any other issues relating to sexual harassment and sexual violence involving Academy personnel.

(d) ANNUAL REPORT.—(1) The Secretary of the Navy shall direct the Superintendent of the Naval Academy to submit to the Secretary a report on sexual harassment and sexual violence involving midshipmen or other personnel at the Academy for each Academy program year.

(2) Each report under paragraph (1) shall include, for the Academy program year covered by the report, the following:

(A) The number of sexual assaults, rapes, and other sexual offenses involving midshipmen or other Academy personnel that have been reported to Naval Academy officials during the program year and, of those reported cases, the number that have been substantiated.

(B) The policies, procedures, and processes implemented by the Secretary of the Navy and the leadership of the Naval Academy in response to sexual harassment and sexual violence involving midshipmen or other Academy personnel during the program year.

(C) A plan for the actions that are to be taken in the following Academy program year regarding prevention of and response to sexual harassment and sexual violence involving midshipmen or other Academy personnel.

(3) Each report under paragraph (1) for an Academy program year that begins in an odd-numbered calendar year shall include

the results of the survey conducted in that program year under subsection (c)(2).

(4)(A) The Secretary of the Navy shall transmit to the Secretary of Defense, and to the Board of Visitors of the Naval Academy, each report received by the Secretary under this subsection, together with the Secretary's comments on the report.

(B) The Secretary of Defense shall transmit each such report, together with the Secretary's comments on the report, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 109-364, div. A, title V, Sec. 532(a)(2), Oct. 17, 2006, 120 Stat. 2201.)

CHAPTER 605—UNITED STATES NAVAL POSTGRADUATE SCHOOL

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§ 7041. Function

There is a United States Naval Postgraduate School, the primary function of which is to provide advanced instruction and professional and technical education and research opportunities for commissioned officers of the naval service in—

- (1) their practical and theoretical duties;
- (2) the science, physics, and systems engineering of current and future naval warfare doctrine, operations, and systems; and
- (3) the integration of naval operations and systems into joint, combined, and multinational operations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Pub. L. 109-163, div. A, title V, Sec. 523(a), Jan. 6, 2006, 119 Stat. 3244.)

§ 7042. President; assistants

(a)(1) The President of the Naval Postgraduate School shall be one of the following:

(A) An active-duty officer of the Navy or Marine Corps in a grade not below the grade of captain or colonel, respectively, who is assigned or detailed to such position.

(B) A civilian individual, including an individual who was retired from the Navy or Marine Corps in a grade not below captain, or colonel, respectively, who has the qualifications appropriate to the position of President and is selected by the Secretary of the Navy as the best qualified from among candidates for the position in accordance with—

- (i) the criteria specified in paragraph (4);
- (ii) a process determined by the Secretary; and
- (iii) other factors the Secretary considers essential.

(2) Before making an assignment, detail, or selection of an individual for the position of President of the Naval Postgraduate School, the Secretary shall—

(A) consult with the Board of Advisors for the Naval Postgraduate School;

(B) consider any recommendation of the leadership and faculty of the Naval Postgraduate School regarding the assignment or selection to that position; and

(C) consider the recommendations of the Chief of Naval Operations and the Commandant of the Marine Corps.

(3) An individual selected for the position of President of the Naval Postgraduate School under paragraph (1)(B) shall serve in that position for a term of not more than five years and may be continued in that position for an additional term of up to five years.

(4) The qualifications appropriate for selection of an individual for detail or assignment to the position of President of the Naval Postgraduate School include the following:

(A) An academic degree that is either—

(i) a doctorate degree in a field of study relevant to the mission and function of the Naval Postgraduate School; or

(ii) a master's degree in a field of study relevant to the mission and function of the Naval Postgraduate School, but only if—

(I) the individual is an active-duty or retired officer of the Navy or Marine Corps in a grade not below the grade of captain or colonel, respectively; and

(II) at the time of the selection of that individual as President, the individual permanently appointed to the position of Provost and Academic Dean has a doctorate degree in such a field of study.

(B) A comprehensive understanding of the Department of the Navy, the Department of Defense, and joint and combined operations.

(C) Leadership experience at the senior level in a large and diverse organization.

(D) Demonstrated ability to foster and encourage a program of research in order to sustain academic excellence.

(E) Other qualifications, as determined by the Secretary of the Navy.

(b) The Secretary shall detail officers of the Navy and the Marine Corps of appropriate grades and qualifications to assist the President in—

(1) the advanced instruction and professional and technical education of students and the provision of research opportunities for students; and

(2) the administration of the Postgraduate School.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Pub. L. 96-513, title V, Sec. 503(53), Dec. 12, 1980, 94 Stat. 2915; Pub. L. 108-375, div. A, title V, Sec. 557(a)(3), Oct. 28, 2004, 118 Stat. 1915; Pub. L. 109-163, div. A, title V, Secs. 523(b), 524, Jan. 6, 2006, 119 Stat. 3244, 3245; Pub. L. 109-364, div. A, title V, Sec. 508, Oct. 17, 2006, 120 Stat. 2180; Pub. L. 111-383, div. A, title X, Sec. 1075(b)(49), Jan. 7, 2011, 124 Stat. 4371.)

§ 7043. Provost and Academic Dean

(a) There is at the Naval Postgraduate School the civilian position of Provost and Academic Dean. The Provost and Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy. Before making an appointment to the position of Provost and Academic Dean, the Secretary shall consult with the Board of Advisors for the Naval Postgraduate School and shall consider any recommendation of the leadership

and faculty of the Naval Postgraduate School regarding an appointment to that position.

(b) The Provost and Academic Dean is entitled to such compensation for his services as the Secretary prescribes, but not more than the rate of compensation authorized for level IV of the Executive Schedule.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Pub. L. 85–861, Sec. 1(148), Sept. 2, 1958, 72 Stat. 1513; Pub. L. 89–536, Aug. 11, 1966, 80 Stat. 346; Pub. L. 96–513, title V, Sec. 513(22), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 105–85, div. A, title V, Sec. 551(c), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 108–375, div. A, title V, Sec. 557(b)(3), (4), Oct. 28, 2004, 118 Stat. 1915, 1916.)

§ 7044. Civilian teachers: number; compensation

The Secretary of the Navy may employ as many civilians as he considers necessary to serve at the Naval Postgraduate School under the direction of the President of the school as senior professors, professors, associate professors, assistant professors, and instructors. The Secretary shall prescribe the compensation of those persons.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Pub. L. 108–375, div. A, title V, Sec. 557(a)(4)(A), Oct. 28, 2004, 118 Stat. 1915.)

§ 7045. Officers of the other armed forces; enlisted members: admission

(a)(1) The Secretary of the Navy may permit officers of the Army, Air Force, and Coast Guard to receive instruction at the Naval Postgraduate School. The numbers and grades of such officers shall be as agreed upon by the Secretary of the Navy with the Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security, respectively.

(2)(A) The Secretary may permit an enlisted member of the armed forces to receive instruction at the Naval Postgraduate School through attendance at an executive level seminar.

(B) The Secretary may permit an eligible enlisted member of the armed forces to receive instruction at the Postgraduate School in connection with pursuit of a program of education in information assurance as a participant in the Information Security Scholarship program under chapter 112 of this title. To be eligible for instruction under this subparagraph, the enlisted member must have been awarded a baccalaureate degree by an institution of higher education.

(C) The Secretary may permit an eligible enlisted member of the armed forces to receive instruction from the Postgraduate School in certificate programs and courses required for the performance of the member's duties.

(D)(i) The Secretary may permit an eligible enlisted member of the armed forces to receive graduate-level instruction at the Naval Postgraduate School in a program leading to a master's degree in a technical, analytical, or engineering curriculum.

(ii) To be eligible to be provided instruction under this subparagraph, the enlisted member must have been awarded a baccalaureate degree by an institution of higher education.

(iii) Instruction under this subparagraph may be provided only on a space-available basis.

(iv) An enlisted member who successfully completes a course of instruction under this subparagraph may be awarded a master's degree under section 7048 of this title.

(v) Instruction under this subparagraph shall be provided pursuant to regulations prescribed by the Secretary. Such regulations may include criteria for eligibility of enlisted members for instruction under this subparagraph and specification of obligations for further service in the armed forces relating to receipt of such instruction.

(E) In addition to instruction authorized under subparagraphs (A), (B), (C), and (D), the Secretary may, on a space-available basis, permit an enlisted member of the armed forces who is assigned permanently to the staff of the Postgraduate School or to a nearby command to receive instruction at the Postgraduate School.

(b)(1) Except as provided under paragraph (3), the Department of the Army, the Department of the Air Force, and the Department of Homeland Security shall bear the cost of the instruction received by the members detailed for that instruction by the Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security, respectively.

(2) In the case of an enlisted member permitted under subsection (a)(2)(E) to receive instruction at the Postgraduate School on a space-available basis, the Secretary of the Navy shall charge that member only for such costs and fees as the Secretary considers appropriate.

(3) The requirements for payment of costs and fees under paragraph (1) shall be subject to such exceptions as the Secretary of Defense may prescribe for members of the armed forces who receive instruction at the Postgraduate School in connection with pursuit of a degree or certification as participants in the Information Security Scholarship program under chapter 112 of this title.

(c) While receiving instruction at the Postgraduate School, members of the Army, Air Force, and Coast Guard are subject to such regulations, as determined appropriate by the Secretary of the Navy, as apply to students who are members of the naval service.

(d) The Secretary may not award a baccalaureate, masters, or doctorate degree to an enlisted member based upon instruction received at the Postgraduate School under subsection (a)(2)(C).

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Pub. L. 96-513, title V, Sec. 513(23), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 105-85, div. A, title V, Sec. 551(a), (b)(1), Nov. 18, 1997, 111 Stat. 1747; Pub. L. 105-261, div. A, title X, Sec. 1069(a)(6), Oct. 17, 1998, 112 Stat. 2136; Pub. L. 107-296, title XVII, Sec. 1704(b)(5), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108-136, div. A, title V, Sec. 532, Nov. 24, 2003, 117 Stat. 1472; Pub. L. 109-163, div. A, title V, Sec. 526(a), (b), Jan. 6, 2006, 119 Stat. 3245, 3246; Pub. L. 109-364, div. A, title V, Sec. 543(a)-(c), Oct. 17, 2006, 120 Stat. 2213.)

§ 7046. Officers of foreign countries: admission

(a) The Secretary of the Navy, upon authorization of the President, may permit commissioned officers of the military services of foreign countries to receive instruction at the Naval Postgraduate School.

(b) Officers receiving instruction under this section are subject to the same regulations governing attendance, discipline, discharge, and standards of study as apply to students who are officers of the United States naval service.

(c) No officer of a foreign country is entitled to an appointment in the Navy or the Marine Corps by reason of his completion of the prescribed course of study at the Postgraduate School.

(Aug. 10, 1956, ch. 1041, 70A Stat. 438.)

§ 7047. Students at institutions of higher education: admission

(a) ADMISSION PURSUANT TO RECIPROCAL AGREEMENT.—The Secretary of the Navy may enter into an agreement with an accredited institution of higher education to permit a student described in subsection (b) enrolled at that institution to receive instruction at the Naval Postgraduate School on a tuition-free basis. In exchange for the admission of the student, the institution of higher education shall be required to permit an officer of the armed forces to attend on a tuition-free basis courses offered by that institution corresponding in length to the instruction provided to the student at the Naval Postgraduate School.

(b) ELIGIBLE STUDENTS.—A student enrolled at an institution of higher education that is party to an agreement under subsection (a) may be admitted to the Naval Postgraduate School pursuant to that agreement if—

(1) the student is a citizen of the United States or lawfully admitted for permanent residence in the United States; and

(2) the Secretary of the Navy determines that the student has a demonstrated ability in a field of study designated by the Secretary as related to naval warfare and national security.

(Added Pub. L. 102-484, div. A, title X, Sec. 1073(a)(2), Oct. 23, 1992, 106 Stat. 2510.)

§ 7048. Degree granting authority for United States Naval Postgraduate School

(a) AUTHORITY.—Under regulations prescribed by the Secretary of the Navy, the President of the Naval Postgraduate School may, upon the recommendation of the faculty of the Naval Postgraduate School, confer appropriate degrees upon graduates who meet the degree requirements.

(b) LIMITATION.—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the Naval Postgraduate School is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the Naval Postgraduate School to award any new or existing degree.

(Aug. 10, 1956, ch. 1041, 70A Stat. 438, Sec. 7047; renumbered Sec. 7048, Pub. L. 102-484, div. A, title X, Sec. 1073(a)(1), Oct. 23, 1992, 106 Stat. 2510; amended Pub. L. 108-375, div. A, title V, Sec. 557(a)(4)(B), Oct. 28, 2004, 118 Stat. 1915; Pub. L. 110-417, [div. A], title V, Sec. 543(e)(1), Oct. 14, 2008, 122 Stat. 4460.)

§ 7049. Defense industry civilians: admission to defense product development program

(a) **AUTHORITY FOR ADMISSION.**—The Secretary of the Navy may permit eligible defense industry employees to receive instruction at the Naval Postgraduate School in accordance with this section. Any such defense industry employee may only be enrolled in, and may only be provided instruction in, a program leading to a masters's degree in a curriculum related to defense product development and systems engineering. No more than 125 such defense industry employees may be enrolled at any one time. Upon successful completion of the course of instruction in which enrolled, any such defense industry employee may be awarded an appropriate degree under section 7048 of this title.

(b) **ELIGIBLE DEFENSE INDUSTRY EMPLOYEES.**—For purposes of this section, an eligible defense industry employee is an individual employed by a private firm that is engaged in providing to the Department of Defense significant and substantial defense-related systems, products, or services. A defense industry employee admitted for instruction at the school remains eligible for such instruction only so long as that person remains employed by the same firm.

(c) **ANNUAL DETERMINATION BY THE SECRETARY OF THE NAVY.**—Defense industry employees may receive instruction at the school during any academic year only if, before the start of that academic year, the Secretary of the Navy determines that providing instruction to defense industry employees under this section during that year—

(1) will further the military mission of the school;

(2) will enhance the ability of the Department of Defense and defense-oriented private sector contractors engaged in the design and development of defense systems to reduce the product and project lead times required to bring such systems to initial operational capability; and

(3) will be done on a space-available basis and not require an increase in the size of the faculty of the school, an increase

in the course offerings of the school, or an increase in the laboratory facilities or other infrastructure of the school.

(d) PROGRAM REQUIREMENTS.—The Secretary of the Navy shall ensure that—

(1) the curriculum for the defense product development program in which defense industry employees may be enrolled under this section is not readily available through other schools and concentrates on defense product development functions that are conducted by military organizations and defense contractors working in close cooperation; and

(2) the course offerings at the school continue to be determined solely by the needs of the Department of Defense.

(e) TUITION.—The President of the school shall charge tuition for students enrolled under this section at a rate not less than the rate charged for employees of the United States outside the Department of the Navy.

(f) STANDARDS OF CONDUCT.—While receiving instruction at the school, students enrolled under this section, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the school.

(g) USE OF FUNDS.—Amounts received by the school for instruction of students enrolled under this section shall be retained by the school to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the school.

(Added Pub. L. 106–398, Sec. 1[div. A], title V, Sec. 535(a)(1), Oct. 30, 2000, 114 Stat. 1654, 1654A–112; amended Pub. L. 108–136, div. A, title X, Sec. 1031(a)(57), Nov. 24, 2003, 117 Stat. 1603; Pub. L. 108–375, div. A, title V, Sec. 557(a)(4)(B), Oct. 28, 2004, 118 Stat. 1915; Pub. L. 109–163, div. A, title V, Sec. 525, Jan. 6, 2006, 119 Stat. 3245; Pub. L. 110–417, [div. A], title V, Sec. 542, Oct. 14, 2008, 122 Stat. 4456.)

§ 7050. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Navy may authorize the President of the Naval Postgraduate School to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the School for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The President of the Naval Postgraduate School shall use the funds in the account in accordance with appli-

cable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Naval Postgraduate School may be used to pay expenses incurred by the School in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

(Added Pub. L. 109–163, div. A, title V, Sec. 522(c)(1), Jan. 6, 2006, 119 Stat. 3241.)

**CHAPTER 607—RETIREMENT OF CIVILIAN MEMBERS OF
THE TEACHING STAFFS OF THE UNITED STATES
NAVAL ACADEMY AND UNITED STATES NAVAL POST-
GRADUATE SCHOOL**

Sec.	
7081.	Civilian member: definition; exceptions.
7082.	Deferred annuity policy required.
7083.	Annuity premium to be paid by monthly installments; government reimbursement.
7084.	Age of retirement.
7085.	Computation of life annuity.
7086.	Physical disability retirement.
7087.	Election of annuity for self and beneficiary.
7088.	Regulations.

§ 7081. Civilian member: definition; exceptions

(a) In this chapter, the term “civilian member” means a civilian member of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School. It includes the Provost and Academic Dean of the Postgraduate School, senior professors, professors, associate professors, assistant professors, chief instructors, assistant chief instructors, and instructors.

(b) This chapter does not apply to any civilian member who was employed at the Naval Academy or the Postgraduate School on January 16, 1936, and who did not elect to participate in the benefits provided by the Act of January 16, 1936, ch. 3 (49 Stat. 1092).

(c) This chapter does not apply to any person who was a civilian member after September 30, 1956.

(Aug. 10, 1956, ch. 1041, 70A Stat. 438; Pub. L. 85–861, Sec. 1(149), Sept. 2, 1958, 72 Stat. 1513; Pub. L. 101–189, div. A, title XVI, Sec. 1622(e)(8), Nov. 29, 1989, 103 Stat. 1605; Pub. L. 108–375, div. A, title V, Sec. 557(b)(4), Oct. 28, 2004, 118 Stat. 1916.)

§ 7082. Deferred annuity policy required

Each civilian member, as a part of his contract of employment, shall carry, during his employment, a deferred annuity policy, having no cash surrender or loan provision, in a joint-stock life insurance corporation that is incorporated under the laws of a State and has a charter restriction that its business must be conducted without profit to its stockholders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

§ 7083. Annuity premium to be paid by monthly installments; government reimbursement

Each civilian member shall make a monthly allotment in an amount equal to 10 percent of his monthly basic salary toward the purchase of his deferred annuity policy. For each month the allotment is in force, the pay account of the civilian member shall be credited monthly from appropriations made for this purpose with

an additional amount equal to 5 percent of his monthly basic salary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439; Pub. L. 89-718, Sec. 39, Nov. 2, 1966, 80 Stat. 1120.)

§ 7084. Age of retirement

A civilian member may be retired at any time after his sixty-fifth birthday, and shall be retired by June 30 following that birthday. However, in any special case the Secretary of the Navy may defer the retirement of a member until a date not later than the member's seventieth birthday.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

§ 7085. Computation of life annuity

Each civilian member who retires under section 7084 of this title is entitled to a life annuity computed by multiplying his average annual compensation during any five consecutive years of allowable service, at his option, by his number of years of service, not exceeding 35, and dividing the product by 70. The retirement annuity payable to a retired civilian member under a policy required by section 7082 of this title is counted as part of the retirement annuity provided in this section. Any difference between the amount received by the retired civilian member under his annuity policy and the total annual amount to which he is entitled under this section shall be paid to him by the Secretary of the Navy from appropriations made for this purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

§ 7086. Physical disability retirement

(a) Each civilian member who has served not less than five years, and who, before reaching the age of 65, becomes totally disabled for useful and efficient service in his position, by reason of disease or injury not due to his own vicious habits, intemperance, or willful misconduct shall, upon his application or upon the request of the Secretary of the Navy, be retired with a life annuity computed under section 7085 of this title.

(b) The amount that the Secretary shall pay annually under this section is the difference between the total amount to which the retired member is entitled under subsection (a) and the immediate life annuity to which he is entitled at the time of his disability retirement under the annuity policy required by section 7082 of this title.

(c) Each civilian member retired under this section, unless the disability for which he was retired is permanent in character, shall be examined by a board of medical officers designated by the Superintendent of the Naval Academy or of the Postgraduate School, as appropriate, one year after his retirement and annually thereafter, until he becomes 65 years of age.

(d) Payments by the Secretary under this section shall be terminated if the retired civilian member is found to be sufficiently recovered for useful and efficient service in his former position and is offered reemployment in that position by the Superintendent.

(e) If a civilian member retired under this section is later reemployed by the United States, the payments by the Secretary shall be terminated.

(f) Each civilian member retired under this section who is re-employed as a civilian member of the teaching staff of the Naval Academy or the Naval Postgraduate School shall, upon his later retirement, be paid annually by the Secretary the difference between the total annual amount computed under section 7085 of this title and the immediate life annuity which the total premiums paid on his annuity contracts would buy.

(g) No person may receive payments from the Secretary of the Navy under this chapter and, for the same period of time, compensation under chapter 81 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439; Pub. L. 89-718, Sec. 40, Nov. 2, 1966, 80 Stat. 1120.)

§ 7087. Election of annuity for self and beneficiary

(a) At the time of his retirement, a civilian member retiring under this chapter may elect to receive instead of the amount payable annually by the Secretary of the Navy under section 7085 or 7086 of this title a reduced annuity for his life and an annuity payable after his death to his beneficiary in either—

(1) an amount equal to his reduced annuity; or

(2) an amount equal to 50 percent of his reduced annuity.

The annuities payable to principal and beneficiary, under either election, shall be in amounts that have, on the date of the retirement of the civilian member, a combined actuarial value equal to the actuarial value of the annuity payable by the Secretary under section 7085 or 7086 of this title, as determined under actuarial tables prepared by the Director of the Office of Personnel Management.

(b) If the civilian member elects to take a reduced annuity under this section, he shall, at the time of his retirement, designate the beneficiary in writing and file the designation with the Secretary.

(c) The annuity payable under this section to the beneficiary of a deceased civilian member shall be terminated upon the death of the beneficiary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 440; Pub. L. 97-295, Sec. 1(45), Oct. 12, 1982, 96 Stat. 1298.)

§ 7088. Regulations

The Secretary of the Navy shall prescribe regulations for the administration of this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 441.)

CHAPTER 609—PROFESSIONAL MILITARY EDUCATION SCHOOLS

- Sec.
7101. Degree granting authority for Naval War College.
7102. Degree granting authority for Marine Corps University.
7103. Naval War College: acceptance of grants for faculty research for scientific, literary, and educational purposes.
7104. Marine Corps University: acceptance of grants for faculty research for scientific, literary, and educational purposes.

§ 7101. Degree granting authority for Naval War College

(a) **AUTHORITY.**—Under regulations prescribed by the Secretary of the Navy, the President of the Naval War College may, upon the recommendation of the faculty of the Naval War College components, confer appropriate degrees upon graduates who meet the degree requirements.

(b) **LIMITATION.**—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the Naval War College is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) **CONGRESSIONAL NOTIFICATION REQUIREMENTS.**—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the Naval War College to award any new or existing degree.

(Added Pub. L. 101–510, div. A, title IX, Sec. 912(a), Nov. 5, 1990, 104 Stat. 1626; amended Pub. L. 110–417, [div. A], title V, Sec. 543(f)(1), Oct. 14, 2008, 122 Stat. 4461.)

§ 7102. Degree granting authority for Marine Corps University

(a) **AUTHORITY.**—Under regulations prescribed by the Secretary of the Navy, the President of the Marine Corps University may, upon the recommendation of the directors and faculty of the Marine Corps University, confer appropriate degrees upon graduates who meet the degree requirements.

(b) **LIMITATION.**—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the Marine Corps University is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) **CONGRESSIONAL NOTIFICATION REQUIREMENTS.**—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education’s National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the Marine Corps University to award any new or existing degree.

(d) **BOARD OF ADVISORS.**—The Secretary of the Navy shall establish a board of advisors for the Marine Corps University. The Secretary shall ensure that the board is established so as to meet all requirements of the appropriate regional accrediting association.

(Added Pub. L. 103–337, div. A, title IX, Sec. 911(a)(1), Oct. 5, 1994, 108 Stat. 2828; amended Pub. L. 107–107, div. A, title V, Sec. 532(a)–(b)(3)(A), (c)(1), Dec. 28, 2001, 115 Stat. 1104, 1105; Pub. L. 108–136, div. A, title V, Sec. 531(a), Nov. 24, 2003, 117 Stat. 1472; Pub. L. 108–375, div. A, title X, Sec. 1084(d)(31), Oct. 28, 2004, 118 Stat. 2063; Pub. L. 110–417, [div. A], title V, Sec. 543(g)(1), Oct. 14, 2008, 122 Stat. 4462.)

§ 7103. Naval War College: acceptance of grants for faculty research for scientific, literary, and educational purposes

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Navy may authorize the President of the Naval War College to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The President of the Naval War College shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Naval War College may be used to pay expenses incurred by the College in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

(Added Pub. L. 109–163, div. A, title V, Sec. 522(d)(1), Jan. 6, 2006, 119 Stat. 3242.)

§ 7104. Marine Corps University: acceptance of grants for faculty research for scientific, literary, and educational purposes

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Navy may authorize the President of the Marine Corps University to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of one of the institutions comprising the University for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research

grants under this section. The President of the Marine Corps University shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Marine Corps University may be used to pay expenses incurred by the University in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

(Added Pub. L. 109–163, div. A, title V, Sec. 522(d)(1), Jan. 6, 2006, 119 Stat. 3242.)

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CHAPTER 631—SECRETARY OF THE NAVY: MISCELLANEOUS POWERS AND DUTIES

- Sec.
[7201 to 7203. Repealed.]
7204. Schools near naval activities: financial aid.
7205. Promotion of health and prevention of accidents.
[7206. Repealed.]
7207. Administration of liberated and occupied areas.
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7211. Attendance at meetings of technical, professional, or scientific organizations.
7212. Employment of outside architects and engineers.
[7213. Repealed.]
7214. Apprehension of deserters and prisoners; operation of shore patrols.
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7233. Auxiliary vessels: extended lease authority.
7234. Submarine safety programs: participation of NATO naval personnel.

[§ 7201. Repealed. Pub. L. 103-160, div. A, title VIII, Sec. 824(a)(1), Nov. 30, 1993, 107 Stat. 1707]

[§ 7202. Repealed. Pub. L. 94-106, title VIII, Sec. 804(b), Oct. 7, 1975, 89 Stat. 538]

[§ 7203. Repealed. Pub. L. 103-355, title III, Sec. 3025(a), Oct. 13, 1994, 108 Stat. 3334]

§ 7204. Schools near naval activities: financial aid

(a) The Secretary of the Navy may contribute, out of funds specifically appropriated for the purpose, to the support of schools in any locality where a naval activity is located if he finds that the schools available in the locality are inadequate for the welfare of the dependents of—

- (1) members of the naval service;
- (2) civilian officers and employees of the Department of the Navy;
- (3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy; who are stationed at the activity.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 442; Pub. L. 89-718, Sec. 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, Sec. 513(24), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 98-525, title XIV, Sec. 1401(j)(3)(A), (B), Oct. 19, 1984, 98 Stat. 2620; Pub. L. 99-145, title XIII, Sec. 1303(a)(23), Nov. 8, 1985, 99 Stat. 739.)

§ 7205. Promotion of health and prevention of accidents

(a) The Secretary of the Navy may make such expenditures as he considers appropriate to prevent accidents and to promote the safety and occupational health of—

- (1) members of the naval service on active duty;
- (2) civilian officers and employees of the Department of the Navy;
- (3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy.

The expenditures may include payments for clothing, equipment, and other materials necessary for the purposes of this section. Any appropriation available for the activities in which the personnel are engaged shall be available for these purposes.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 443; Pub. L. 89-718, Sec. 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, Sec. 513(24), Dec. 12, 1980, 94 Stat. 2932.)

[§ 7206. Repealed. Pub. L. 85-861, Sec. 36B(22), Sept. 2, 1958, 72 Stat. 1571]

§ 7207. Administration of liberated and occupied areas

(a) The Secretary of the Navy may, out of any appropriation made for the purpose, provide for the administration of liberated and occupied areas by the Department of the Navy.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 443.)

[§ 7208. Repealed. Pub. L. 98-525, title XIV, Sec. 1401(d)(3)(A), Oct. 19, 1984, 98 Stat. 2616]

[§ 7209. Repealed. Pub. L. 100-370, Sec. 1(e)(3)(A), July 19, 1988, 102 Stat. 845]

[§ 7210. Repealed. Pub. L. 103-160, div. A, title VIII, Sec. 824(a)(2), Nov. 30, 1993, 107 Stat. 1707]

§ 7211. Attendance at meetings of technical, professional, or scientific organizations

(a) The Secretary of the Navy may authorize—

- (1) members of the naval service on active duty;
- (2) civilian officers and employees of the Department of the Navy;
- (3) members of the Coast Guard when it is operating as a service in the Navy; and
- (4) members of the National Oceanic and Atmospheric Administration serving with the Navy;

to attend meetings of technical, professional, scientific, and similar organizations, if the Secretary believes that their attendance will benefit the Department. The personnel may be reimbursed for their expenses at the rates prescribed by law.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 444; Pub. L. 89-718, Sec. 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, Sec. 513(24), Dec. 12, 1980, 94 Stat. 2932.)

§ 7212. Employment of outside architects and engineers

(a) Whenever the Secretary of the Navy believes that the existing facilities of the Department of the Navy are inadequate and he considers it advantageous to national defense, he may employ, by contract or otherwise, without advertising and without reference to sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5, architectural or engineering corporations, or firms, or individual architects or engineers, to produce designs, plans, drawings, and specifications for the accomplishment of any naval public works or utilities project or for the construction of any vessel or aircraft, or part thereof.

(b) The fee for any service under this section may not exceed 6 percent of the estimated cost, as determined by the Secretary, of the project to which the fee applies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 444; Pub. L. 89-718, Sec. 28, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 95-454, title VII, Sec. 703(c)(3), title VIII, Sec. 801(a)(3)(I), Oct. 13, 1978, 92 Stat. 1217, 1222; Pub. L. 96-513, title V, Sec. 513(25), Dec. 12, 1980, 94 Stat. 2932.)

[§ 7213. Repealed. Pub. L. 103-160, div. A, title VIII, Sec. 824(a)(3), Nov. 30, 1993, 107 Stat. 1707]

§ 7214. Apprehension of deserters and prisoners; operation of shore patrols

(a) The Secretary of the Navy may make such expenditures out of available appropriations as he considers necessary to—

- (1) apprehend and deliver deserters, stragglers, and prisoners; and
- (2) operate shore patrols.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

[§ 7215. Repealed. Pub. L. 90-377, Sec. 6(2), July 5, 1968, 82 Stat. 288]

§ 7216. Collection, preservation, and display of captured flags

The Secretary of the Navy shall collect all flags, standards, and colors taken by the Navy or the Marine Corps from enemies of the United States. These flags, standards, and colors shall be delivered to the President. Under his direction they shall be preserved and displayed in any public place he considers proper.

(Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

[§ 7217. Repealed. Pub. L. 101-510, div. A, title XIII, Sec. 1322(a)(15), Nov. 5, 1990, 104 Stat. 1672]

[§ 7218. Repealed. Pub. L. 89-529, Sec. 1(3), Aug. 11, 1966, 80 Stat. 339; Pub. L. 97-295, Sec. 1(46), Oct. 12, 1982, 96 Stat. 1298]

§ 7219. Leases of waterfront property from States or municipalities

In leasing waterfront property from a State or municipality, the Secretary of the Navy may provide in the lease, where it is required by state law or municipal charter, that, as part or all of the consideration, any improvements placed upon the property by the United States become the property of the lessor when the lease, including any renewal, ends.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

§ 7220. Gifts for welfare of enlisted members

The Secretary of the Navy may accept gifts for use in providing recreation, amusement, and contentment for enlisted members of the naval service. The fund “Ships’ Stores Profits, Navy” shall be credited with these gifts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

§ 7221. Acceptance and care of gifts to vessels

The Secretary of the Navy may accept and care for such gifts of silver, colors, books, or other articles of equipment or furniture as, in accordance with custom, are made to vessels of the Navy. Necessary expenses incident to the care of gifts that are accepted shall be paid from the appropriation for the maintenance and operation of vessels.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

§ 7222. Naval Historical Center Fund: references to Fund

Any reference in a law, regulation, document, paper, or other record of the United States to the Naval Historical Center Fund formerly maintained under this section shall be deemed to refer to the Department of the Navy General Gift Fund maintained under section 2601 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446; Pub. L. 104-201, div. A, title X, Sec. 1073(b)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2657; Pub. L. 106-398, Sec. 1 [[div. A], title IX, Sec. 942(d)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-242.)

§ 7223. Acquisition of land for radio stations and for other purposes

Land of the United States that is under the control of any department or agency of the United States may be mutually selected as a site for a naval radio station by the Secretary of the Navy and the head of the department or agency having control of the land. By direction of the President, land so selected may be transferred to and placed under the jurisdiction of the Department of the Navy for use as a naval radio station or for any other naval purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

§ 7224. Transportation on naval vessels during wartime

In time of war or during a national emergency declared by the President, such persons as the Secretary of the Navy authorizes by regulation may be transported and subsisted on naval vessels at Government expense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

§ 7225. Navy Reserve flag

The Secretary of the Navy shall prescribe a suitable flag to be known as the Navy Reserve flag. This flag may be flown by a sea-going merchant vessel if—

- (1) the vessel is documented under the laws of the United States;
- (2) the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war; and
- (3) the master or commanding officer and at least half of the other licensed officers of the vessel are members of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(T), (3)(D), Jan. 6, 2006, 119 Stat. 3233, 3234.)

§ 7226. Navy Reserve yacht pennant

The Secretary of the Navy shall prescribe a suitable pennant to be known as the Navy Reserve yacht pennant. This pennant may be flown by a yacht or similar vessel if—

- (1) the vessel is documented under the laws of the United States;
- (2) the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war; and
- (3) the captain or owner of the vessel is a member of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(U), (3)(E), Jan. 6, 2006, 119 Stat. 3233, 3234.)

§ 7227. Foreign naval vessels and aircraft: supplies and services

(a) The Secretary of the Navy, under such regulations as he prescribes, may authorize any United States naval vessel or activity to furnish any of the following supplies or services, when in the best interests of the United States, on a reimbursable basis without an advance of funds if similar supplies and services are furnished

on a like basis to naval vessels and military aircraft of the United States by the foreign country concerned:

(1) Routine port services in territorial waters of the United States or in waters under United States control, including pilotage, tugs, garbage removal, line-handling, and utilities, to naval vessels of foreign countries.

(2) Routine airport services, including landing and takeoff assistance, use of runways, parking and servicing, to military aircraft of foreign countries.

(3) Miscellaneous supplies, including fuel, provisions, spare parts, and general stores, but not including ammunition, to naval vessels and military aircraft of foreign countries.

(4) Overhauls, repairs, and alterations together with necessary equipment and its installation required in connection therewith, to naval vessels and military aircraft of foreign countries.

(b)(1) Routine port and airport services may be furnished under this section at no cost to the foreign country concerned where such services are provided by United States naval personnel and equipment without direct cost to the Navy.

(2) When furnishing routine port services under this section to naval vessels of a foreign country, the Secretary may furnish such services without reimbursement if such services are provided under an agreement that provides for the reciprocal furnishing by such country of routine port services to naval vessels of the United States without reimbursement. When furnishing routine airport services under this section to military aircraft of a foreign country, the Secretary may furnish such services without reimbursement if such services are provided under an agreement that provides for the reciprocal furnishing by such country of routine airport services to military aircraft of the United States without reimbursement.

(3) If routine port or airport services are furnished under this section by a working-capital fund activity of the Navy established under section 2208 of this title and such activity is not reimbursed directly for the costs incurred by the activity in furnishing those services by reason of paragraph (2), the working-capital fund activity shall be reimbursed for such costs out of operating funds currently available to the Navy.

(c) Payments for supplies and services furnished under this section may be credited to current appropriations so as to be available for the same purpose as the appropriation initially charged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447; Pub. L. 86-55, Sec. 1, June 23, 1959, 73 Stat. 89; Pub. L. 98-94, title XII, Sec. 1219(a), Sept. 24, 1983, 97 Stat. 691; Pub. L. 98-525, title XIV, Sec. 1405(49), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 102-190, div. A, title X, Sec. 1048, Dec. 5, 1991, 105 Stat. 1468.)

§ 7228. Merchant vessels: supplies

(a) The Secretary of the Navy, under such regulations as he prescribes, may sell to a merchant ship such fuel and other supplies as may be required to meet its necessities if the ship is unable—

(1) to procure the supplies from other sources at its present location; and

(2) to proceed to the nearest port where they may be obtained without endangering the safety of the ship, the health

and comfort of its personnel, or the safe condition of the property carried on it.

(b) Sales under this section shall be at such prices as the Secretary considers reasonable. Payment shall be made on a cash basis or on such other basis as will reasonably assure prompt payment. Amounts received from such a sale shall, unless otherwise directed by another provision of law, be credited to the current appropriation concerned and are available for the same purposes as that appropriation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

§ 7229. Purchase of fuel

In buying fuel, the Secretary of the Navy may, in any manner he considers proper, buy the kind of fuel that is best adapted to the purpose for which it is to be used.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

[§ 7230. Repealed. Pub. L. 103–160, div. A, title VIII, Sec. 824(a)(4), Nov. 30, 1993, 107 Stat. 1707]

§ 7231. Accounting for expenditures for obtaining information

When the Secretary of the Navy decides that an expenditure by the Department of the Navy from an appropriation for obtaining information from anywhere in the world may be made public, the expenditure shall be accounted for specifically. When the Secretary decides that an expenditure should not be made public, the Secretary shall make a certificate on the amount of the expenditure. The certificate is a sufficient voucher for the amount stated to have been spent.

(Added Pub. L. 97–258, Sec. 2(b)(11)(B), Sept. 13, 1982, 96 Stat. 1057.)

§ 7233.¹ Auxiliary vessels: extended lease authority

(a) AUTHORIZED CONTRACTS.—Subject to subsection (b), the Secretary of the Navy may enter into contracts with private United States shipyards for the construction of new surface vessels to be acquired on a long-term lease basis by the United States from the shipyard or other private person for any of the following:

- (1) The combat logistics force of the Navy.
- (2) The strategic sealift force of the Navy.
- (3) Other auxiliary support vessels for the Department of Defense.

(b) CONTRACTS REQUIRED TO BE AUTHORIZED BY LAW.—A contract may be entered into under subsection (a) with respect to a specific vessel only if the Secretary is specifically authorized by law to enter into such a contract with respect to that vessel. As part of a request to Congress for enactment of any such authorization by law, the Secretary of the Navy shall provide to Congress the Secretary's findings under subsection (g).

(c) TERM OF CONTRACT.—In this section, the term “long-term lease” means a lease, bareboat charter, or conditional sale agree-

¹So in original. No section 7232 has been enacted.

ment with respect to a vessel the term of which (including any option period) is for a period of 20 years or more.

(d) **OPTION TO BUY.**—A contract entered into under subsection (a) may include options for the United States to purchase one or more of the vessels covered by the contract at any time during, or at the end of, the contract period (including any option period) upon payment of an amount equal to the lesser of (1) the unamortized portion of the cost of the vessel plus amounts incurred in connection with the termination of the financing arrangements associated with the vessel, or (2) the fair market value of the vessel.

(e) **DOMESTIC CONSTRUCTION.**—The Secretary shall require in any contract entered into under this section that each vessel to which the contract applies—

(1) shall have been constructed in a shipyard within the United States; and

(2) upon delivery, shall be documented under the laws of the United States.

(f) **VESSEL OPERATION.**—(1) The Secretary may operate a vessel held by the Secretary under a long-term lease under this section through a contract with a United States corporation with experience in the operation of vessels for the United States. Any such contract shall be for a term as determined by the Secretary.

(2) The Secretary may provide a crew for any such vessel using civil service mariners only after an evaluation taking into account—

(A) the fully burdened cost of a civil service crew over the expected useful life of the vessel;

(B) the effect on the private sector manpower pool; and

(C) the operational requirements of the Department of the Navy.

(g) **CONTINGENT WAIVER OF OTHER PROVISIONS OF LAW.**—(1) The Secretary may waive the applicability of subsections (e)(2) and (f) of section 2401 of this title to a contract authorized by law as provided in subsection (b) if the Secretary makes the following findings with respect to that contract:

(A) The need for the vessels or services to be provided under the contract is expected to remain substantially unchanged during the contemplated contract or option period.

(B) There is a reasonable expectation that throughout the contemplated contract or option period the Secretary of the Navy (or, if the contract is for services to be provided to, and funded by, another military department, the Secretary of that military department) will request funding for the contract at the level required to avoid contract cancellation.

(C) The timeliness of consideration of the contract by Congress is such that such a waiver is in the interest of the United States.

(2) The Secretary shall submit a notice of any waiver under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(h) SOURCE OF FUNDS FOR TERMINATION LIABILITY.—If a contract entered into under this section is terminated, the costs of such termination may be paid from—

- (1) amounts originally made available for performance of the contract;
- (2) amounts currently available for operation and maintenance of the type of vessels or services concerned and not otherwise obligated; or
- (3) funds appropriated for those costs.

(Added Pub. L. 106–65, div. A, title X, Sec. 1014(a)(1), Oct. 5, 1999, 113 Stat. 741.)

§ 7234. Submarine safety programs: participation of NATO naval personnel

(a) ACCEPTANCE OF ASSIGNMENT OF FOREIGN NAVAL PERSONNEL.—In order to facilitate the development, standardization, and interoperability of submarine vessel safety and rescue systems and procedures, the Secretary of the Navy may conduct a program under which members of the naval service of any of the member nations of the North Atlantic Treaty Organization may be assigned to United States commands to work on such systems and procedures.

(b) RECIPROCITY NOT REQUIRED.—The authority under subsection (a) is not an exchange program. Reciprocal assignments of members of the Navy to the naval service of a foreign country is not a condition for the exercise of such authority.

(c) COSTS FOR FOREIGN PERSONNEL.—(1) The United States may not pay the following costs for a member of a foreign naval service sent to the United States under the program authorized by this section:

- (A) Salary.
- (B) Per diem.
- (C) Cost of living.
- (D) Travel costs.
- (E) Cost of language or other training.
- (F) Other costs.

(2) Paragraph (1) does not apply to the following costs, which may be paid by the United States:

- (A) The cost of temporary duty directed by the Secretary of the Navy or an officer of the Navy authorized to do so.
- (B) The cost of training programs conducted to familiarize, orient, or certify members of foreign naval services regarding unique aspects of their assignments.
- (C) Costs incident to the use of the facilities of the Navy in the performance of assigned duties.

(d) RELATIONSHIP TO OTHER AUTHORITY.—The provisions of this section shall apply in the exercise of any authority of the Secretary of the Navy to enter into an agreement with the government of a foreign country, subject to the concurrence of the Secretary of State, to provide for the assignment of members of the naval service of the foreign country to a Navy submarine safety program. The Secretary of the Navy may prescribe regulations for the application of this section in the exercise of such authority.

(e) TERMINATION OF AUTHORITY.—The Secretary of the Navy may not accept the assignment of a member of the naval service of a foreign country under this section after September 30, 2008.

(Added Pub. L. 108-375, div. A, title XII, Sec. 1223(a), Oct. 28, 2004, 118 Stat. 2089)

CHAPTER 633—NAVAL VESSELS

- Sec.
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7317. Status of Government rights in the designs of vessels, boats, and craft, and components thereof.

§ 7291. Classification

The President may establish, and from time to time modify, as the needs of the service require, a classification of naval vessels.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

§ 7292. Naming

(a) Not more than one vessel of the Navy may have the same name.

(b) Each battleship shall be named for a State. However, if the names of all the States are in use, a battleship may be named for a city, place, or person.

(c) The Secretary of the Navy may change the name of any vessel bought for the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

§ 7293. Number in service in time of peace

In time of peace, the President may keep in service such vessels of the Navy as are required and keep the rest in reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

§ 7294. Suspension of construction in case of treaty

In case of a treaty for the limitation of naval armament to which the United States is a signatory, the President may suspend so much of the authorized naval construction as is necessary to bring the naval vessels of the United States within the limitations agreed upon. Such a suspension does not apply to vessels under construction at the time the suspension is made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

§ 7295. Vessels: under-age

Vessels of the following types are considered under-age for the period after completion indicated below:

- (1) Battleships—26 years.
- (2) Aircraft carriers—20 years.
- (3) Cruisers—20 years.
- (4) Submarines—13 years.
- (5) Other combatant surface vessels—16 years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

§ 7296. Combatant surface vessels: notice before reduction in number; preservation of surge capability

(a) NOTICE-AND-WAIT BEFORE REDUCTIONS.—(1) A reduction described in paragraph (2) in the number of combatant surface vessels may only be carried out after—

(A) the Secretary of the Navy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the proposed reduction; and

(B) a period of 90 days has expired after the date on which such notification is received.

(2) A reduction described in this paragraph in the number of combatant surface vessels is a reduction—

(A) from 116, or a number greater than 116, to a number less than 116; or

(B) from a number less than 116 to a lesser number.

(b) CONTENT OF NOTIFICATION.—Any notification under subsection (a)(1)(A) shall include the following:

(1) The schedule for the proposed reduction.

(2) The number of vessels that are to comprise the force of combatant surface vessels after the reduction.

(3) A risk assessment for a force of combatant surface vessels of the number specified under paragraph (2) that is based on the same assumptions as were applied in the QDR 2001 combatant surface force risk assessment.

(c) DEFINITIONS.—In this section:

(1) The term “combatant surface vessels” means cruisers, destroyers, and frigates that are in active service in the Navy or in active reserve service in the Navy.

(2) The term “QDR 2001 combatant surface force risk assessment” means the risk assessment associated with a force of combatant surface vessels numbering 116 that is set forth in the report on the quadrennial defense review submitted to Congress on September 30, 2001, under section 118 of this title.

(Added Pub. L. 107–314, div. A, title X, Sec. 1021(b)(1), Dec. 2, 2002, 116 Stat. 2638; amended Pub. L. 108–136, div. A, title X, Sec. 1011, Nov. 24, 2003, 117 Stat. 1589.)

§ 7297. Changing category or type: limitations

Unless they have been specifically made available for the purpose, funds appropriated for the repair or alteration of naval vessels may not be used to make repairs or alterations of any vessel that would change its category or type.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

[§ 7298. Repealed. Pub. L. 103–160, div. A, title VIII, Sec. 824(a)(6), Nov. 30, 1993, 107 Stat. 1707]

§ 7299. Contracts: applicability of chapter 65 of title 41

Each contract for the construction, alteration, furnishing, or equipping of a naval vessel is subject to chapter 65 of title 41 unless the President determines that this requirement is not in the interest of national defense.

(Added Pub. L. 104–106, div. A, title VIII, Sec. 815(a), Feb. 10, 1996, 110 Stat. 396; amended Pub. L. 111–350, Sec. 5(b)(52), Jan. 4, 2011, 124 Stat. 3846.)

§ 7299a. Construction of combatant and escort vessels and assignment of vessel projects

(a) The assignment of naval vessel conversion, alteration, and repair projects shall be based on economic and military considerations and may not be restricted by a requirement that certain parts of naval shipwork be assigned to a particular type of shipyard or geographical area or by a similar requirement.

(b) In evaluating bids or proposals for a contract for the overhaul, repair, or maintenance of a naval vessel, the Secretary of the Navy shall, in determining the cost or price of work to be performed in an area outside the area of the homeport of the vessel, consider foreseeable costs of moving the vessel and its crew from the homeport to the outside area and from the outside area back to the homeport at the completion of the contract.

(c)(1) Before issuing a solicitation for a contract for short-term work for the overhaul, repair, or maintenance of a naval vessel, the Secretary of the Navy shall determine if there is adequate competition available among firms able to perform the work at the homeport of the vessel. If the Secretary determines that there is adequate competition among such firms, the Secretary—

(A) shall issue such a solicitation only to firms able to perform the work at the homeport of the vessel; and

(B) may not award such contract to a firm other than a firm that will perform the work at the homeport of the vessel.

(2) Paragraph (1) applies notwithstanding subsection (a) or any other provision of law.

(3) Paragraph (1) does not apply in the case of voyage repairs.

(4) In this subsection, the term “short-term work” means work that will be for a period of six months or less.

(Added Pub. L. 97–295, Sec. 1(48)(A), Oct. 12, 1982, 96 Stat. 1298; amended Pub. L. 99–661, div. A, title XII, Sec. 1201(a), Nov. 14, 1986, 100 Stat. 3967; Pub. L. 100–180, div. A, title XI, Sec. 1101, Dec. 4, 1987, 101 Stat. 1145; Pub. L. 101–510, div. A, title XIV, Sec. 1422, Nov. 5, 1990, 104 Stat. 1682; Pub. L. 102–484, div. A, title X, Sec. 1016, Oct. 23, 1992, 106 Stat. 2485.)

§ 7300. Contracts for nuclear ships: sales of naval shipyard articles and services to private shipyards

The conditions set forth in section 2208(j)(1)(B) of this title and subsections (a)(1) and (c)(1)(A) of section 2563 of this title shall not apply to a sale by a naval shipyard of articles or services to a private shipyard that is made at the request of the private shipyard in order to facilitate the private shipyard’s fulfillment of a Department of Defense contract with respect to a nuclear ship. This section does not authorize a naval shipyard to construct a nuclear ship for the private shipyard, to perform a majority of the work called for in a contract with a private entity, or to provide articles or services not requested by the private shipyard.

(Added Pub. L. 106–65, div. A, title X, Sec. 1016(a), Oct. 5, 1999, 113 Stat. 744; amended Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1033(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–261.)

[§ 7301. Repealed. Pub. L. 103–160, div. A, title VIII, Sec. 824(a)(7), Nov. 30, 1993, 107 Stat. 1707]

[§ 7302. Repealed. Pub. L. 103–355, title III, Sec. 3024(a), Oct. 13, 1994, 108 Stat. 3334]

§ 7303. Model Basin; investigation of hull designs

(a) An office or agency in the Department of the Navy designated by the Secretary of the Navy shall conduct at the David W. Taylor Model Basin, Carderock, Maryland, investigations to determine the most suitable shapes and forms for United States vessels and aircraft and investigations of other problems of their design.

(b) The Secretary of the Navy may authorize experiments to be made at the Model Basin for private persons. The costs of experiments made for private persons shall be paid by those persons under regulations prescribed by the Secretary. The results of private experiments are confidential and may not be divulged without the consent of the persons for whom they are made. However, the data obtained from such experiments may be used by the Secretary for governmental purposes, subject to the patent laws of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 451; Pub. L. 89–718, Sec. 41, Nov. 2, 1966, 80 Stat. 1120.)

§ 7304. Examination of vessels; striking of vessels from Naval Vessel Register

(a) **BOARDS OF OFFICERS TO EXAMINE NAVAL VESSELS.**—The Secretary of the Navy shall designate boards of naval officers to ex-

amine naval vessels, including unfinished vessels, for the purpose of making a recommendation to the Secretary as to which vessels, if any, should be stricken from the Naval Vessel Register. Each vessel shall be examined at least once every three years if practicable.

(b) ACTIONS BY BOARD.—A board designated under subsection (a) shall submit to the Secretary in writing its recommendations as to which vessels, if any, among those it examined should be stricken from the Naval Vessel Register.

(c) ACTION BY SECRETARY.—If the Secretary concurs with a recommendation by a board that a vessel should be stricken from the Naval Vessel Register, the Secretary shall strike the name of that vessel from the Naval Vessel Register.

(Added Pub. L. 103-160, div. A, title VIII, Sec. 824(b), Nov. 30, 1993, 107 Stat. 1708.)

§ 7305. Vessels stricken from Naval Vessel Register: sale

(a) APPRAISAL OF VESSELS STRICKEN FROM NAVAL VESSEL REGISTER.—The Secretary of the Navy shall appraise each vessel stricken from the Naval Vessel Register under section 7304 of this title.

(b) AUTHORITY TO SELL VESSEL.—If the Secretary considers that the sale of the vessel is in the national interest, the Secretary may sell the vessel. Any such sale shall be in accordance with regulations prescribed by the Secretary for the purposes of this section.

(c) PROCEDURES FOR SALE.—(1) A vessel stricken from the Naval Vessel Register and not subject to disposal under any other law may be sold under this section.

(2) In such a case, the Secretary may—

(A) sell the vessel to the highest acceptable bidder, regardless of the appraised value of the vessel, after publicly advertising the sale of the vessel for a period of not less than 30 days; or

(B) subject to paragraph (3), sell the vessel by competitive negotiation to the acceptable offeror who submits the offer that is most advantageous to the United States (taking into account price and such other factors as the Secretary determines appropriate).

(3) Before entering into negotiations to sell a vessel under paragraph (2)(B), the Secretary shall publish notice of the intention to do so in the Commerce Business Daily sufficiently in advance of initiating the negotiations that all interested parties are given a reasonable opportunity to prepare and submit proposals. The Secretary shall afford an opportunity to participate in the negotiations to all acceptable offerors submitting proposals that the Secretary considers as having the potential to be the most advantageous to the United States (taking into account price and such other factors as the Secretary determines appropriate).

(d) APPLICABILITY.—This section does not apply to a vessel the disposal of which is authorized by subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, if it is to be disposed of under those provisions.

(Added Pub. L. 103-160, div. A, title VIII, Sec. 824(b), Nov. 30, 1993, 107 Stat. 1708; amended Pub. L. 105-85, div. A, title X, Sec. 1021, Nov. 18, 1997, 111 Stat. 1875; Pub. L. 107-217, Sec.

3(b)(28), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–136, div. A, title X, Sec. 1045(a)(7), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 111–350, Sec. 5(b)(53), Jan. 4, 2011, 124 Stat. 3847.)

§ 7305a. Vessels stricken from Naval Vessel Register: contracts for dismantling on net-cost basis

(a) **AUTHORITY FOR NET-COST BASIS CONTRACTS.**—When the Secretary of the Navy awards a contract for the dismantling of a vessel stricken from the Naval Vessel Register, the Secretary may award the contract on a net-cost basis.

(b) **RETENTION BY CONTRACTOR OF PROCEEDS OF SALE OF SCRAP AND REUSABLE ITEMS.**—When the Secretary awards a contract on a net-cost basis under subsection (a), the Secretary shall provide in the contract that the contractor may retain the proceeds from the sale of scrap and reusable items removed from the vessel dismantled under the contract.

(c) **DEFINITIONS.**—In this section:

(1) The term “net-cost basis”, with respect to a contract for the dismantling of a vessel, means that the amount to be paid to the contractor under the contract for dismantling and for removal and disposal of hazardous waste material is discounted by the offeror’s estimate of the value of scrap and reusable items that the contractor will remove from the vessel during performance of the contract.

(2) The term “scrap” means personal property that has no value except for its basic material content.

(3) The term “reusable item” means a demilitarized component or a removable portion of a vessel or equipment that the Secretary of the Navy has identified as excess to the needs of the Navy but which has potential resale value on the open market.

(Added Pub. L. 108–375, div. A, title X, Sec. 1011(a), Oct. 28, 2004, 118 Stat. 2038.)

§ 7306. Vessels stricken from Naval Vessel Register; captured vessels: transfer by gift or otherwise

(a) **AUTHORITY TO MAKE TRANSFER.**—Subject to section 113 of title 40, the Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register, or any captured vessel, to—

(1) any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof;

(2) the District of Columbia; or

(3) any not-for-profit or nonprofit entity.

(b) **VESSEL TO BE MAINTAINED IN CONDITION SATISFACTORY TO SECRETARY.**—An agreement for the transfer of a vessel under subsection (a) shall include a requirement that the transferee will maintain the vessel in a condition satisfactory to the Secretary.

(c) **TRANSFERS TO BE AT NO COST TO UNITED STATES.**—Any transfer of a vessel under this section shall be made at no cost to the United States.

(d) **CONGRESSIONAL NOTICE-AND-WAIT PERIOD.**—(1) A transfer under this section may not take effect until—

(A) the Secretary submits to Congress notice of the proposed transfer; and

(B) 30 days of a session of Congress have expired following the date on which the notice is sent to Congress.

(2) For purposes of paragraph (1)(B)—

(A) the period of a session of Congress is broken only by an adjournment of Congress sine die at the end of the final session of a Congress; and

(B) any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain, or because of an adjournment sine die at the end of the first session of a Congress, shall be excluded in the computation of such 30-day period.

(Added Pub. L. 103–160, div. A, title VIII, Sec. 824(b), Nov. 30, 1993, 107 Stat. 1709; amended Pub. L. 106–65, div. A, title X, Sec. 1011, Oct. 5, 1999, 113 Stat. 739; Pub. L. 107–217, Sec. 3(b)(29), Aug. 21, 2002, 116 Stat. 1297.)

§ 7306a. Vessels stricken from Naval Vessel Register: use for experimental purposes

(a) **AUTHORITY.**—The Secretary of the Navy may use for experimental purposes any vessel stricken from the Naval Vessel Register.

(b) **STRIPPING AND ENVIRONMENTAL REMEDIATION OF VESSEL.**—

(1) Before using a vessel for an experimental purpose pursuant to subsection (a), the Secretary shall carry out such stripping of the vessel as is practicable and such environmental remediation of the vessel as is required for the use of the vessel for experimental purposes.

(2) Material and equipment stripped from a vessel under paragraph (1) may be sold by the contractor or by a sales agent approved by the Secretary.

(3) Amounts received as proceeds from the stripping of a vessel pursuant to this subsection shall be credited to appropriations available for the procurement of services needed for such stripping and for environmental remediation required for the use of the vessel for experimental purposes. Amounts received in excess of amounts needed for reimbursement of those costs shall be deposited into the account from which the stripping and environmental remediation expenses were incurred and shall be available for stripping and environmental remediation of other vessels to be used for experimental purposes.

(c) **USE FOR EXPERIMENTAL PURPOSES DEFINED.**—In this section, the term “use for experimental purposes”, with respect to a vessel, includes use of the vessel in a Navy sink exercise or for target purposes.

(Added Pub. L. 103–160, div. A, title VIII, Sec. 824(b), Nov. 30, 1993, 107 Stat. 1709; amended Pub. L. 108–136, div. A, title X, Sec. 1012, Nov. 24, 2003, 117 Stat. 1589.)

§ 7306b. Vessels stricken from Naval Vessel Register: transfer by gift or otherwise for use as artificial reefs

(a) **AUTHORITY TO MAKE TRANSFER.**—The Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register to any State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, for use as provided in subsection (b).

(b) **VESSEL TO BE USED AS ARTIFICIAL REEF.**—An agreement for the transfer of a vessel under subsection (a) shall require that—

(1) the recipient use, site, construct, monitor, and manage the vessel only as an artificial reef in accordance with the requirements of the National Fishing Enhancement Act of 1984 (33 U.S.C. 2101 et seq.), except that the recipient may use the artificial reef to enhance diving opportunities if that use does not have an adverse effect on fishery resources (as that term is defined in section 3(14) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(14))); and

(2) the recipient obtain, and bear all responsibility for complying with, applicable Federal, State, interstate, and local permits for using, siting, constructing, monitoring, and managing the vessel as an artificial reef.

(c) PREPARATION OF VESSEL FOR USE AS ARTIFICIAL REEF.—The Secretary shall ensure that the preparation of a vessel transferred under subsection (a) for use as an artificial reef is conducted in accordance with—

(1) the environmental best management practices developed pursuant to section 3504(b) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 16 U.S.C. 1220 note); and

(2) any applicable environmental laws.

(d) COST SHARING.—The Secretary may share with the recipient of a vessel transferred under subsection (a) any costs associated with transferring the vessel under that subsection, including costs of the preparation of the vessel under subsection (c).

(e) NO LIMITATION ON NUMBER OF VESSELS TRANSFERABLE TO PARTICULAR RECIPIENT.—A State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, may be the recipient of more than one vessel transferred under subsection (a).

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a transfer authorized by subsection (a) as the Secretary considers appropriate.

(g) CONSTRUCTION.—Nothing in this section shall be construed to establish a preference for the use as artificial reefs of vessels stricken from the Naval Vessel Register in lieu of other authorized uses of such vessels, including the domestic scrapping of such vessels, or other disposals of such vessels, under this chapter or other applicable authority.

(Added Pub. L. 108-136, div. A, title X, Sec. 1013(a), Nov. 24, 2003, 117 Stat. 1590; amended Pub. L. 109-364, div. A, title X, Sec. 1071(a)(36), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 111-84, div. A, title X, Sec. 1073(a)(31), Oct. 28, 2009, 123 Stat. 2474.)

§ 7307. Disposals to foreign nations

(a) LARGER OR NEWER VESSELS.—A naval vessel that is in excess of 3,000 tons or that is less than 20 years of age may not be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) unless the disposal of that vessel, or of a vessel of the class of that vessel, is authorized by law enacted after August 5, 1974. A lease or loan of such a vessel under such a law may be made only in accordance with the provisions of chapter 6 of the Arms Export Control Act (22 U.S.C. 2796 et seq.) or chapter 2 of part II of the Foreign Assistance Act of 1961 (22

U.S.C. 2311 et seq.). In the case of an authorization by law for the disposal of such a vessel that names a specific vessel as being authorized for such disposal, the Secretary of Defense may substitute another vessel of the same class, if the vessel substituted has virtually identical capabilities as the named vessel. In the case of an authorization by law for the disposal of vessels of a specified class, the Secretary may dispose of vessels of that class pursuant to that authorization only in the number of such vessels specified in that law as being authorized for disposal.

(b) OTHER VESSELS.—(1) A naval vessel not subject to subsection (a) may be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) in accordance with applicable provisions of law, but only after—

(A) the Secretary of the Navy notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed disposition; and

(B) 30 days of continuous session of Congress have expired following the date on which such notice is sent to those committees.

(2) For purposes of paragraph (1)(B), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 30-day period.

(Added Pub. L. 103–160, div. A, title VIII, Sec. 824(b), Nov. 30, 1993, 107 Stat. 1709; amended Pub. L. 104–106, div. A, title XV, Sec. 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 109–364, div. A, title X, Sec. 1013, Oct. 17, 2006, 120 Stat. 2376.)

§ 7308. Chief of Naval Operations: certification required for disposal of combatant vessels

Notwithstanding any other provision of law, no combatant vessel of the Navy may be sold, transferred, or otherwise disposed of unless the Chief of Naval Operations certifies that it is not essential to the defense of the United States.

(Added Pub. L. 103–160, div. A, title VIII, Sec. 824(b), Nov. 30, 1993, 107 Stat. 1710.)

§ 7309. Construction of vessels in foreign shipyards: prohibition

(a) PROHIBITION.—Except as provided in subsection (b), no vessel to be constructed for any of the armed forces, and no major component of the hull or superstructure of any such vessel, may be constructed in a foreign shipyard.

(b) PRESIDENTIAL WAIVER FOR NATIONAL SECURITY INTEREST.—

(1) The President may authorize exceptions to the prohibition in subsection (a) when the President determines that it is in the national security interest of the United States to do so.

(2) The President shall transmit notice to Congress of any such determination, and no contract may be made pursuant to the exception authorized until the end of the 30-day period beginning on the date on which the notice of the determination is received by Congress.

(c) EXCEPTION FOR INFLATABLE BOATS.—An inflatable boat or a rigid inflatable boat, as defined by the Secretary of the Navy, is not a vessel for the purpose of the restriction in subsection (a).

(Added Pub. L. 103–160, div. A, title VIII, Sec. 824(b), Nov. 30, 1993, 107 Stat. 1710.)

§ 7310. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions

(a) VESSELS WITH HOMEPORT IN UNITED STATES OR GUAM.—A naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) the homeport of which is in the United States or Guam may not be overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs.

(b) VESSEL CHANGING HOMEPORTS.—(1) In the case of a naval vessel the homeport of which is not in the United States (or a territory of the United States), the Secretary of the Navy may not during the 15-month period preceding the planned reassignment of the vessel to a homeport in the United States (or a territory of the United States) begin any work for the overhaul, repair, or maintenance of the vessel that is scheduled to be for a period of more than six months.

(2) In the case of a naval vessel the homeport of which is in the United States (or a territory of the United States), the Secretary of the Navy shall during the 15-month period preceding the planned reassignment of the vessel to a homeport not in the United States (or a territory of the United States) perform in the United States (or a territory of the United States) any work for the overhaul, repair, or maintenance of the vessel that is scheduled—

(A) to begin during the 15-month period; and

(B) to be for a period of more than six months.

(c) REPORT.—(1) The Secretary of the Navy shall submit to Congress each year, at the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a report listing all repairs and maintenance performed on any covered naval vessel that has undergone work for the repair of the vessel in any shipyard outside the United States or Guam (in this section referred to as a "foreign shipyard") during the fiscal year preceding the fiscal year in which the report is submitted.

(2) The report shall include the percentage of the annual ship repair budget of the Navy that was spent on repair of covered naval vessels in foreign shipyards during the fiscal year covered by the report.

(3) The report also shall include the following with respect to each covered naval vessel:

(A) The justification under law for the repair in a foreign shipyard.

(B) The name and class of vessel repaired.

(C) The category of repair and whether the repair qualified as voyage repair as defined in Commander Military Sealift Command Instruction 4700.15C (September 13, 2007) or Joint Fleet Maintenance Manual (Commander Fleet Forces Command Instruction 4790.3 Revision A, Change 7), Volume III. Scheduled availabilities are to be considered as a composite

and reported as a single entity without individual repair and maintenance items listed separately.

(D) The shipyard where the repair work was carried out.

(E) The number of days the vessel was in port for repair.

(F) The cost of the repair and the amount (if any) that the cost of the repair was less than or greater than the cost of the repair provided for in the contract.

(G) The schedule for repair, the amount of work accomplished (stated in terms of work days), whether the repair was accomplished on schedule, and, if not so accomplished, the reason for the schedule over-run.

(H) The homeport or location of the vessel prior to its voyage for repair.

(I) Whether the repair was performed under a contract awarded through the use of competitive procedures or procedures other than competitive procedures.

(4) In this subsection, the term “covered naval vessel” means any of the following:

(A) A naval vessel.

(B) Any other vessel under the jurisdiction of the Secretary of the Navy.

(Added and amended Pub. L. 103–160, div. A, title III, Sec. 367, title VIII, Sec. 824(b), Nov. 30, 1993, 107 Stat. 1632, 1710; Pub. L. 104–106, div. A, title X, Sec. 1017, Feb. 10, 1996, 110 Stat. 425; Pub. L. 109–364, div. A, title X, Sec. 1014, Oct. 17, 2006, 120 Stat. 2376; Pub. L. 110–417, [div. A], title X, Sec. 1012, Oct. 14, 2008, 122 Stat. 4584.)

§ 7311. Repair or maintenance of naval vessels: handling of hazardous waste

(a) **CONTRACTUAL PROVISIONS.**—The Secretary of the Navy shall ensure that each contract entered into for work on a naval vessel (other than new construction) includes the following provisions:

(1) **IDENTIFICATION OF HAZARDOUS WASTES.**—A provision in which the Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste.

(2) **COMPENSATION.**—A provision specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

(3) **STATEMENT OF WORK.**—A provision specifying the responsibilities of the Navy and of the contractor, respectively, for the removal (including the handling, storage, transportation, and disposal) of hazardous wastes.

(4) **ACCOUNTABILITY FOR HAZARDOUS WASTES.**—(A) A provision specifying the following:

(i) In any case in which the Navy is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices,

and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the Navy pursuant to applicable law.

(ii) In any case in which the contractor is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the contractor pursuant to applicable law.

(iii) In any case in which both the Navy and the contractor are generators of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear both a generator identification number issued to the Navy and a generator identification number issued to the contractor pursuant to applicable law.

(B) A determination under this paragraph of whether the Navy is a generator, a contractor is a generator, or both the Navy and a contractor are generators, shall be made in the same manner provided under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) and regulations promulgated under that subtitle.

(b) RENEGOTIATION OF CONTRACT.—The Secretary of the Navy shall renegotiate a contract described in subsection (a) if—

(1) the contractor, during the performance of work under the contract, discovers hazardous wastes different in type or amount from those identified in the contract; and

(2) those hazardous wastes originated on, or resulted from material furnished by the Government for, the naval vessel on which the work is being performed.

(c) REMOVAL OF WASTES.—The Secretary of the Navy shall remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for performance of a contract, to the extent such removal is feasible.

(d) RELATIONSHIP TO SOLID WASTE DISPOSAL ACT.—Nothing in this section shall be construed as altering or otherwise affecting those provisions of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that relate to generators of hazardous waste. For purposes of this section, any term used in this section for which a definition is provided by the Solid Waste Disposal Act (or regulations promulgated pursuant to such Act) has the meaning provided by that Act or regulations.

(Added Pub. L. 99-661, div. A, title XII, Sec. 1202(a), Nov. 14, 1986, 100 Stat. 3967; amended Pub. L. 101-189, div. A, title XVI, Sec. 1611(a), Nov. 29, 1989, 103 Stat. 1599.)

§ 7312. Service craft stricken from Naval Vessel Register; obsolete boats: use of proceeds from exchange or sale

(a) EXCHANGE OR SALE OF SIMILAR ITEMS.—When the Secretary of the Navy sells an obsolete service craft or an obsolete boat, or exchanges such a craft or boat in a transaction for which a similar craft or boat is acquired, the Secretary may retain the proceeds of the sale or the exchange allowance from the exchange, as the case may be, and apply the proceeds of sale or the exchange allowance for any of the following purposes:

(1) For payment, in whole or in part, for a similar service craft or boat acquired as a replacement, as authorized by section 503 of title 40.

(2) For reimbursement, to the extent practicable, of the appropriate accounts of the Navy for the full costs of preparation of such obsolete craft or boat for such sale or exchange.

(3) For deposit to the special account established under subsection (b), to be available in accordance with that subsection.

(b) SPECIAL ACCOUNT.—Amounts retained under subsection (a) that are not applied as provided in paragraph (1) or (2) of that subsection shall be deposited into a special account. Amounts in the account shall be available under subsection (c) without regard to fiscal year limitation. Amounts in the account that the Secretary of the Navy determines are not needed for the purpose stated in subsection (c) shall be transferred at least annually to the General Fund of the Treasury.

(c) COSTS OF PREPARATION OF OBSOLETE SERVICE CRAFT AND BOATS FOR FUTURE SALE OR EXCHANGE.—The Secretary may use amounts in the account under subsection (b) for payment, in whole or in part, for the full costs of preparation of obsolete service craft and obsolete boats for future sale or exchange.

(d) COSTS OF PREPARATION FOR SALE OR EXCHANGE.—In this section, the term “full costs of preparation” means the full costs (direct and indirect) incurred by the Navy in preparing an obsolete service craft or an obsolete boat for exchange or sale, including the cost of the following:

(1) Towing.

(2) Storage.

(3) Defueling.

(4) Removal and disposal of hazardous wastes.

(5) Environmental surveys to determine the presence of regulated materials containing polychlorinated biphenyl (PCB) and, if such materials are found, the removal and disposal of such materials.

(6) Other costs related to such preparation.

(e) OBSOLETE SERVICE CRAFT.—For purposes of this section, an obsolete service craft is a service craft that has been stricken from the Naval Vessel Register.

(f) INAPPLICABILITY OF ADVERTISING REQUIREMENT.—Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply to sales of service craft and boats described in subsection (a).

(g) REGULATIONS.—The Secretary of the Navy shall prescribe regulations for the purposes of this section.

(Added Pub. L. 108–375, div. A, title X, Sec. 1012(a)(1), Oct. 28, 2004, 118 Stat. 2039.)

§ 7313. Ship overhaul work: availability of appropriations for unusual cost overruns and for changes in scope of work

(a) UNUSUAL COST OVERRUNS.—(1) Appropriations available to the Department of Defense for a fiscal year may be used for payment of unusual cost overruns incident to ship overhaul, maintenance, and repair for a vessel inducted into an industrial-fund activity or contracted for during a prior fiscal year.

(2) The Secretary of Defense shall notify Congress promptly before an obligation is incurred for any payment under paragraph (1).

(b) CHANGES IN SCOPE OF WORK.—An appropriation available to the Department of Defense for a fiscal year may be used after the otherwise-applicable expiration of the availability for obligation of that appropriation—

(1) for payments to an industrial-fund activity for amounts required because of changes in the scope of work for ship overhaul, maintenance, and repair, in the case of work inducted into the industrial-fund activity during the fiscal year; and

(2) for payments under a contract for amounts required because of changes in the scope of work, in the case of a contract entered into during the fiscal year for ship overhaul, maintenance, and repair.

(Added Pub. L. 100–370, Sec. 1(n)(1), July 19, 1988, 102 Stat. 850.)

§ 7314. Overhaul of naval vessels: competition between public and private shipyards

The Secretary of the Navy should ensure, in any case in which the Secretary awards a project for repair, alteration, overhaul, or conversion of a naval vessel following competition between public and private shipyards, that each of the following criteria is met:

(1) The bid of any public shipyard for the award includes—

(A) the full costs to the United States associated with future retirement benefits of civilian employees of that shipyard consistent with computation methodology established by Office of Management and Budget Circular A–76; and

(B) in a case in which equal access to the Navy supply system is not allowed to public and private shipyards, a pro rata share of the costs of the Navy supply system.

(2) Costs applicable to oversight of the contract by the appropriate Navy supervisor of shipbuilding, conversion, and repair are added to the bid of any private shipyard for the purpose of comparability analysis.

(3) The award is made using the results of the comparability analysis.

(Added Pub. L. 100–456, div. A, title XII, Sec. 1225(a)(1), Sept. 29, 1988, 102 Stat. 2054, Sec. 7313; renumbered Sec. 7314, Pub. L. 101–189, div. A, title XVI, Sec. 1622(a), Nov. 29, 1989, 103 Stat. 1604.)

§ 7315. Preservation of Navy shipbuilding capability

(a) SHIPBUILDING CAPABILITY PRESERVATION AGREEMENTS.—The Secretary of the Navy may enter into an agreement, to be known as a “shipbuilding capability preservation agreement”, with a shipbuilder under which the cost reimbursement rules described in subsection (b) shall be applied to the shipbuilder under a Navy contract for the construction of a ship. Such an agreement may be entered into in any case in which the Secretary determines that the application of such cost reimbursement rules would facilitate the achievement of the policy objectives set forth in section 2501(b) of this title.

(b) COST REIMBURSEMENT RULES.—The cost reimbursement rules applicable under an agreement entered into under subsection (a) are as follows:

(1) The Secretary of the Navy shall, in determining the reimbursement due a shipbuilder for its indirect costs of performing a contract for the construction of a ship for the Navy, allow the shipbuilder to allocate indirect costs to its private sector work only to the extent of the shipbuilder’s allocable indirect private sector costs, subject to paragraph (3).

(2) For purposes of paragraph (1), the allocable indirect private sector costs of a shipbuilder are those costs of the shipbuilder that are equal to the sum of the following:

(A) The incremental indirect costs attributable to such work.

(B) The amount by which the revenue attributable to such private sector work exceeds the sum of—

(i) the direct costs attributable to such private sector work; and

(ii) the incremental indirect costs attributable to such private sector work.

(3) The total amount of allocable indirect private sector costs for a contract covered by the agreement may not exceed the amount of indirect costs that a shipbuilder would have allocated to its private sector work during the period covered by the agreement in accordance with the shipbuilder’s established accounting practices.

(c) AUTHORITY TO MODIFY COST REIMBURSEMENT RULES.—The cost reimbursement rules set forth in subsection (b) may be modified by the Secretary of the Navy for a particular agreement if the Secretary determines that modifications are appropriate to the particular situation to facilitate achievement of the policy set forth in section 2501(b) of this title.

(d) APPLICABILITY.—(1) An agreement entered into with a shipbuilder under subsection (a) shall apply to each of the following Navy contracts with the shipbuilder:

(A) A contract that is in effect on the date on which the agreement is entered into.

(B) A contract that is awarded during the term of the agreement.

(2) In a shipbuilding capability preservation agreement applicable to a shipbuilder, the Secretary may agree to apply the cost reimbursement rules set forth in subsection (b) to allocations of in-

direct costs to private sector work performed by the shipbuilder only with respect to costs that the shipbuilder incurred on or after November 18, 1997, under a contract between the shipbuilder and a private sector customer of the shipbuilder that became effective on or after January 26, 1996.

(Added Pub. L. 105–85, div. A, title X, Sec. 1027(a)(1), Nov. 18, 1997, 111 Stat. 1878; amended Pub. L. 106–65, div. A, title X, Sec. 1066(a)(29), Oct. 5, 1999, 113 Stat. 772.)

§ 7316. Support for transfers of decommissioned vessels and shipboard equipment

(a) **AUTHORITY TO PROVIDE ASSISTANCE.**—The Secretary of the Navy may provide an entity described in subsection (b) with assistance in support of a transfer of a vessel or shipboard equipment described in such subsection that is being executed under section 2572, 7306, 7307, or 7545 of this title, or under any other authority.

(b) **COVERED VESSELS AND EQUIPMENT.**—The authority under this section applies—

(1) in the case of a decommissioned vessel that—

(A) is owned and maintained by the Navy, is located at a Navy facility, and is not in active use; and

(B) is being transferred to an entity designated by the Secretary of the Navy or by law to receive transfer of the vessel; and

(2) in the case of any shipboard equipment that—

(A) is on a vessel described in paragraph (1)(A); and

(B) is being transferred to an entity designated by the Secretary of the Navy or by law to receive transfer of the equipment.

(c) **REIMBURSEMENT.**—The Secretary may require a recipient of assistance under subsection (a) to reimburse the Navy for amounts expended by the Navy in providing the assistance.

(d) **DEPOSIT OF FUNDS RECEIVED.**—Funds received in a fiscal year under subsection (c) shall be credited to the appropriation available for such fiscal year for operation and maintenance for the office of the Navy managing inactive ships, shall be merged with other sums in the appropriation that are available for such office, and shall be available for the same purposes and period as the sums with which merged.

(Added Pub. L. 108–136, div. A, title X, Sec. 1015(a), Nov. 24, 2003, 117 Stat. 1591.)

§ 7317. Status of Government rights in the designs of vessels, boats, and craft, and components thereof

(a) **IN GENERAL.**—Government rights in the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and all shipboard equipment and systems, shall be determined solely as follows:

(1) In the case of a vessel, boat, craft, or component procured through a contract, in accordance with the provisions of section 2320 of this title.

(2) In the case of a vessel, boat, craft, or component procured through an instrument not governed by section 2320 of this title, by the terms of the instrument (other than a con-

tract) under which the design for such vessel, boat, craft, or component, as applicable, was developed for the Government.

(b) CONSTRUCTION OF SUPERSEDING AUTHORITIES.—This section may be modified or superseded by a provision of statute only if such provision expressly refers to this section in modifying or superseding this section.

(Added Pub. L. 110-417, [div. A], title VIII, Sec. 825(a), Oct. 14, 2008, 122 Stat. 4534.)

[CHAPTER 635—REPEALED]

[§§ 7341 to 7345. Repealed. Pub. L. 103–160, div. A, title VIII, Sec. 824(a)(9), Nov. 30, 1993, 107 Stat. 1708]

CHAPTER 637—SALVAGE FACILITIES

Sec.	
7361.	Authority to provide for necessary salvage facilities.
7362.	Acquisition and transfer of vessels and equipment.
7363.	Settlement of claims.
7364.	Disposition of receipts.

§ 7361. Authority to provide for necessary salvage facilities

(a) **AUTHORITY.**—The Secretary of the Navy may provide, by contract or otherwise, necessary salvage facilities for public and private vessels.

(b) **COORDINATION WITH SECRETARY OF HOMELAND SECURITY.**—The Secretary shall submit to the Secretary of Homeland Security for comment each proposed contract for salvage facilities that affects the interests of the Department of Homeland Security.

(c) **LIMITATION.**—The Secretary of the Navy may enter into a term contract under subsection (a) only if the Secretary determines that available commercial salvage facilities are inadequate to meet the requirements of national defense.

(d) **PUBLIC NOTICE.**—The Secretary may not enter into a contract under subsection (a) until the Secretary has provided public notice of the intent to enter into such a contract.

(e) **SALVAGE FACILITIES DEFINED.**—In this section, the term “salvage facilities” includes equipment and gear utilized to prevent, abate, or minimize damage to the environment.

(Added Pub. L. 104–106, div. A, title X, Sec. 1015, Feb. 10, 1996, 110 Stat. 424; amended Pub. L. 107–296, title XVII, Sec. 1704(b)(1), (6), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title III, Sec. 315(a), Nov. 24, 2003, 117 Stat. 1431.)

§ 7362. Acquisition and transfer of vessels and equipment

(a) **AUTHORITY.**—The Secretary of the Navy may acquire or transfer for operation by private salvage companies such vessels and equipment as the Secretary considers necessary.

(b) **AGREEMENT ON USE.**—Before any salvage vessel or salvage gear is transferred by the Secretary to a private party, the private party must agree in writing with the Secretary that the vessel or gear will be used to support organized offshore salvage facilities for a period of as many years as the Secretary considers appropriate.

(c) **REFERENCE TO AUTHORITY TO ADVANCE FUNDS FOR IMMEDIATE SALVAGE OPERATIONS.**—For authority for the Secretary of the Navy to advance to private salvage companies such funds as

the Secretary considers necessary to provide for the immediate financing of salvage operations, see section 2307(g)(2) of this title.

(Added Pub. L. 104–106, div. A, title X, Sec. 1015, Feb. 10, 1996, 110 Stat. 424.)

§ 7363. Settlement of claims

(a) **AUTHORITY TO SETTLE CLAIM.**—The Secretary of the Navy may settle any claim by the United States for salvage services rendered by the Department of the Navy and may receive payment of any such claim.

(b) **SALVAGE SERVICES DEFINED.**—In this section, the term “salvage services” includes services performed in connection with a marine salvage operation that are intended to prevent, abate, or minimize damage to the environment.

(Added Pub. L. 104–106, div. A, title X, Sec. 1015, Feb. 10, 1996, 110 Stat. 425; amended Pub. L. 108–136, div. A, title III, Sec. 315(b), Nov. 24, 2003, 117 Stat. 1431.)

§ 7364. Disposition of receipts

Amounts received under this chapter shall be credited to appropriations for maintaining naval salvage facilities. However, any amount received under this chapter in any fiscal year in excess of naval salvage costs incurred by the Navy during that fiscal year shall be deposited into the general fund of the Treasury.

(Added Pub. L. 104–106, div. A, title X, Sec. 1015, Feb. 10, 1996, 110 Stat. 425.)

CHAPTER 639—UNITED STATES NAVAL OBSERVATORY

Sec.

[7391 to 7394. Repealed.]

7395. Naval Observatory: administration.

7396. Naval Observatory: exchange of information with foreign offices.

[§§ 7391 to 7394. Repealed. Pub. L. 97-295, Sec. 1(50)(A), Oct. 12, 1982, 96 Stat. 1299]

§ 7395. Naval Observatory: administration

(a) The Naval Observatory shall be attached to the Office of the Chief of Naval Operations.

(b) The Superintendent of the Naval Observatory shall be detailed from officers in the line of the Navy serving in the grade of captain or above.

(c) The Secretary of the Navy may detail any officer of the Navy, competent for that duty, to supervise the Nautical Almanac.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457.)

§ 7396. Naval Observatory: exchange of information with foreign offices

(a) The Secretary of the Navy may arrange to exchange data with foreign almanac offices to reduce the duplication of work in preparing the different national nautical and astronomical almanacs and make available for publication a larger amount of data useful to navigators and astronomers. Each such arrangement shall be made terminable on one year's notice.

(b) The work of the Nautical Almanac Office shall be so conducted that in an emergency the part of the work intended for the use of navigators may be computed by the force of the office without foreign cooperation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457; Pub. L. 95-357, Sept. 8, 1978, 92 Stat. 591.)

CHAPTER 641—NAVAL PETROLEUM RESERVES

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§ 7420. Definitions

In this chapter:

(1) The term “national defense” includes the needs of, and the planning and preparedness to meet, essential defense, industrial, and military emergency energy requirements relative to the national safety, welfare, and economy, particularly resulting from foreign military or economic actions.

(2) The term “naval petroleum reserves” means the naval petroleum and oil shale reserves established by this chapter, including Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912; Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912; Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915; Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919; Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

(3) The term “petroleum” includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources.

(4) The term “Secretary” means the Secretary of Energy.

(5) The term “small refiner” means an owner of a refinery or refineries (including refineries not in operation) who qualifies as a small business refiner under the rules and regulations of the Small Business Administration.

(6) The term “maximum efficient rate” means the maximum sustainable daily oil or gas rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to the ultimate recovery.

(Added Pub. L. 94–258, title II, Sec. 201(1), Apr. 5, 1976, 90 Stat. 307; amended Pub. L. 96–513, title V, Sec. 513(30), Dec. 12, 1980, 94 Stat. 2933; Pub. L. 100–26, Sec. 7(k)(5), Apr. 21, 1987, 101 Stat. 284.)

§ 7421. Jurisdiction and control

(a) The Secretary shall take possession of all properties inside the naval petroleum reserves that are or may become subject to the control of and use by the United States for national defense purposes, except as otherwise provided in this chapter.

(b) The Secretary has exclusive jurisdiction and control over those lands inside Naval Petroleum Reserves Numbered 1 and 2 that are covered by leases granted under sections 181–184, 185–188, 189–194, 201, 202–209, 211–214, 223, 224–226, 226d, 226e, 227–229a, 241, 251, and 261–263 of title 30, and shall administer those leases.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457; Pub. L. 87–796, Sec. 1(1), Oct. 11, 1962, 76 Stat. 904; Pub. L. 94–258, title II, Sec. 201(2), Apr. 5, 1976, 90 Stat. 307; Pub. L. 98–525, title XIV, Sec. 1405(50), Oct. 19, 1984, 98 Stat. 2625.)

§ 7422. Administration

(a) The Secretary, directly or by contract, lease, or otherwise, shall explore, prospect, conserve, develop, use, and operate the naval petroleum reserves in his discretion, subject to the provisions of subsection (c) and the other provisions of this chapter; except that no petroleum leases shall be granted at Naval Petroleum Reserves Numbered 1 and 3.

(b) Except as otherwise provided in this chapter, particularly subsection (c), the naval petroleum reserves shall be used and operated for—

(1) the protection, conservation, maintenance, and testing of those reserves; or

(2) the production of petroleum whenever and to the extent that the Secretary, with the approval of the President, finds that such production is needed for national defense purposes and the production is authorized by a joint resolution of Congress.

(c)(1) In administering Naval Petroleum Reserves Numbered 1, 2, and 3, the Secretary is authorized and directed—

(A) to further explore, develop, and operate such reserves;

(B) to produce, during any extension of a period under paragraph (2), such reserves—

(i) at the maximum efficient rate consistent with sound engineering practices; or

(ii) at a lesser rate consistent with sound engineering practices and the protection, conservation, maintenance, and testing of such reserves if the Secretary determines

that the minimum price described in section 7430(b)(2) of this title cannot be attained for the United States share of petroleum (other than natural gas liquids) produced from such Reserves;

(C) during such production period or any extension thereof to sell or otherwise dispose of the United States share of such petroleum produced from such reserves as provided in section 7430 of this title; and

(D) to construct, acquire, or contract for the use of storage and shipping facilities on and off the reserves and pipelines and associated facilities on and off the reserves for transporting petroleum from such reserves to the points where the production from such reserves will be refined or shipped.

Any pipeline in the vicinity of a naval petroleum reserve not otherwise operated as a common carrier may be acquired by the Secretary by condemnation, if necessary, if the owner thereof refuses to accept, convey, and transport without discrimination and at reasonable rates any petroleum produced at such reserve. With the approval of the Secretary, rights-of-way for new pipelines and associated facilities may be acquired by the exercise of the right of eminent domain in the appropriate United States district court. Such rights-of-way may be acquired in the manner set forth in sections 3114–3116 and 3118 of title 40, and the prospective holder of the right-of-way is “the authority empowered by law to acquire the land” within the meaning of those sections. Such new pipelines shall accept, convey, and transport without discrimination and at reasonable rates any petroleum produced at such reserves as a common carrier.

(2) After April 5, 1982, the President may extend the period of production in the case of any naval petroleum reserve for additional periods of not to exceed three years each—

(A) after the President requires an investigation to be made, in the case of each extension, to determine the necessity for continued production from such naval petroleum reserve;

(B) after the President submits to the Congress, at least 180 days before the expiration of the current production period prescribed by this section, or any extension thereof, a copy of the report made to him on such investigation together with a certification by him that continued production from such naval petroleum reserve is in the national interest; and

(C) if neither House of Congress within ninety days after receipt of such report and certification adopts a resolution disapproving further production from such naval petroleum reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Aug. 24, 1962, Pub. L. 87–599, Sec. 1, 76 Stat. 401; Oct. 11, 1962, Pub. L. 87–796, Sec. 1(2), 76 Stat. 904; Apr. 5, 1976, Pub. L. 94–258, title II, Sec. 201(3), 90 Stat. 307; Dec. 12, 1979, Pub. L. 96–137, Sec. 3(a), 93 Stat. 1061; Dec. 12, 1980, Pub. L. 96–513, title V, Sec. 513(31), 94 Stat. 2933; Oct. 19, 1984, Pub. L. 98–525, title XIV, Sec. 1405(51), 98 Stat. 2625; Aug. 29, 1986, Pub. L. 99–413, Sec. 1(a), 100 Stat. 944; Dec. 22, 1987, Pub. L. 100–202, Sec. 101(g) [title II, Sec. 201], 101 Stat. 1329–213, 1329–242; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, Sec. 1622(f)(2), 103 Stat. 1605; Pub. L. 107–217, Sec. 3(b)(30), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–178, Sec. 4(b)(6), Dec. 15, 2003, 117 Stat. 2641.)

§ 7423. Periodic re-examination of production requirements

The Secretary shall from time to time reexamine the need for the production of petroleum from oil shale for national defense when that production is authorized under section 7422 of this title. If he finds that the authorized quantity is no longer needed, he shall reduce production to the amount currently needed for national defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Pub. L. 87-796, Sec. 1(3), Oct. 11, 1962, 76 Stat. 904; Pub. L. 94-258, title II, Sec. 201(4), Apr. 5, 1976, 90 Stat. 309.)

§ 7424. Protection of oil reserves; contracts for conservation

(a) To consolidate and protect the oil lands owned by the United States, the Secretary may—

(1) contract with owners and lessees of land inside or adjoining naval petroleum reserves for—

(A) conservation of oil and gas; and

(B) compensation for estimated drainage in lieu of drilling or operating offset wells; and

(2) acquire privately owned lands or leases inside Naval Petroleum Reserve Numbered 1 by exchange of—

(A) lands of the United States inside Naval Petroleum Reserve Numbered 1;

(B) the right to royalty production from any of the naval petroleum reserves; and

(C) the right to any money due the United States as a result of the wrongful extraction of petroleum products from lands inside Naval Petroleum Reserve Numbered 1.

(b) The Secretary shall report annually to Congress all agreements under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Pub. L. 87-796, Sec. 1(4), Oct. 11, 1962, 76 Stat. 904; Pub. L. 94-258, title II, Sec. 201(5), Apr. 5, 1976, 90 Stat. 309; Pub. L. 96-513, title V, Sec. 513(32)(A), Dec. 12, 1980, 94 Stat. 2933.)

§ 7425. Acquisition by condemnation and purchase

(a) Whenever the Secretary is unable to make arrangements he considers satisfactory for exchanges of land or agreements for conservation authorized by section 7424 of this title, the Secretary may acquire, with the approval of the President, such privately owned lands and leases—

(1) by purchase, inside the naval petroleum reserves, or outside those reserves on the same geologic structure; and

(2) by condemnation, inside Naval Petroleum Reserve Numbered 1, or, if there is substantial drainage, outside that reserve on the same geologic structure.

(b) The Secretary shall report annually to Congress all proceedings for purchase and condemnation under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Pub. L. 94-258, title II, Sec. 201(6), Apr. 5, 1976, 90 Stat. 309; Pub. L. 96-513, title V, Sec. 513(32)(A), Dec. 12, 1980, 94 Stat. 2933; Pub. L. 106-398, Sec. 1 [div. C, title XXXIV, Sec. 3402(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-484.)

[§ 7426. Repealed. Pub. L. 106-398, Sec. 1 [div. C, title XXXIV, Sec. 3402(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-484]

§ 7427. Cooperative or unit plans in the naval petroleum reserves

The Secretary, with the consent of the President, may make agreements, with respect to lands inside the naval petroleum reserves, of the same type as the Secretary of the Interior may make under section 17(m) of the Act of February 25, 1920 (30 U.S.C. 226(m)). No such agreement made by the Secretary may extend the term of any lease unless the agreement so provides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 94-258, title II, Sec. 201(8), Apr. 5, 1976, 90 Stat. 309; Pub. L. 96-513, title V, Sec. 513(33), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 100-456, div. A, title XII, Sec. 1233(g)(3), Sept. 29, 1988, 102 Stat. 2058.)

§ 7428. Agreements and leases: provision for change

Every unit or cooperative plan of development and operation and every lease affecting lands owned by the United States within Naval Petroleum Reserve Numbered 2 and the oil shale reserves shall contain a provision authorizing the Secretary, subject to approval by the President and to any limitation in the plan or lease, to change from time to time the rate of prospecting and development on, and the quantity and rate of production from, lands of the United States under the plan or lease, notwithstanding any other provision of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 87-796, Sec. 1(5), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94-258, title II, Sec. 201(9), Apr. 5, 1976, 90 Stat. 309; Pub. L. 106-398, Sec. 1 [div. C, title XXXIV, Sec. 3402(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-484.)

§ 7429. Re-lease of certain lands: lessee's preferential right

The Secretary, on terms prescribed by him, may re-lease lands in the naval petroleum reserves that were covered by leases made before July 1, 1936, and terminated by law at the expiration of their initial twenty-year periods. If any such land is to be re-leased, the Secretary shall give to the former lessee preferential rights to the new lease.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 94-258, title II, Sec. 201(10), Apr. 5, 1976, 90 Stat. 309.)

§ 7430. Disposition of products

(a) In administering the naval petroleum reserves under this chapter, the Secretary shall use, store, or sell the petroleum produced from the naval petroleum reserves and lands covered by joint, unit, or other cooperative plans.

(b)(1) Subject to paragraph (2) and notwithstanding any other provision of law, each sale of the United States share of petroleum shall be made by the Secretary at public sale to the highest qualified bidder, at such time, in such amounts, and after such advertising as the Secretary considers proper and without regard to Federal, State, or local regulations controlling sales or allocation of petroleum products. Each sale of the United States share of petroleum shall be for periods of not more than one year, except that a sale of natural gas may be made for a period of more than one year.

(2) The Secretary may not sell any part of the United States share of petroleum produced from Naval Petroleum Reserves Numbered 2 and 3 at a price less than the current sales price, as estimated by the Secretary, of comparable petroleum in the same area.

(3) For purposes of paragraph (2), the term “petroleum” does not include natural gas liquids.

(c) In no event shall the Secretary permit the award of any contract which would result in any person obtaining control, directly or indirectly, over more than 20 percent of the estimated annual United States share of petroleum produced from Naval Petroleum Reserve Numbered 1.

(d) Each proposal for sale under this title shall provide that the terms of every sale of the United States share of petroleum from the naval petroleum reserves shall be so structured as to give full and equal opportunity for the acquisition of petroleum by all interested persons, including major and independent oil producers and refiners alike. When the Secretary, in consultation with the Secretary of the Interior, determines that the public interests will be served by the sale of petroleum to small refiners not having their own adequate sources of supply of petroleum, the Secretary is authorized and directed to set aside a portion of the United States share of petroleum produced for sale to such refiners under the provisions of this section for processing or use in such refineries, except that—

(1) none of the production sold to small refiners may be resold in kind;

(2) production must be sold at a cost of not less than the prevailing local market price of comparable petroleum;

(3) the set-aside portion may not exceed 25 percent of the estimated annual United States share of the total production from all producing naval petroleum reserves; and

(4) notwithstanding the provisions of subsection (b), the Secretary may, at his discretion if he deems it to be in the public interest, prorate such petroleum among such refiners for sale, without competition, at not less than the prevailing local market price of comparable petroleum.

(e) Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

(f) During the period of production or any extension thereof authorized by section 7422(c) of this title, the consultation and approval requirements of section 7431(a)(3) of this title are waived.

(g)(1) Prior to the promulgation of any rules and regulations, plans of development and amendments thereto, and in the entering and making of contracts and operating agreements relating to the

development, production, or sale of petroleum in or from the reserves, the Secretary shall consult with and give due consideration to the views of the Attorney General of the United States with respect to matters which may affect competition.

(2) No contract or operating agreement may be made, issued, or executed under this chapter until at least 15 days after the Secretary notifies the Attorney General of the proposed contract or operating agreement. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary as to whether such contract or operating agreement may create or maintain a situation inconsistent with the antitrust laws. If, within such 15-day period, the Attorney General advises the Secretary that a contract or operating agreement may create or maintain a situation inconsistent with the antitrust laws, then the Secretary may not make, issue, or execute that contract or operating agreement.

(h) Nothing in this chapter shall be deemed to confer on any person immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(i) In this section, the term “antitrust laws” means—

- (1) the Sherman Act (15 U.S.C. 1 et seq.);
- (2) the Clayton Act (15 U.S.C. 12 et seq.);
- (3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);
- (4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and
- (5) sections 2, 3, and 4 of the Act of June 19, 1936 (commonly referred to as the “Robinson-Patman Act”) (15 U.S.C. 13a, 13b, and 21a).

(j) Any pipeline which accepts, conveys, or transports any petroleum produced from Naval Petroleum Reserves Numbered 1 or Numbered 3 shall accept, convey, and transport without discrimination and at reasonable rates any such petroleum as a common carrier insofar as petroleum from such reserves is concerned. Every contract entered into by the Secretary for the sale of any petroleum owned by the United States which is produced from such reserves shall contain provisions implementing the requirements of the preceding sentence if the contractor owns a controlling interest in any pipeline or any company operating any pipeline, or is the operator of any pipeline, which carries any petroleum produced from such naval petroleum reserves. The Secretary may promulgate rules and regulations for the purpose of carrying out the provisions of this section and he, or the Secretary of the Interior where the authority extends to him, may declare forfeit any contract, operating agreement, right-of-way, permit, or easement held by any person violating any such rule or regulation. This section shall not apply to any natural gas common carrier pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) or any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(k)(1) With respect to all or any part of the United States share of petroleum produced from the naval petroleum reserves, the President may direct that the Secretary—

(A) place that petroleum in the Strategic Petroleum Reserve as authorized by sections 151 through 166 of the Energy Policy and Conservation Act (42 U.S.C. 6231–6246); or

(B) exchange, directly or indirectly, that petroleum for other petroleum to be placed in the Strategic Petroleum Reserve under such terms and conditions and by such methods as the Secretary determines to be appropriate, without regard to otherwise applicable Federal procurement statutes and regulations.

(2) The requirements of section 159 of the Energy Policy and Conservation Act (42 U.S.C. 6239) do not apply to actions taken under this subsection.

(1)(1) Notwithstanding any other provision of this chapter (but subject to paragraph (2)), during any period in which the production of petroleum is authorized from Naval Petroleum Reserves Numbered 1, 2, or 3, the Secretary, at the request of the Secretary of Defense, may provide any portion of the United States share of petroleum so produced to the Department of Defense for its use, exchange, or sale in order to meet petroleum product requirements of the Department of Defense.

(2) Petroleum may be provided to the Department of Defense under paragraph (1) either directly or by such exchange as the Secretary deems appropriate. Appropriate reimbursement reasonably reflecting the fair market value shall be provided by the Secretary of Defense for petroleum provided under this subsection.

(3) Any exchange made pursuant to this subsection may be made without regard to otherwise applicable Federal procurement statutes and regulations.

(4) Paragraph (1) does not apply to any petroleum set aside for small refiners under subsection (d) or placed in the Strategic Petroleum Reserve under subsection (k).

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 87–599, Sec. 2, Aug. 24, 1962, 76 Stat. 401; Pub. L. 87–796, Sec. 1(6), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94–258, title II, Sec. 201(11), Apr. 5, 1976, 90 Stat. 309; Pub. L. 96–294, title VIII, Sec. 804, June 30, 1980, 94 Stat. 777; Pub. L. 96–513, title V, Sec. 513(34), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 97–22, Sec. 11(a)(10), July 10, 1981, 95 Stat. 138; Pub. L. 98–525, title XIV, Sec. 1405(53), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 99–413, Sec. 1(b), (c), Aug. 29, 1986, 100 Stat. 944, 945; Pub. L. 100–26, Sec. 7(k)(9), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–202, Sec. 101(g) [title II, Sec. 201], Dec. 22, 1987, 101 Stat. 1329–213, 1329–242; Pub. L. 100–456, div. A, title XII, Sec. 1233(e)(2), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 106–398, Sec. 1 [div. C, title XXXIV, Sec. 3401], Oct. 30, 2000, 114 Stat. 1654, 1654A–484; Pub. L. 107–107, div. A, title X, Sec. 1048(e)(12), Dec. 28, 2001, 115 Stat. 1228.)

§ 7431. Requirements as to consultation and approval

(a) The Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives must be consulted and the President's approval must be obtained before any condemnation proceedings may be started under this chapter and before any of the following transactions authorized by this chapter may be effective:

(1) A lease of any part of the naval petroleum reserves.

(2) A contract to alienate from the United States the use, control, or possession of any part of the naval petroleum reserves (except that consultation and Presidential approval are

not required in connection with the issuance of permits, licenses, easements, grazing and agricultural leases, rights-of-way, and similar contracts pertaining to use of the surface area of the naval petroleum reserves).

(3) A contract to sell the petroleum (other than royalty oil and gas) produced from any part of the naval petroleum reserves.

(4) A contract for conservation or for compensation for estimated drainage.

(5) An agreement to exchange land, the right to royalty production, or the right to any money due the United States.

(b)(1) During the period of production authorized by section 7422(c) of this title, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration, development, and production of the naval petroleum reserves.

(2) All plans or substantial amendments submitted to the Congress pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or amendments on competition. Such plans or amendments shall not be implemented until sixty days after such plans or amendments have been submitted to such committees.

(c) During the period of production authorized by section 7422(c) of this title, the Secretary shall submit annual reports as of the first day of the fiscal year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and such committees shall cause such reports to be printed as a Senate or House document, as appropriate. The Secretary shall include in such reports, with respect to each naval petroleum reserve, an explanation in detail of the following:

(1) The status of the exploration, development, and production programs.

(2) The production that has been achieved, including the disposition of such production and the proceeds realized therefrom.

(3) The status of pipeline construction and procurement and problems related to the availability of transportation facilities.

(4) A summary of future plans for exploration, development, production, disposal, and transportation of the production from the naval petroleum reserves.

(5) Such other information regarding the reserve as the Secretary deems appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 87-796, Sec. 1(7), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94-258, title II, Sec. 201(12), Apr. 5, 1976, 90 Stat. 311; Pub. L. 98-525, title XIV, Sec. 1405(52), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 99-145, title XIII, Sec. 1303(a)(25), Nov. 8, 1985, 99 Stat. 740; Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 7432. Authorizations of appropriations

(a) Funds for the following purposes may not be appropriated unless such appropriations have been specifically authorized by law:

(1) Exploration, prospecting, conservation, development, use, operations, and production of the naval petroleum reserves as authorized by this chapter.

(2) Production (including preparation for production) as authorized by this chapter or as may be authorized after April 5, 1976.

(3) The construction and operation of facilities both within and outside the naval petroleum reserves incident to the production and the delivery of petroleum, including pipelines and shipping terminals.

Sums appropriated for such purposes shall remain available until expended.

(b) Contracts under this chapter providing for the obligation of funds may be entered into for a period of five years, renewable for an additional five-year period; however, such contracts may obligate funds only to the extent that such funds are made available in appropriation Acts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Pub. L. 87-796, Sec. 1(8), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94-258, title II, Sec. 201(13), Apr. 5, 1976, 90 Stat. 312; Pub. L. 96-137, Sec. 3(b)(1), Dec. 12, 1979, 93 Stat. 1061; Pub. L. 96-513, title V, Sec. 513(35), Dec. 12, 1980, 94 Stat. 2934.)

§ 7433. Disposition of royalties

(a) Any oil, gas, gasoline or other substance accruing to the United States as royalty from any lease under this chapter shall be delivered to the United States, or shall be paid for in money, as the Secretary elects.

(b) All money accruing to the United States from lands in the naval petroleum reserves shall be covered into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Oct. 11, 1962, Pub. L. 87-796, Sec. 1(9), 76 Stat. 905; Apr. 5, 1976, Pub. L. 94-258, title II, Sec. 201(14), (15), 90 Stat. 313.)

[§ 7434. Repealed. Pub. L. 104-66, title I, Sec. 1051(g), Dec. 21, 1995, 109 Stat. 716]

§ 7435. Foreign interest

(a) If the laws, customs, or regulations of any foreign country deny the privilege of leasing public lands to citizens or corporations of the United States, citizens of that foreign country, or corporations controlled by citizens of that country, may not, by contract made after July 1, 1937, or by stock ownership, holding, or control, acquire or own any interest in, or right to any benefit from, any lease of land in the naval petroleum, naval oil shale, or other naval fuel reserves made under sections 181-184, 185-188, 189-194, 201, 202-209, 211-214, 223, 224-226, 226d, 226e, 227-229a, 241, 251, and 261-263 of title 30, or under this chapter.

(b) The Secretary may cancel any lease for any violation of this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Pub. L. 87-796, Sec. 1(11), Oct. 11, 1962, 76 Stat. 906; Pub. L. 94-258, title II, Sec. 201(17), Apr. 5, 1976, 90 Stat. 313.)

§ 7436. Regulations

(a) The Secretary may prescribe regulations and take any proper action to accomplish the purposes of this chapter.

(b) All statements, reports, and representations required by the regulations shall be under oath, unless otherwise specified, and in such form as the Secretary requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Pub. L. 94-258, title II, Sec. 201(18), Apr. 5, 1976, 90 Stat. 313.)

§ 7437. Violations by lessee

(a) If a lessee fails to comply with any provision of this chapter, of his lease, or of regulations issued under section 7436 of this title that are in force on the date of his lease, the lease may be forfeited and cancelled by an appropriate proceeding in the United States district court for the district in which any part of the property is located.

(b) The lease may provide appropriate methods for the settlement of disputes and remedies for breach of specified conditions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461.)

§ 7438. Rifle, Colorado, plant; possession, use, and transfer of

(a) The Secretary shall take possession of the experimental demonstration facility near Rifle, Colorado, which was constructed and operated by the Department of the Interior on lands on or near the naval oil shale reserves under the Act of April 5, 1944 (30 U.S.C. 321 et seq.).

(b) The Secretary, subject to the approval of the President, shall by contract, lease, or otherwise encourage the use of the facility described in subsection (a) in research, development, test, evaluation, and demonstration work. For such purposes the Secretary may use or lease for use by institutions, organizations, or individuals, public or private, the facility described in subsection (a) and may construct, install, and operate, or lease for operation additional experimental facilities on such lands. The Secretary may, after consultation with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, mine and remove, or authorize the mining and removal, of any oil shale or products therefrom from lands in the naval oil shale reserves that may be needed for such experimentation.

(c) Nothing in this chapter shall be construed—

(1) to authorize the commercial development and operation of the naval oil shale reserves by the Government in competition with private industry; or

(2) in diminution of the responsibility of the Secretary in providing oil shale and products therefrom for needs of national defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462; Pub. L. 87-796, Sec. 1(12), Oct. 11, 1962, 76 Stat. 906; Pub. L. 94-258, title II, Sec. 201(19), Apr. 5, 1976, 90 Stat. 313; Pub. L. 96-513, title V, Sec. 513(37), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 7439. Certain oil shale reserves: transfer of jurisdiction and petroleum exploration, development, and production

(a) TRANSFER REQUIRED.—(1) Upon the enactment of this section, the Secretary of Energy shall transfer to the Secretary of the

Interior administrative jurisdiction over all public domain lands included within Oil Shale Reserve Numbered 1 and those public domain lands included within the undeveloped tracts of Oil Shale Reserve Numbered 3.

(2) Not later than November 18, 1998, the Secretary of Energy shall transfer to the Secretary of the Interior administrative jurisdiction over those public domain lands included within the developed tract of Oil Shale Reserve Numbered 3, which consists of approximately 6,000 acres and 24 natural gas wells, together with pipelines and associated facilities.

(3) Notwithstanding the transfer of jurisdiction, the Secretary of Energy shall continue to be responsible for all environmental restoration, waste management, and environmental compliance activities that are required under Federal and State laws with respect to conditions existing on the lands at the time of the transfer.

(4) Upon the transfer to the Secretary of the Interior of jurisdiction over public domain lands under this subsection, the other provisions of this chapter shall cease to apply with respect to the transferred lands.

(b) **AUTHORITY TO LEASE.**—(1) Beginning on November 18, 1997, or as soon thereafter as practicable, the Secretary of the Interior shall enter into leases with one or more private entities for the purpose of exploration for, and development and production of, petroleum (other than in the form of oil shale) located on or in public domain lands in Oil Shale Reserves Numbered 1 and 3 (including the developed tract of Oil Shale Reserve Numbered 3). Any such lease shall be made in accordance with the requirements of the Mineral Leasing Act (30 U.S.C. 181 et seq.) regarding the lease of oil and gas lands and shall be subject to valid existing rights.

(2) Notwithstanding the delayed transfer of the developed tract of Oil Shale Reserve Numbered 3 under subsection (a)(2), the Secretary of the Interior shall enter into a lease under paragraph (1) with respect to the developed tract before November 18, 1998.

(c) **MANAGEMENT.**—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall manage the lands transferred under subsection (a) in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other laws applicable to the public lands.

(d) **TRANSFER OF EXISTING EQUIPMENT.**—The lease of lands by the Secretary of the Interior under this section may include the transfer, at fair market value, of any well, gathering line, or related equipment owned by the United States on the lands transferred under subsection (a) and suitable for use in the exploration, development, or production of petroleum on the lands.

(e) **COST MINIMIZATION.**—The cost of any environmental assessment required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in connection with a proposed lease under this section shall be paid out of unobligated amounts available for administrative expenses of the Bureau of Land Management.

(f) **TREATMENT OF RECEIPTS.**—(1) Notwithstanding section 35 of the Mineral Leasing Act (30 U.S.C. 191), all moneys received during the period specified in paragraph (2) from a lease under this section (including moneys in the form of sales, bonuses, royalties

(including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.)), and rentals) shall be covered into the Treasury of the United States and shall not be subject to distribution to the States pursuant to subsection (a) of such section 35.

(2) The period referred to in this subsection is the period beginning on November 18, 1997, and ending on the date on which the Secretary of Energy and the Secretary of the Interior jointly certify to Congress that the sum of the moneys deposited in the Treasury under paragraph (1) is equal to the total of the following:

(A) The cost of all environmental restoration, waste management, and environmental compliance activities incurred by the United States with respect to the lands transferred under subsection (a).

(B) The cost to the United States to originally install wells, gathering lines, and related equipment on the transferred lands and any other cost incurred by the United States with respect to the lands.

(g) USE OF RECEIPTS.—(1) The Secretary of the Interior may use, without further appropriation, not more than \$1,500,000 of the moneys covered into the Treasury under subsection (f)(1) to cover the cost of any additional analysis, site characterization, and geotechnical studies deemed necessary by the Secretary to support environmental restoration, waste management, or environmental compliance with respect to Oil Shale Reserve Numbered 3. Upon the completion of such studies, the Secretary of the Interior shall submit to Congress a report containing—

(A) the results and conclusions of such studies; and

(B) an estimate of the total cost of the Secretary's preferred alternative to address environmental restoration, waste management, and environmental compliance needs at Oil Shale Reserve Numbered 3.

(2) If the cost estimate required by paragraph (1)(B) does not exceed the total of the moneys covered into the Treasury under subsection (f)(1) and remaining available for obligation as of the date of submission of the report under paragraph (1), the Secretary of the Interior may access such moneys, beginning 60 days after submission of the report and without further appropriation, to cover the costs of implementing the preferred alternative to address environmental restoration, waste management, and environmental compliance needs at Oil Shale Reserve Numbered 3. If the cost estimate exceeds such available moneys, the Secretary of the Interior may only access such moneys as authorized by subsequent Act of Congress.

(Added Pub. L. 105–85, div. C, title XXXIV, Sec. 3404(a), Nov. 18, 1997, 111 Stat. 2059; amended Pub. L. 107–107, div. A, title X, Sec. 1048(c)(14), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 107–345, Sec. 1, Dec. 17, 2002, 116 Stat. 2894.)

CHAPTER 643—CIVILIAN EMPLOYEES

- Sec.
[7471. Repealed.]
7472. Physical examination: employees engaged in hazardous occupations.
7473. Employment of aliens.
[7474, 7475. Repealed.]
7476. Administration of oaths by clerks and employees.
7477. Transportation of dependents and household effects of civilian personnel stationed outside the United States: payment in lieu of transportation.
7478. Naval War College and Marine Corps University: civilian faculty members.
7479. Civil service mariners of Military Sealift Command: release of drug test results to Coast Guard.
7480. Special agents of the Naval Criminal Investigative Service: authority to execute warrants and make arrests.

[§ 7471. Repealed. Pub. L. 85–861, Sec. 36B(23), Sept. 2, 1958, 72 Stat. 1571]

§ 7472. Physical examination: employees engaged in hazardous occupations

(a) The Secretary of the Navy may provide for physical examination by civilians of employees engaged in hazardous occupations, where the professional services of the Medical Department are not available. The Secretary may compensate these civilians for their services, on a contract or fee basis, at the rates customary in the locality.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462.)

§ 7473. Employment of aliens

Laws prohibiting payment of compensation to a person who is not a citizen of the United States do not apply to a person whose employment by the Department of the Navy is determined by the Secretary of the Navy to be necessary to obtain for the armed forces the benefits of the special technical or scientific knowledge or experience possessed by that person and not readily obtainable from a citizen.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462.)

[§ 7474. Repealed. Pub. L. 89–554, Sec. 8(a), Sept. 6, 1966, 80 Stat. 663]

[§ 7475. Repealed. Pub. L. 86–148, Sec. 1(1), Aug. 7, 1959, 73 Stat. 302]

§ 7476. Administration of oaths by clerks and employees

(a) Chief clerks and inspectors attached to any office of inspector of naval material, chief clerks attached to the field service of the Department of the Navy, to naval shipyards and stations, and to Marine Corps posts and stations, and such other clerks and employees attached to those activities as the Secretary of the Navy designates, may administer—

(1) oaths required by law or regulation relating to claims against, or applications to, the United States of officers and of employees of the Department; and

(2) oaths of office to officers and employees of the Department.

(b) There may be no compensation for the administration of oaths under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 463.)

§ 7477. Transportation of dependents and household effects of civilian personnel stationed outside the United States: payment in lieu of transportation

(a) When civilian employees of the Department of the Navy are located at duty stations outside the United States, the dependents and household effects of such personnel may be transported—

(1) from the locations outside the United States to locations designated by such personnel or their dependents; and

(2) from those designated locations to the duty stations to which the personnel are ordered.

The Secretary of the Navy may determine the civilian employees whose dependents and household effects may be transported under this section.

(b) Authority to transport household effects under this section includes authority to pack and unpack those effects.

(c) Transportation of dependents and household effects is authorized under this section either before or after orders are issued relieving the civilian concerned from the duty station outside the United States. The transportation may be by Government or commercial facilities.

(d) In place of the transportation in kind authorized for dependents, the Secretary may authorize the payment, after the travel has been completed, of an amount equal to the commercial transportation costs, including taxes if paid, of all parts of the travel for which transportation in kind was not furnished.

(e) Current appropriations available for travel and transportation may be used for expenditures under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 463.)

§ 7478. Naval War College and Marine Corps University: civilian faculty members

(a) **AUTHORITY OF SECRETARY.**—The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at a school of the Naval War College or of the Marine Corps University as the Secretary considers necessary.

(b) **COMPENSATION OF FACULTY MEMBERS.**—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) **APPLICATION TO CERTAIN FACULTY MEMBERS.**—This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Naval War College or of the Marine Corps University if the duration of the principal course of instruction offered at the school or college involved is less than 10 months.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464; Pub. L. 101–189, div. A, title XI, Sec. 1124(c)(1), Nov. 29, 1989, 103 Stat. 1559; Pub. L. 105–85, div. A, title XI, Sec. 1109(a), (b)(1), Nov. 18, 1997, 111 Stat. 1927.)

§ 7479. Civil service mariners of Military Sealift Command: release of drug test results to Coast Guard

(a) **RELEASE OF DRUG TEST RESULTS TO COAST GUARD.**—The Secretary of the Navy may release to the Commandant of the Coast Guard the results of a drug test of any employee of the Department of the Navy who is employed in any capacity on board a vessel of the Military Sealift Command. Any such release shall be in accordance with the standards and procedures applicable to the disclosure and reporting to the Coast Guard of drug tests results and drug test records of individuals employed on vessels documented under the laws of the United States.

(b) **WAIVER.**—The results of a drug test of an employee may be released under subsection (a) without the prior written consent of the employee that is otherwise required under section 503(e) of the Supplemental Appropriations Act, 1987 (5 U.S.C. 7301 note).

(Added Pub. L. 105–261, div. A, title XI, Sec. 1103(a), Oct. 17, 1998, 112 Stat. 2141.)

§ 7480. Special agents of the Naval Criminal Investigative Service: authority to execute warrants and make arrests

(a) **AUTHORITY.**—The Secretary of the Navy may authorize any Department of the Navy civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) **AGENTS TO HAVE AUTHORITY.**—Subsection (a) applies to any employee of the Department of the Navy who is a special agent of the Naval Criminal Investigative Service (or any successor to that service) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Navy.

(c) **GUIDELINES FOR EXERCISE OF AUTHORITY.**—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Navy and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Navy, the Secretary of Defense, or the Attorney General.

(Added Pub. L. 106–398, Sec. 1 [[div. A], title V, Sec. 554(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–126.)

CHAPTER 645—PROCUREMENT OF SUPPLIES AND SERVICES

Sec.	
[7521.	Repealed.]
7522.	Contracts for research.
7523.	Tolls and fares: payment or reimbursement.
7524.	Marine mammals: use for national defense purposes.

[§ 7521. Repealed. Pub. L. 103-355, title II, Sec. 2001(j)(1), Oct. 13, 1994, 108 Stat. 3303]

§ 7522. Contracts for research

(a) The Secretary of the Navy and, by direction of the Secretary, the Chief of Naval Research and the chiefs of bureaus may, without advertising, make contracts or amendments or modifications of contracts for services and materials necessary to conduct research and to make or secure reports, tests, models, or apparatus. A contractor supplying such services or materials need not be required to furnish a bond.

(b) This section does not authorize the use of the cost-plus-a-percentage-of-cost system of contracting.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464; Pub. L. 96-513, title V, Sec. 513(38), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 97-258, Sec. 3(b)(9), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 98-525, title XIV, Sec. 1405(56)(B), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 103-355, title II, Sec. 2001(j)(2), Oct. 13, 1994, 108 Stat. 3303.)

§ 7523. Tolls and fares: payment or reimbursement

Naval appropriations chargeable for transportation or travel are available for the payment or reimbursement of ferry, bridge, and similar tolls and of streetcar, bus, and similar fares.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464.)

§ 7524. Marine mammals: use for national defense purposes

(a) **AUTHORITY.**—Subject to subsection (c), the Secretary of Defense may authorize the taking of not more than 25 marine mammals each year for national defense purposes. Any such authorization may be made only with the concurrence of the Secretary of Commerce and after consultation with the Marine Mammal Commission established by section 201 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1401).

(b) **HUMANE TREATMENT REQUIRED.**—A mammal taken under this section shall be captured, supervised, cared for, transported, and deployed in a humane manner consistent with conditions established by the Secretary of Commerce.

(c) **PROTECTION FOR ENDANGERED SPECIES.**—A mammal may not be taken under this section if the mammal is determined to be a member of an endangered or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).

(d) APPLICATION OF OTHER ACT.—This section applies without regard to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

(Added Pub. L. 99-661, div. A, title XIII, Sec. 1354(a), Nov. 14, 1986, 100 Stat. 3996.)

CHAPTER 647—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

- Sec.
7541. Obsolete and other material: gift or sale to Boy Scouts of America, Naval Sea Cadet Corps and Young Marines of the Marine Corps League.
7541a. Uniform clothing: sale to Naval Sea Cadet Corps.
7541b. Authority to make grants for purposes of Naval Sea Cadet Corps.
7542. Excess clothing: sale for distribution to needy.
7543. Useless ordnance material: disposition of proceeds on sale.
7544. Devices and trophies: transfer to other agencies.
7545. Obsolete material and articles of historical interest: loan or gift.
7546. Loan or gift of articles to ships' sponsors and donors.
7547. Equipment for instruction in seamanship: loan to military schools.

§ 7541. Obsolete and other material: gift or sale to Boy Scouts of America, Naval Sea Cadet Corps and Young Marines of the Marine Corps League

Subject to regulations under section 121 of title 40, the Secretary of the Navy may—

- (1) give obsolete material not needed for naval purposes; and
- (2) sell other material that may be spared at a price representing its fair value;

to the Boy Scouts of America for the sea scouts, to the Naval Sea Cadet Corps for the sea cadets, and to the Young Marines of the Marine Corps League for the young marines. The cost of transportation and delivery of material given or sold under this section shall be charged to the Boy Scouts of America, to the Naval Sea Cadets, or to the Young Marines of the Marine Corps League, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465; Jan. 3, 1975, Pub. L. 93-628, Sec. 1, 88 Stat. 2147; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 513(39), 94 Stat. 2934; Pub. L. 107-217, Sec. 3(b)(31), Aug. 21, 2002, 116 Stat. 1297.)

§ 7541a. Uniform clothing: sale to Naval Sea Cadet Corps

Subject to regulations under section 121 of title 40, the Secretary of the Navy, under regulations prescribed by him, may sell any item of enlisted naval uniform clothing that may be spared, at a price representing its fair value, to the Naval Sea Cadet Corps for the sea cadets and to any Federal or State maritime academy having a department of naval science for the maritime cadets and midshipmen. The cost of transportation and delivery of items sold under this section shall be charged to the Naval Sea Cadet Corps and to such Federal and State maritime academies.

(Added Pub. L. 89-266, Sec. 1(1), Oct. 19, 1965, 79 Stat. 990; amended Pub. L. 96-513, title V, Sec. 513(39), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 107-217, Sec. 3(b)(32), Aug. 21, 2002, 116 Stat. 1297.)

§ 7541b. Authority to make grants for purposes of Naval Sea Cadet Corps

Subject to the availability of funds for this purpose, the Secretary of the Navy may make grants to support the purposes of Naval Sea Cadet Corps, a federally chartered corporation under chapter 1541 of title 36.

(Added Pub. L. 111–84, div. A, title V, Sec. 592(a), Oct. 28, 2009, 123 Stat. 2337.)

§ 7542. Excess clothing: sale for distribution to needy

(a) Subject to regulations under section 121 of title 40, the Secretary of the Navy, under regulations prescribed by him, may sell, at nominal prices, to recognized charitable organizations, to States and subdivisions thereof, and to municipalities nonregulation and excess clothing that may be available for distribution to the needy. The clothing may be sold only if the purchaser agrees not to resell it but to give it to the needy.

(b) A fair proportionate allotment of clothing to be sold under this section shall be set aside for distribution in each State and the District of Columbia. An allotment so set aside may not be sold for other distribution until at least 30 days after the allotment was made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465; Dec. 12, 1980, Pub. L. 96–513, title V, Sec. 513(39), 94 Stat. 2934; Pub. L. 107–217, Sec. 3(b)(33), Aug. 21, 2002, 116 Stat. 1297.)

§ 7543. Useless ordnance material: disposition of proceeds on sale

The net proceeds of sales of useless ordnance material by the Department of the Navy shall be covered into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

§ 7544. Devices and trophies: transfer to other agencies

(a) The Secretary of the Navy may, without reimbursement, transfer to the Secretary of the Treasury devices and trophies for the promotion of the sale of war bonds or victory bonds. The Secretary of the Treasury may sell or donate the devices and trophies for the promotion of the sale of such bonds.

(b) The Secretary of the Navy may, without reimbursement, transfer to any agency of the United States devices and trophies for scientific, experimental, monumental, or display purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

§ 7545. Obsolete material and articles of historical interest: loan or gift

(a) **AUTHORITY TO MAKE LOANS AND GIFTS.**—The Secretary of the Navy may lend or give, without expense to the United States, items described in subsection (b) that are not needed by the Department of the Navy to any of the following:

- (1) A State, Commonwealth, or possession of the United States, or political subdivision or municipal corporation thereof.
- (2) The District of Columbia.
- (3) A library.
- (4) A historical society.

- (5) An educational institution whose graduates or students fought in a foreign war.
 - (6) A servicemen's monument association.
 - (7) A State museum.
 - (8) A museum or memorial operated and maintained for educational purposes only, whose charter denies it the right to operate for profit.
 - (9) A post of the Veterans of Foreign Wars of the United States.
 - (10) A post of the American Legion.
 - (11) Any other recognized war veterans' association.
 - (12) A post of the Sons of Veterans Reserve.
- (b) ITEMS ELIGIBLE FOR DISPOSAL.—This section applies to the following types of property held by the Department of the Navy:
- (1) Captured, condemned, or obsolete ordnance material.
 - (2) Captured, condemned, or obsolete combat or shipboard material.
- (c) REGULATIONS.—A loan or gift made under this section shall be subject to regulations prescribed by the Secretary and to regulations under section 121 of title 40.
- (d) MAINTENANCE OF THE RECORDS OF THE GOVERNMENT.—Records of the Government as defined in section 3301 of title 44 may not be disposed of under this section.
- (e) ALTERNATIVE AUTHORITIES TO MAKE GIFTS OR LOANS.—If any disposition is authorized by this section and section 2572 of this title, the Secretary may make the gift or loan under either section.
- (f) AUTHORITY TO TRANSFER A PORTION OF A VESSEL.—The Secretary may lend, give, or otherwise transfer any portion of the hull or superstructure of a vessel stricken from the Naval Vessel Register and designated for scrapping to a qualified organization specified in subsection (a). The terms and conditions of an agreement for the transfer of a portion of a vessel under this section shall include a requirement that the transferee will maintain the material conveyed in a condition that will not diminish the historical value of the material or bring discredit upon the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466; Pub. L. 96-513, title V, Sec. 513(39), (40), Dec. 12, 1980, 94 Stat. 2934, 2935; Pub. L. 104-106, div. A, title X, Sec. 1061(i), Feb. 10, 1996, 110 Stat. 443; Pub. L. 107-107, div. A, title X, Sec. 1043(a)-(c), Dec. 28, 2001, 115 Stat. 1218, 1219; Pub. L. 107-217, Sec. 3(b)(34), Aug. 21, 2002, 116 Stat. 1298; Pub. L. 107-314, div. A, title X, Sec. 1062(e)(2), Dec. 2, 2002, 116 Stat. 2651; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

§ 7546. Loan or gift of articles to ships' sponsors and donors

The Secretary of the Navy, under regulations prescribed by him and without expense to the United States, may lend or give—

- (1) to the sponsor of a vessel the name plate or any small article of negligible or sentimental value from that vessel; and
- (2) to any State, group, or organization named in section 7545 of this title any article, material, or equipment, including silver service, given by it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

§ 7547. Equipment for instruction in seamanship: loan to military schools

(a) Upon the application of the governor of any State having a seacoast or bordering on any of the Great Lakes, the President may direct the Secretary of the Navy to lend to one well-established military school in that State that desires to instruct its cadets in elementary seamanship one fully equipped cutter for every 25 cadets attending the school, and such other equipment adequate for instruction in elementary seamanship as may be spared.

(b) To be eligible for a loan under this section a school must—

- (1) have adequate facilities for cutter drill;
- (2) have at least 75 cadets—
 - (A) at least 15 years of age;
 - (B) in uniform;
 - (C) receiving military instruction; and
 - (D) quartered in barracks under military regulations;

and

(3) have the capacity to quarter and educate 150 cadets at one time.

(c) Whenever a loan is made under this section, the Secretary shall require a bond in double the value of the property for its care and return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

CHAPTER 649—QUARTERS, UTILITIES, AND SERVICES

Sec.	
7571.	Quarters or other accommodations: to whom furnished.
7572.	Quarters: accommodations in place of for members on sea duty.
7573.	Quarters: temporary; transient members.
[7574, 7575.	Repealed.]
7576.	Quarters: extension telephones.
7577.	Quarters: Nurse Corps officers; assignment in hospitals.
[7578.	Repealed.]
7579.	Officers' messes and quarters: limitations on employment of enlisted members.
7580.	Heat and light for Young Men's Christian Association buildings.
7581.	Marine Corps post laundries: disposition of receipts.
7582.	Naval and Marine Corps Historical Centers: fee for providing historical information to the public.

§ 7571. Quarters or other accommodations: to whom furnished

(a) Under such regulations as the Secretary of the Navy prescribes, public quarters including heat, light, water, and refrigeration may be furnished for personnel in the following categories who are on active duty:

- (1) Members of the naval service.
- (2) Members of the Coast Guard when it is operating as a service in the Navy.
- (3) Members of the National Oceanic and Atmospheric Administration serving with the Navy.

If public quarters are not available for any such member, the Secretary may provide lodging accommodations for him. Lodging accommodations so provided may not be occupied by the member's dependents.

(b) The Secretary may determine in any case whether public quarters are available within the meaning of any provision of law relating to the assignment of or commutation for public quarters.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by subsection (a), except the authority to prescribe regulations, to any person in the Department of the Navy, with or without authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 467; Pub. L. 89-718, Sec. 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, Sec. 513(41), Dec. 12, 1980, 94 Stat. 2935.)

§ 7572. Quarters: accommodations in place of for members on sea duty

(a) If public quarters are not available, the Secretary of the Navy may provide lodging accommodations for any—

- (1) member of the naval service;
- (2) member of the Coast Guard when it is operating as a service in the Navy; or
- (3) member of the National Oceanic and Atmospheric Administration serving with the Navy;

on sea duty who is deprived of his quarters on board ship because of repairs or because of other conditions that make his quarters uninhabitable. Lodging accommodations so provided may not be occupied by the member's dependents.

[(b) Repealed. Pub. L. 105-261, div. A, title X, Sec. 1069(a)(7), Oct. 17, 1998, 112 Stat. 2136.]

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by subsection (a) to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(d)(1) After the expiration of the authority provided in subsection (b), an officer of the naval service on sea duty who is deprived of quarters on board ship because of repairs or because of other conditions that make the officer's quarters uninhabitable may be reimbursed for expenses incurred in obtaining quarters if it is impracticable to furnish the officer with accommodations under subsection (a).

(2) The total amount that an officer may be reimbursed under this subsection may not exceed an amount equal to the basic allowance for quarters of an officer of that officer's grade.

(3) This subsection shall not apply to an officer who is entitled to basic allowance for quarters.

(4) The Secretary may prescribe regulations to carry out this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 468; Pub. L. 89-718, Sec. 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-357, Sec. 3, Sept. 24, 1980, 94 Stat. 1182; Pub. L. 96-513, title V, Sec. 513(41), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 97-60, title II, Sec. 207(b), Oct. 14, 1981, 95 Stat. 1007; Pub. L. 98-94, title IX, Sec. 912(a), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98-525, title VI, Sec. 602(d)(3), 603(a), title XIV, Sec. 1405(54), Oct. 19, 1984, 98 Stat. 2536, 2537, 2625; Pub. L. 99-145, title VI, Sec. 606(a), Nov. 8, 1985, 99 Stat. 638; Pub. L. 99-661, div. A, title VI, Sec. 603(a), Nov. 14, 1986, 100 Stat. 3874; Pub. L. 102-190, div. A, title VI, Sec. 607(a), (b), Dec. 5, 1991, 105 Stat. 1375; Pub. L. 105-85, div. A, title VI, Sec. 603(d)(2)(D), Nov. 18, 1997, 111 Stat. 1783; Pub. L. 105-261, div. A, title X, Sec. 1069(a)(7), Oct. 17, 1998, 112 Stat. 2136.)

§ 7573. Quarters: temporary; transient members

Temporary quarters may be furnished on a rental basis to transient members of the naval service with their dependents, for periods not exceeding 60 days, without loss of entitlement to basic allowance for housing under section 403 of title 37.

(Aug. 10, 1956, ch. 1041, 70A Stat. 468; Pub. L. 105-85, div. A, title VI, Sec. 603(d)(2)(E), Nov. 18, 1997, 111 Stat. 1783.)

[§§ 7574, 7575. Repealed. Pub. L. 93-166, title V, Sec. 509(d), Nov. 29, 1973, 87 Stat. 678]

§ 7576. Quarters: extension telephones

(a) Under regulations prescribed by the Secretary of the Navy appropriated funds may be used to pay the cost of installation and use, other than for personal long distance calls, of extension telephones connecting public quarters occupied by personnel in the following categories with the switchboards of their official stations:

- (1) Members of the naval service.
- (2) Members of the Coast Guard when it is operating as a service in the Navy.
- (3) Members of the National Oceanic and Atmospheric Administration serving with the Navy.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section, except the authority to prescribe regulations, to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 469; Pub. L. 89-718, Sec. 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, Sec. 513(41), Dec. 12, 1980, 94 Stat. 2935.)

§ 7577. Quarters: Nurse Corps officers; assignment in hospitals

Under such regulations as the Secretary of the Navy prescribes, officers in the Nurse Corps may be assigned quarters in naval hospitals.

(Aug. 10, 1956, ch. 1041, 70A Stat. 469.)

[§ 7578. Repealed. Pub. L. 85-861, Sec. 36B(24), Sept. 2, 1958, 72 Stat. 1571]

§ 7579. Officers' messes and quarters: limitations on employment of enlisted members

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the naval service and enlisted members of the Coast Guard when it is operating as a service in the Navy may be assigned to duty in a service capacity in officers' messes and public quarters where the Secretary finds that this use of the members is desirable for military reasons.

(b) Notwithstanding any other provision of law, retired enlisted members of the naval service and members of the Fleet Reserve and the Fleet Marine Corps Reserve may, when not on active duty, be voluntarily employed in any service capacity in officers' messes and public quarters without additional expense to the United States.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section, except the authority to prescribe regulations, to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

§ 7580. Heat and light for Young Men's Christian Association buildings

The Secretary of the Navy may furnish, without charge, heat and light to any building of the Young Men's Christian Association located at a naval activity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

§ 7581. Marine Corps post laundries: disposition of receipts

(a) Money received for laundry work performed by Marine Corps post laundries shall be used to pay the cost of maintenance and operation of those laundries. Any amount remaining at the end of the fiscal year after the cost has been so paid shall be deposited in the Treasury to the credit of the appropriation from which the cost of operating the laundries is paid.

(b) The receipts and expenditures of Marine Corps post laundries shall be accounted for as public funds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

§ 7582. Naval and Marine Corps Historical Centers: fee for providing historical information to the public

(a) **AUTHORITY.**—Except as provided in subsection (b), the Secretary of the Navy may charge a person a fee for providing the person with information from the United States Naval Historical Center or the Marine Corps Historical Center that is requested by that person.

(b) **EXCEPTIONS.**—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) **LIMITATION ON AMOUNT.**—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) **RETENTION OF FEES.**—Amounts received under subsection (a) for providing information from the United States Naval Historical Center or the Marine Corps Historical Center in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from that historical center during that fiscal year.

(e) **DEFINITIONS.**—In this section:

(1) The term “United States Naval Historical Center” means the archive for historical records and materials of the Navy that the Secretary of the Navy designates as the primary archive for such records and materials.

(2) The term “Marine Corps Historical Center” means the archive for historical records and materials of the Marine Corps that the Secretary of the Navy designates as the primary archive for such records and materials.

(3) The terms “officer of the United States” and “employee of the United States” have the meanings given the terms “officer” and “employee”, respectively, in sections 2104 and 2105, respectively, of title 5.

(Added Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1085(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–288.)

CHAPTER 651—SHIPS' STORES AND COMMISSARY STORES

Sec.	
7601.	Sales: members of the naval service and Coast Guard; widows and widowers; civilian employees and other persons.
7602.	Sales: members of Army and Air Force; prices.
7603.	Sales: veterans under treatment.
7604.	Ships' stores: sale of goods and services.
7605.	Acceptance of Government checks outside the United States.
7606.	Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.

§ 7601. Sales: members of the naval service and Coast Guard; widows and widowers; civilian employees and other persons

(a) Such stores as the Secretary of the Navy designates may be procured and sold to members of the naval service, members of the Coast Guard, and widows and widowers of such members.

(b) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of naval activities.

However, sales to civilian officers and employees inside the United States may be made only to those residing within military installations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470; Pub. L. 99-145, title XIII, Sec. 1301(e)(3)(A), (B), Nov. 8, 1985, 99 Stat. 736.)

§ 7602. Sales: members of Army and Air Force; prices

The Navy and the Marine Corps shall sell subsistence supplies to any member of the Army or the Air Force at prices charged members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471.)

§ 7603. Sales: veterans under treatment

A person who has been separated honorably or under honorable conditions from the Army, the Navy, the Air Force, or the Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, from the Navy and the Marine Corps at prices charged members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

§ 7604. Ships' stores: sale of goods and services

(a) IN GENERAL.—Under such regulations and at such prices as the Secretary of the Navy may prescribe, the Secretary may provide for the sale of goods and services from ships' stores to members of the naval service and to such other persons as provided by law.

(b) INCIDENTAL SERVICES.—The Secretary of the Navy may provide financial services, space, utilities, and labor to ships' stores on a nonreimbursable basis.

(c) ITEMS SOLD.—Merchandise sold by ship stores afloat shall include items in the following categories:

- (1) Health, beauty, and barber items.
- (2) Prerecorded music and videos.
- (3) Photographic batteries and related supplies.
- (4) Appliances and accessories.
- (5) Uniform items, emblematic and athletic clothing, and equipment.
- (6) Luggage and leather goods.
- (7) Stationery, magazines, books, and supplies.
- (8) Sundry, games, and souvenirs.
- (9) Beverages and related food and snacks.
- (10) Laundry, tailor, and cleaning supplies.
- (11) Tobacco products.

(Added Pub. L. 101-510, div. A, title III, Sec. 329(a)(1), Nov. 5, 1990, 104 Stat. 1534; amended Pub. L. 103-160, div. A, title III, Sec. 371(a), formerly Sec. 371(c), Nov. 30, 1993, 107 Stat. 1635, renumbered Sec. 371(a), Pub. L. 104-106, div. A, title III, Sec. 340(a)(2), Feb. 10, 1996, 110 Stat. 265.)

§ 7605. Acceptance of Government checks outside the United States

Notwithstanding section 3302(a) of title 31, the Secretary of the Navy may authorize the officer in charge of any commissary store or ship's store ashore located outside the United States to—

- (1) accept any Government check tendered by a retired member of the Navy or the Marine Corps, a member of the Navy Reserve or the Marine Corps Reserve, or a member of the Fleet Reserve or the Fleet Marine Corps Reserve, if the member is the payee of the check and the check is tendered in payment of amounts due from the member to the store; and
- (2) refund in cash any difference between the amount due and the amount of the tendered check.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471; Pub. L. 96-513, title V, Sec. 513(42), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 97-258, Sec. 3(b)(10), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(V), Jan. 6, 2006, 119 Stat. 3233.)

§ 7606. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a)(1) The Secretary of the Navy shall procure and sell, for cash or credit—

- (A) articles designated by the Secretary to members of the Navy and Marine Corps; and

(B) items of individual clothing and equipment to members of the Navy and Marine Corps, under such restrictions as the Secretary may prescribe.

(2) An account of sales on credit shall be kept and the amount due reported to the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Navy and Marine Corps.

(c) The Secretary may sell serviceable supplies, other than subsistence supplies, to members of other armed forces for the buyers' use in the service. The prices at which the supplies are sold shall be the same prices at which like property is sold to members of the Navy and Marine Corps.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to members of the Navy and Marine Corps.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged honorably or under honorable conditions from the Navy or Marine Corps, at the prices at which like articles are sold to members of the Navy or Marine Corps. This subsection does not modify section 772 or 773 of this title.

(f) Under regulations prescribed by the Secretary, payment for subsistence supplies shall be made in cash or by commercial credit.

(g)(1) The Secretary may provide for the procurement and sale of stores designated by the Secretary to such civilian officers and employees of the United States, and such other persons, as the Secretary considers proper—

(A) at military installations outside the United States; and

(B) subject to paragraph (2), at military installations inside the United States where the Secretary determines that it is impracticable for those civilian officers, employees, and persons to obtain such stores from commercial enterprises without impairing the efficient operation of military activities.

(2) Sales to civilian officers and employees inside the United States may be made under paragraph (1) only to civilian officers and employees residing within military installations.

(h) Appropriations for subsistence of the Navy or Marine Corps may be applied to the purchase of subsistence supplies for sale to members of the Navy and Marine Corps on active duty for the use of such members and their families.

(Added Pub. L. 104–106, div. A, title III, Sec. 375(a)(1), Feb. 10, 1996, 110 Stat. 281; amended Pub. L. 105–85, div. A, title X, Sec. 1073(a)(63), Nov. 18, 1997, 111 Stat. 1903.)

CHAPTER 653—CLAIMS

Sec.	
7621.	Definitions.
7622.	Admiralty claims against the United States.
7623.	Admiralty claims by the United States.
	[7624, 7625. Repealed.]

§ 7621. Definitions

(a) In this chapter “vessel in the naval service” means—

(1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or

(2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

(b) In this chapter “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 472.)

§ 7622. Admiralty claims against the United States

(a) The Secretary of the Navy may settle, or compromise, and pay in an amount not more than \$15,000,000 an admiralty claim against the United States for—

(1) damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy.

(b) If a claim under this section is settled or compromised for more than \$15,000,000, the Secretary shall certify it to Congress.

(c) In any case where the amount to be paid is not more than \$1,000,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the claimant, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 472; July 7, 1965, Pub. L. 89-67, 79 Stat. 212; Aug. 29, 1972, Pub. L. 92-417, Sec. 1(5), 86 Stat. 654; Nov. 29, 1989, Pub. L. 101-189, div. A, title XVI, Sec. 1633, 103 Stat. 1608; Dec. 28, 2001, Pub. L. 107-107, title X, Sec. 1014(a), 115 Stat. 1212.)

§ 7623. Admiralty claims by the United States

(a) The Secretary of the Navy may settle, or compromise, and receive payment of a claim by the United States for damage to

property under the jurisdiction of the Department of the Navy or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the net amount to be received by the United States is not more than \$15,000,000.

(b)(1) In exchange for payment of an amount found to be due the United States under this section, the Secretary may execute a release of the claim on behalf of the United States.

(2)(A) Except as provided in subparagraph (B), amounts received under this section shall be covered into the Treasury as miscellaneous receipts.

(B) Amounts received under this section for damage or loss to property operated and maintained with funds from a Department of Defense working capital fund or account shall be credited to that fund or account.

(c) In any case where the amount to be received by the United States is not more than \$1,000,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the Secretary, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law.

(e) This section does not apply to any claim while there is pending as to that claim a suit filed by or against the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 472; Pub. L. 89-67, July 7, 1965, 79 Stat. 212; Pub. L. 101-189, div. A, title XVI, Sec. 1633, Nov. 29, 1989, 103 Stat. 1608; Pub. L. 107-107, div. A, title X, Sec. 1014(b), Dec. 28, 2001, 115 Stat. 1212; Pub. L. 110-417, [div. A], title X, Sec. 1032, Oct. 14, 2008, 122 Stat. 4591.)

[§ 7624. Repealed. Pub. L. 86-533, Sec. 1(10)(A), June 29, 1960, 74 Stat. 247]

[§ 7625. Repealed. Pub. L. 87-769, Sec. 1(2)(A), Oct. 9, 1962, 76 Stat. 768]

CHAPTER 655—PRIZE

Sec.	
7651.	Scope of chapter.
7652.	Jurisdiction.
7653.	Court in which proceedings brought.
7654.	Effect of failure to start proceedings.
7655.	Appointment of prize commissioners and special prize commissioners.
7656.	Duties of United States attorney.
7657.	Duties of commanding officer of capturing vessel.
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7660.	Duties of prize commissioners.
7661.	Interrogation of witnesses by prize commissioners.
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7663.	Prize property appropriated for the use of the United States.
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§ 7651. Scope of chapter

(a) This chapter applies to all captures of vessels as prize during war by authority of the United States or adopted and ratified by the President. However, this chapter does not affect the right of the Army or the Air Force, while engaged in hostilities, to capture wherever found and without prize procedure—

- (1) enemy property; or
- (2) neutral property used or transported in violation of the obligations of neutrals under international law.

(b) As used in this chapter—

- (1) “vessel” includes aircraft; and
- (2) “master” includes the pilot or other person in command of an aircraft.

(c) Property seized or taken upon the inland waters of the United States by its naval forces is not maritime prize. All such property shall be delivered promptly to the proper officers of the courts.

(d) Nothing in this chapter may be construed as contravening any treaty of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

§ 7652. Jurisdiction

(a) The United States district courts have original jurisdiction, exclusive of the courts of the States, of each prize and each proceeding for the condemnation of property taken as prize, if the prize is—

(1) brought into the United States, or the Commonwealths or possessions;

(2) brought into the territorial waters of a cobelligerent;

(3) brought into a locality in the temporary or permanent possession of, or occupied by, the armed forces of the United States; or

(4) appropriated for the use of the United States.

(b) The United States district courts, exclusive of the courts of the States, also have original jurisdiction of a prize cause in which the prize property—

(1) is lost or entirely destroyed; or

(2) cannot be brought in for adjudication because of its condition.

(c) The jurisdiction conferred by this section of prizes brought into the territorial waters of a cobelligerent may not be exercised, nor may prizes be appropriated for the use of the United States within those territorial waters, unless the government having jurisdiction over those waters consents to the exercise of the jurisdiction or to the appropriation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474; Pub. L. 109–163, div. A, title X, Sec. 1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

§ 7653. Court in which proceedings brought

(a) If a prize is brought into a port of the United States, or the Commonwealths or possessions, proceedings for the adjudication of the prize cause shall be brought in the district in which the port is located.

(b) If a prize is brought into the territorial waters of a cobelligerent, or is brought into a locality in the temporary or permanent possession of, or occupied by, the armed forces of the United States, or is appropriated for the use of the United States, before proceedings are started, the venue of the proceedings for adjudication of the cause shall be in the judicial district selected by the Attorney General, or his designee, for the convenience of the United States.

(c) If the prize property is lost or entirely destroyed or if, because of its condition, no part of it has been or can be sent in for adjudication, proceedings for adjudication of the cause may be brought in any district designated by the Secretary of the Navy. In such cases the proceeds of anything sold shall be deposited with the Treasurer of the United States or public depository in or nearest the district designated by the Secretary, subject to the orders of the court for that district.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474; Pub. L. 109–163, div. A, title X, Sec. 1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

§ 7654. Effect of failure to start proceedings

If a vessel is captured as prize and no proceedings for adjudication are started within a reasonable time, any party claiming the captured property may, in any district court as a court of prize—

- (1) move for a monition to show cause why such proceedings shall not be started; or
- (2) bring an original suit for restitution.

The monition issued in either case shall be served on the United States Attorney for the district, on the Secretary of the Navy, and on such other persons as are designated by order of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

§ 7655. Appointment of prize commissioners and special prize commissioners

(a) In each judicial district there may be not more than three prize commissioners, one of whom is the naval prize commissioner. They shall be appointed by the district court for service in connection with any prize cause in which proceedings are brought under section 7653(a) or (c) of this title. The naval prize commissioner must be an officer of the Navy whose appointment is approved by the Secretary of the Navy. The naval prize commissioner shall protect the interests of the Department of the Navy in the prize property. At least one of the other commissioners must be a member of the bar of the court, of not less than three years' standing, who is experienced in taking depositions.

(b) A district court may appoint special prize commissioners to perform abroad, in connection with any prize cause in which proceedings are brought under section 7653(b) of this title, the duties prescribed for prize commissioners, and, in connection with those causes, to exercise anywhere such additional powers and perform such additional duties as the court considers proper, including the duties prescribed by this chapter for United States marshals. The court may determine the number and qualifications of the special prize commissioners it appoints, except that for each cause there shall be at least one naval special prize commissioner. The naval special prize commissioner must be an officer of the Navy whose appointment is approved by the Secretary. The naval special prize commissioner shall protect the interests of the Department of the Navy in the prize property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

§ 7656. Duties of United States attorney

(a) The interests of the United States in a prize cause shall be represented by the United States attorney for the judicial district in which the prize cause is adjudicated. The United States attorney shall protect the interests of the United States and shall examine all fees, costs, and expenses sought to be charged against the prize fund.

(b) In a judicial district where one or more prize causes are pending the United States attorney shall send to the Secretary of the Navy, at least once every three months, a statement of all such

causes in the form and covering the particulars required by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

§ 7657. Duties of commanding officer of capturing vessel

(a) The commanding officer of a vessel making a capture shall—

(1) secure the documents of the captured vessel, including the log, and the documents of cargo, together with all other documents and papers, including letters, found on board;

(2) inventory and seal all the documents and papers;

(3) send the inventory and documents and papers to the court in which proceedings are to be had, with a written statement—

(A) that the documents and papers sent are all the papers found, or explaining the reasons why any are missing; and

(B) that the documents and papers sent are in the same condition as found, or explaining the reasons why any are in different condition;

(4) send as witnesses to the prize court the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any other person found on board whom he believes to be interested in or to know the title, national character, or destination of the prize, and if any of the usual witnesses cannot be sent, send the reasons therefor to the court; and

(5) place a competent prize master and a prize crew on board the prize and send the prize, the witnesses, and all documents and papers, under charge of the prize master, into port for adjudication.

(b) In the absence of instructions from higher authority as to the port to which the prize shall be sent for adjudication, the commanding officer of the capturing vessel shall select the port that he considers most convenient in view of the interests of probable claimants.

(c) If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, the commanding officer of the capturing vessel shall have a survey and an appraisal made by competent and impartial persons. The reports of the survey and the appraisal shall be sent to the court in which proceedings are to be had. Property so surveyed and appraised, unless appropriated for the use of the United States, shall be sold under authority of the commanding officer present. Proceeds of the sale shall be deposited with the Treasurer of the United States or in the public depository most accessible to the court in which proceedings are to be had and subject to its order in the cause.

(Aug. 10, 1956, ch. 1041, 70A Stat. 476.)

§ 7658. Duties of prize master

The prize master shall take the captured vessel to the selected port. On arrival he shall—

(1) deliver immediately to a prize commissioner the documents and papers and the inventory thereof;

(2) make affidavit that the documents and papers and the inventory thereof and the prize property are the same and are in the same condition as delivered to him, or explaining any loss or absence or change in their condition;

(3) report all information respecting the prize and her capture to the United States attorney;

(4) deliver the persons sent as witnesses to the custody of the United States marshal; and

(5) retain the prize in his custody until it is taken therefrom by process from the prize court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 476.)

§ 7659. Libel and proceedings by United States attorney

(a) Upon receiving the report of the prize master directed by section 7658 of this title, the United States attorney for the district shall promptly—

(1) file a libel against the prize property;

(2) obtain a warrant from the court directing the marshal to take custody of the prize property; and

(3) proceed to obtain a condemnation of the property.

(b) In connection with the condemnation proceedings the United States attorney shall insure that the prize commissioners—

(1) take proper preparatory evidence; and

(2) take depositions de bene esse of the prize crew and of other transient persons who know any facts bearing on condemnation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

§ 7660. Duties of prize commissioners

One or more of the prize commissioners shall—

(1) receive from the prize master the documents and papers of the captured vessel and the inventory thereof;

(2) take the affidavit of the prize master required by section 7658 of this title;

(3) take promptly, in the manner prescribed by section 7661 of this title, the testimony of the witnesses sent in;

(4) take, at the request of the United States attorney, on interrogatories prescribed by the court, the depositions de bene esse of the prize crew and others;

(5) examine and inventory the prize property;

(6) apply to the court for an order to the marshal to unload the cargo, if this is necessary to that examination and inventory;

(7) report to the court, and notify the United States attorney, whether any of the prize property requires immediate sale in the interest of all parties;

(8) report to the court, from time to time, any matter relating to the condition, custody, or disposal of the prize property requiring action by the court;

(9) return to the court sealed and secured from inspection—

(A) the documents and papers received, duly scheduled and numbered;

(B) the preparatory evidence;

- (C) the evidence taken de bene esse; and
- (D) their inventory of the prize property; and
- (10) report to the Secretary of the Navy, if, in their judgment, any of the prize property is useful to the United States in the prosecution of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

§ 7661. Interrogation of witnesses by prize commissioners

Witnesses before the prize commissioners shall be questioned separately, on interrogatories prescribed by the court, in the manner usual in prize courts. Without special authority from the court, the witnesses may not see the interrogatories, documents, or papers, or consult with counsel or with other persons interested in the cause. Witnesses who have the rights of neutrals shall be discharged as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

§ 7662. Duties of marshal

The marshal shall—

- (1) keep in his custody all persons found on board a prize and sent in as witnesses, until they are released by the prize commissioners or the court;
- (2) keep safely in his custody all prize property under warrant from the court;
- (3) report to the court any cargo or other property that he thinks should be unloaded and stored or sold;
- (4) insure the prize property, if in his judgment it is in the interest of all concerned;
- (5) have charge of the sale of the property, if a sale is ordered, and be responsible for the conduct of the sale in the manner required by the court, for the collection of the gross proceeds, and for their immediate deposit with the Treasurer of the United States or public depository nearest the place of sale, subject to the order of the court in the cause; and
- (6) submit to the Secretary of the Navy, at such times as the Secretary designates, a full statement of the condition of the prize and of the disposal made thereof.

(Aug. 10, 1956, ch. 1041, 70A Stat. 478.)

§ 7663. Prize property appropriated for the use of the United States

(a) Any officer or agency designated by the President may appropriate for the use of the United States any captured vessel, arms, munitions, or other material taken as prize. The department or agency for whose use the prize property is appropriated shall deposit the value of the property with the Treasurer of the United States or with the public depository nearest to the court in which the proceedings are to be had, subject to the orders of the court.

(b) Whenever any captured vessel, arms, munitions, or other material taken as prize is appropriated for the use of the United States before that property comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisal, and inventory sent to the court in which the proceedings

are to be had. If the property is appropriated after it comes into the custody of the court, sufficient notice shall be given to enable the court to have the property appraised for the protection of the rights of the claimants.

(c) Notwithstanding subsections (a) and (b), in any case where prize property is appropriated for the use of the United States, a prize court may adjudicate the cause on the basis of an inventory and survey and an appropriate undertaking by the United States to respond for the value of the property, without either an appraisal or a deposit of the value of the prize with the Treasurer of the United States or a public depository.

(Aug. 10, 1956, ch. 1041, 70A Stat. 478.)

§ 7664. Delivery of property on stipulation

(a) Prize property may be delivered to a claimant on stipulation, deposit, or other security, if—

(1) the claimant satisfies the court that the property has a peculiar and intrinsic value to him, independent of its market value;

(2) the court is satisfied that the rights and interests of the United States or of other claimants will not be prejudiced;

(3) an opportunity is given to the United States attorney and the naval prize commissioner or the naval special prize commissioner to be heard as to the appointment of appraisers; and

(4) a satisfactory appraisal is made.

(b) Money collected on a stipulation, or deposited instead of it, that does not represent costs shall be deposited with the Treasurer of the United States or a public depository in the same manner as proceeds of a sale.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

§ 7665. Sale of prize

(a) The court shall order a sale of prize property if—

(1) the property has been condemned;

(2) the court finds, at any stage of the proceedings, that the property is perishable, liable to deteriorate, or liable to depreciate in value; or

(3) the cost of keeping the property is disproportionate to its value.

(b) The court may order a sale of the prize property if, after the return-day on the libel, all the parties in interest who have appeared in the cause agree to it.

(c) An appeal does not prevent the order of a sale under this section or the execution of such an order.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

§ 7666. Mode of making sale

(a) If a sale of prize property is ordered by the court, the marshal shall—

(1) prepare and circulate full catalogues and schedules of the property to be sold and return a copy of each to the court;

(2) advertise the sale fully and conspicuously by posters and in newspapers ordered by the court;

(3) give notice to the naval prize commissioner at least five days before the sale; and

(4) keep the goods open for inspection for at least three days before the sale.

(b) An auctioneer of known skill in the business to which the sale pertains shall be employed by the Secretary of the Navy to make the sale. The auctioneer, or his agent, shall collect and deposit the gross proceeds of the sale. The auctioneer and his agent are responsible to the marshal for the conduct of the sale and the collection and deposit of the gross proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

§ 7667. Transfer of prize property to another district for sale

(a) In the case of any prize property ordered to be sold, if the court believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, the court may direct the marshal to transfer the property to the district selected by the court for the sale, and to insure it. In such a case the court shall give the marshal proper orders as to the time and manner of conducting the sale.

(b) When so ordered the marshal shall transfer the property and keep it safely. He is responsible for its sale in the same manner as if the property were in his own district and for the deposit of the gross proceeds with the Treasurer of the United States or public depository nearest to the place of sale, subject to the order of the court for the district where the adjudication is pending.

(c) The necessary expenses of insuring, transferring, receiving, keeping, and selling the property are a charge upon it and upon the proceeds. Whenever any such expense is paid in advance by the marshal, any amount not repaid to him from the proceeds shall be allowed to him as in the case of expenses incurred in suits in which the United States is a party.

(d) If the Secretary of the Navy believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, he may, either by a general regulation or by a special direction in the cause, require the marshal to transfer the property from the district in which the judicial proceedings are pending to any other district for sale. In such a case proceedings shall be had as if the transfer had been made by order of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

§ 7668. Disposition of prize money

The net proceeds of all property condemned as prize shall be decreed to the United States and shall be ordered by the court to be paid into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

§ 7669. Security for costs

The court may require any party to give security for costs at any stage of the cause and upon filing an appeal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

§ 7670. Costs and expenses a charge on prize property

(a) Costs and expenses allowed by the court incident to the bringing in, custody, preservation, insurance, and sale or other disposal of prize property are a charge upon the property and shall be paid from the proceeds thereof, unless the court decrees restitution free from such a charge.

(b) Charges for work and labor, materials furnished, or money paid must be supported by affidavit or vouchers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

§ 7671. Payment of costs and expenses from prize fund

(a) Payment may not be made from a prize fund except upon the order of the court. The court may, at any time, order the payment, from the deposit made with the Treasurer or public depository in the cause, of costs or charges accrued and allowed.

(b) When the cause is finally disposed of, the court shall order the Treasurer or public depository to pay the costs and charges allowed and unpaid. If the final decree is for restitution, or if there is no money subject to the order of the court in the cause, costs or charges allowed by the court and not paid by the claimants shall be paid out of the fund for paying the expenses of suits in which the United States is a party or is interested.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

§ 7672. Recaptures: award of salvage, costs, and expenses

(a) If a vessel or other property that has been captured by a force hostile to the United States is recaptured, and the court believes that the property had not been condemned as prize by competent authority before its recapture, the court shall award an appropriate sum as salvage.

(b) If the recaptured property belonged to the United States, it shall be restored to the United States, and costs and expenses ordered to be paid by the court shall be paid from the Treasury.

(c) If the recaptured property belonged to any person residing within or under the protection of the United States, the court shall restore the property to its owner upon his claim and on payment of such sum as the court may award as salvage, costs, and expenses.

(d) If the recaptured property belonged to any person permanently residing within the territory and under the protection of any foreign government in amity with the United States, and, by the law or usage of that government, the property of a citizen of the United States would be restored under like circumstances of recapture, the court shall, upon the owner's claim, restore the property to him under such terms as the law or usage of that government would require of a citizen of the United States under like circumstances. If no such law or usage is known, the property shall be restored upon the payment of such salvage, costs, and expenses as the court orders.

(e) Amounts awarded as salvage under this section shall be paid to the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

§ 7673. Allowance of expenses to marshals

The marshal shall be allowed his actual and necessary expenses for the custody, care, preservation, insurance, and sale or other disposal of the prize property, and for executing any order of the court in the prize cause. Charges of the marshal for expenses or disbursements shall be allowed only upon his oath that they have been necessarily incurred for the purpose stated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

§ 7674. Payment of witness fees

If the court allows fees to any witness in a prize cause, or fees for taking evidence out of the district in which the court sits, and there is no money subject to its order in the cause, the marshal shall pay the fees. He shall be repaid from any money deposited to the order of the court in the cause. Any amount not so repaid to the marshal shall be allowed him as witness fees paid by him in cases in which the United States is a party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

§ 7675. Commissions of auctioneers

(a) The Secretary of the Navy may establish a scale of commissions to be paid to auctioneers employed to make sales of prize property. These commissions are in full satisfaction of expenses as well as services. The scale may in no case allow a commission in excess of—

(1) $\frac{1}{2}$ of 1 percent on any amount exceeding \$10,000 on the sale of a vessel; and

(2) 1 percent on any amount exceeding \$10,000 on the sale of other prize property.

(b) If no such scale is established, auctioneers in prize causes shall be paid such compensation as the court considers just under the circumstances of each case.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

§ 7676. Compensation of prize commissioners and special prize commissioners

(a) Naval prize commissioners and naval special prize commissioners may not receive compensation for their services in prize causes other than that to which they are entitled as officers of the Navy.

(b) Prize commissioners and special prize commissioners, except naval prize commissioners and naval special prize commissioners, are entitled to just and suitable compensation for their services in prize causes. The amount of compensation in each cause shall be determined by the court and allowed as costs.

(c) Annually, on the anniversary of his appointment, each prize commissioner and special prize commissioner, except a naval prize commissioner or a naval special prize commissioner, shall submit to the Attorney General an account of all amounts received for his services in prize causes within the previous year. Of the amounts reported, each such commissioner may retain not more than \$3,000, which is in full satisfaction for all his services in prize

causes for that year. He shall pay any excess over that amount into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

§ 7677. Accounts of clerks of district courts

(a) The clerk of each district court, for the purpose of the final decree in each prize cause, shall keep account of—

(1) the amount deposited with the Treasurer or public depository, subject to the order of the court in the cause; and

(2) the amounts ordered to be paid therefrom as costs and charges.

(b) The clerk shall draw the orders of the court for the payment of costs and allowances and for the disposition of the residue of the prize fund in each cause.

(c) The clerk shall send to the Secretary of the Treasury and the Secretary of the Navy—

(1) copies of final decrees in prize causes; and

(2) a semi-annual statement of the amounts allowed by the court, and ordered to be paid, within the preceding six months to the prize commissioners and special prize commissioners for their services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

§ 7678. Interfering with delivery, custody, or sale of prize property

Whoever willfully does, or aids or advises in the doing of, any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any claimant of that property, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

§ 7679. Powers of district court over prize property notwithstanding appeal

Notwithstanding an appeal, the district court may make and execute all necessary orders for the custody and disposal of prize property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

§ 7680. Appeals and amendments in prize causes

(a) A United States Court of Appeals may allow an appeal in a prize cause if it appears that a notice of appeal was filed with the clerk of the district court within thirty days after the final decree in that cause.

(b) A United States Court of Appeals, if in its opinion justice requires it, may allow amendments in form or substance of any appeal in a prize cause.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

§ 7681. Reciprocal privileges to cobelligerent

(a) A cobelligerent of the United States that consents to the exercise of jurisdiction conferred by section 7652(a) of this title with respect to any prize of the United States brought into the territorial waters of the cobelligerent or appropriated for the use of the United States within those territorial waters shall be given, upon proclamation by the President of the United States, like privileges with respect to any prize captured under the authority of that cobelligerent and brought into the territorial waters of the United States or appropriated for the use of the cobelligerent within the territorial waters of the United States.

(b) Reciprocal recognition shall be given to the jurisdiction acquired by courts of a cobelligerent under this section and full faith and credit shall be given to all proceedings had or judgments rendered in the exercise of that jurisdiction.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

CHAPTER 657—STAY OF JUDICIAL PROCEEDINGS

Sec.	
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§ 7721. Scope of chapter

(a) This chapter applies to any suit against the United States under chapter 311 of title 46 for—

- (1) damage caused by a vessel in the naval service; or
- (2) compensation for towage or salvage services, including contract salvage, rendered to a vessel in the naval service.

(b) In this chapter, the term “vessel in the naval service” means—

- (1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or
- (2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483; Pub. L. 96-513, title V, Sec. 513(43), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 100-26, Sec. 7(k)(10), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103-35, title II, Sec. 201(c)(11), May 31, 1993, 107 Stat. 98; Pub. L. 109-304, Sec. 17(a)(6), Oct. 6, 2006, 120 Stat. 1706.)

§ 7722. Stay of suit

(a) Whenever in time of war the Secretary of the Navy certifies to a court, or to a judge of a court, in which a suit described in section 7721 of this title is pending, that the prosecution of the suit would tend to endanger the security of naval operations in the war, or would tend to interfere with those operations, all further proceedings in the suit shall be stayed.

(b) A stay under this section does not suspend the issue of process to take or preserve evidence to be used in the trial or prevent the completion of action under similar process issued before the stay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

§ 7723. Stay of proceedings for preserving evidence after stay of suit

If, at the time of certification under section 7722 of this title, or at any time before the termination of the stay based on the certificate, the Secretary of the Navy files with the court an additional certificate to the effect that the issue of any process to preserve evi-

dence or the completion of action on process previously issued would tend to endanger the security of the United States or of any of its naval or military operations in the war, or would tend to interfere with those operations, then all proceedings for the taking or preserving of evidence to be used by either party in the trial shall be stayed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

§ 7724. Stay of proceedings for taking evidence before suit is filed

(a) If in time of war, with respect to any claim against the United States on which a suit described in section 7721 of this title would lie, the Secretary of the Navy certifies to the court, or to a judge of the court, in which proceedings are pending for—

- (1) the granting of a *dedimus potestatem* to take depositions;
- (2) a direction to take depositions in *perpetuam rei memoriam*; or
- (3) the taking of depositions or production of evidence pursuant to such *dedimus potestatem* or direction, or pursuant to any other proceedings for the purpose;

that the proceedings would tend to endanger the security of the United States or any of its naval or military operations in the war, or would tend to interfere with those operations, then the proceedings may not be started or, if they have been started, they shall, when the certificate is filed, be stayed.

(b) The time during which a claimant may file suit of the type described in section 7721 of this title is computed by excluding the time during which a stay under this section or any extension of such a stay is in effect.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

§ 7725. Stay extended or shortened

The Secretary of the Navy, when a stay under this chapter is in effect, may file with the court, or a judge of the court, a certificate extending or shortening the time stated in the prior certificate. The filing of such a new certificate extends or shortens the stay to the period specified in the new certificate or terminates the stay if the new certificate so states.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

§ 7726. Reconsideration of stay

(a) A claimant or party who considers himself adversely affected by a stay under this chapter may serve a written notice on the Secretary of the Navy at Washington, D.C., requesting him to reconsider the stay previously issued and to issue a new certificate. The notice shall identify the stay by means of an attached copy of the certificate of the Secretary or a sufficient description of the stay. The notice may not contain any recital of the facts or circumstances involved.

(b) Within ten days after receiving notice under this section, the Secretary or his designee shall hold a secret meeting at which the claimant or party, or his representative, may present any facts and arguments he thinks material.

(c) Within ten days after a hearing under this section, the Secretary shall file with the court that ordered the stay a new certificate stating whether the stay is then to be terminated or for what period the stay is to continue in effect. If the Secretary fails to file a new certificate, the court, upon application by the claimant or party, shall issue an order directing the Secretary to file a new certificate within a specified time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

§ 7727. Duration of stay

A stay of proceedings under this chapter remains in effect for the period specified in the certificate upon which it was based unless the Secretary of the Navy issues a new certificate under section 7725 or 7726 of this title changing the termination date. However, a stay under this chapter may not remain in force longer than six months after the cessation of hostilities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

§ 7728. Restricted certificate

The Secretary of the Navy may restrict a certificate issued under this chapter so that it stays only the taking of testimony of certain witnesses or the production of evidence on certain subjects. The proceedings not stayed may continue.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

§ 7729. Investigation before issue of certificate

The Secretary of the Navy may not issue a certificate under this chapter until he satisfies himself by investigation that it is necessary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

§ 7730. Evidence admissible when witness is not available

Whenever the court is satisfied by appropriate evidence or by agreement of counsel that the United States or the claimant is unable after reasonable efforts to secure the testimony of a witness and—

(1) the United States or the claimant has been prevented by a stay under this chapter from examining the witness; or

(2) the United States establishes that it has refrained from bringing a suit or from taking the testimony of the witness in a pending suit to avoid endangering the security of naval operations or interfering with such operations;

the court shall receive in evidence in place of the testimony of the witness—

(1) the affidavit of the witness duly sworn to before a notary public or other authorized officer; or

(2) the statement or testimony of the witness before a court-martial, a court of inquiry, or an investigation; but the use of such statement or testimony does not, in any litigation, make the remainder of the record admissible or compel the United States to produce the remainder of the record.

The court shall give such weight to the affidavit, statement, or testimony as it considers proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

CHAPTER 659—NAVAL MILITIA

Sec.	
7851.	Composition.
7852.	Appointment and enlistment in reserve components.
7853.	Release from Militia duty upon order to active duty in reserve components.
7854.	Availability of material for Naval Militia.

§ 7851. Composition

The Naval Militia consists of the Naval Militia of the States, the District of Columbia, Guam, and the Virgin Islands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486; Pub. L. 109–163, div. A, title X, Sec. 1057(a)(11), Jan. 6, 2006, 119 Stat. 3441.)

§ 7852. Appointment and enlistment in reserve components

In the discretion of the Secretary of the Navy, any member of the Naval Militia may be appointed or enlisted in the Navy Reserve or the Marine Corps Reserve in the grade for which he is qualified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(W), Jan. 6, 2006, 119 Stat. 3233.)

§ 7853. Release from Militia duty upon order to active duty in reserve components

When ordered to active duty, a member of the Navy Reserve or the Marine Corps Reserve who is a member of the Naval Militia is relieved from all service and duty in the Naval Militia from the date of active duty specified in his orders until he is released from active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(X), Jan. 6, 2006, 119 Stat. 3233.)

§ 7854. Availability of material for Naval Militia

Under regulations prescribed by the Secretary of the Navy, vessels, material, armament, equipment, and other facilities of the Navy and the Marine Corps available to the Navy Reserve and the Marine Corps Reserve may also be made available for issue or loan to any State, the District of Columbia, Guam, or the Virgin Islands for the use of its Naval Militia if—

(1) at least 95 percent of the members of the portion or unit of the Naval Militia to which the facilities would be made available are members of the Navy Reserve or the Marine Corps Reserve; and

(2) the organization, administration, and training of the Naval Militia conform to standards prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(Y), title X, Sec. 1057(a)(12), Jan. 6, 2006, 119 Stat. 3233, 3441.)

CHAPTER 661—ACCOUNTABILITY AND RESPONSIBILITY

Sec.

- 7861. Custody of departmental records and property.
- 7862. Accounts of paymasters of lost or captured naval vessels.
- 7863. Disposal of public stores by order of commanding officer.

§ 7861. Custody of departmental records and property

The Secretary of the Navy has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Navy.

(Added Pub. L. 99-433, title V, Sec. 514(b)(2), Oct. 1, 1986, 100 Stat. 1055.)

§ 7862. Accounts of paymasters of lost or captured naval vessels

When settling the account of a paymaster of a lost or captured naval vessel, the Comptroller General in settling money accounts, and the Secretary of the Navy in settling property accounts, shall credit the account of the paymaster for the amount of provisions, clothing, small stores, and money for which the paymaster is charged that the Comptroller General or Secretary believes was lost inevitably because of the loss or capture. The paymaster is then free of liability for the provisions, clothing, small stores, and money.

(Added Pub. L. 97-258, Sec. 2(b)(12)(B), Sept. 13, 1982, 96 Stat. 1057, Sec. 7861; amended Pub. L. 97-295, Sec. 1(51)(C), Oct. 12, 1982, 96 Stat. 1300; renumbered Sec. 7862, Pub. L. 99-433, title V, Sec. 514(b)(1), Oct. 1, 1986, 100 Stat. 1054.)

§ 7863. Disposal of public stores by order of commanding officer

When settling an account of a disbursing official, the Comptroller General shall allow disposal of public stores the disbursing official made under an order of a commanding officer when presented with satisfactory evidence that the order was made and that the stores were disposed of as the order provided. The commanding officer is accountable for the disposal.

(Added Pub. L. 97-258, Sec. 2(b)(12)(B), Sept. 13, 1982, 96 Stat. 1057, Sec. 7862; renumbered Sec. 7863, Pub. L. 99-433, title V, Sec. 514(b)(1), Oct. 1, 1986, 100 Stat. 1054; amended Pub. L. 104-106, div. A, title IX, Sec. 913(c)(3)(A), (B)(i), Feb. 10, 1996, 110 Stat. 411; Pub. L. 104-201, div. A, title X, Sec. 1074(a)(20), Sept. 23, 1996, 110 Stat. 2660.)

CHAPTER 663—NAMES AND INSIGNIA

Sec.
7881. Unauthorized use of Marine Corps insignia.

§ 7881. Unauthorized use of Marine Corps insignia

(a) The seal, emblem, and initials of the United States Marine Corps shall be deemed to be insignia of the United States.

(b) No person may, except with the written permission of the Secretary of the Navy, use or imitate the seal, emblem, name, or initials of the United States Marine Corps in connection with any promotion, goods, services, or commercial activity in a manner reasonably tending to suggest that such use is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(c) Whenever it appears to the Attorney General of the United States that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (b), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

(Added Pub. L. 98-525, title XV, Sec. 1532(a)(1), Oct. 19, 1984, 98 Stat. 2631.)

CHAPTER 665—NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM

Sec.	
7901.	National Oceanographic Partnership Program.
7902.	National Ocean Research Leadership Council.
7903.	Ocean Research Advisory Panel.

§ 7901. National Oceanographic Partnership Program

(a) **ESTABLISHMENT.**—The Secretary of the Navy shall establish a program to be known as the “National Oceanographic Partnership Program”.

(b) **PURPOSES.**—The purposes of the program are as follows:

(1) To promote the national goals of assuring national security, advancing economic development, protecting quality of life, and strengthening science education and communication through improved knowledge of the ocean.

(2) To coordinate and strengthen oceanographic efforts in support of those goals by—

(A) identifying and carrying out partnerships among Federal agencies, academia, industry, and other members of the oceanographic scientific community in the areas of data, resources, education, and communication; and

(B) reporting annually to Congress on the program.

(Added Pub. L. 104–201, div. A, title II, Sec. 282(a)(1), Sept. 23, 1996, 110 Stat. 2470.)

§ 7902. National Ocean Research Leadership Council

(a) **COUNCIL.**—There is a National Ocean Research Leadership Council (hereinafter in this chapter referred to as the “Council”).

(b) **MEMBERSHIP.**—The Council is composed of the following members:

(1) The Secretary of the Navy.

(2) The Administrator of the National Oceanic and Atmospheric Administration.

(3) The Director of the National Science Foundation.

(4) The Administrator of the National Aeronautics and Space Administration.

(5) The Deputy Secretary of Energy.

(6) The Administrator of the Environmental Protection Agency.

(7) The Commandant of the Coast Guard.

(8) The Director of the United States Geological Survey of the Department of the Interior.

(9) The Director of the Defense Advanced Research Projects Agency.

(10) The Director of the Minerals Management Service of the Department of the Interior.

(11) The Director of the Office of Science and Technology.

(12) The Director of the Office of Management and Budget.

(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

(14) Other Federal officials the Council considers appropriate.

(c) CHAIRMAN AND VICE CHAIRMAN.—(1) Except as provided in paragraph (2), the chairman and vice chairman of the Council shall be appointed every two years by a selection committee of the Council composed of, at a minimum, the Secretary of the Navy, the Administrator of the National Oceanic and Atmospheric Administration, and the Director of the National Science Foundation. The term of office of the chairman and vice chairman shall be two years. A person who has previously served as chairman or vice chairman may be reappointed.

(2) The first chairman of the Council shall be the Secretary of the Navy. The first vice chairman of the Council shall be the Administrator of the National Oceanic and Atmospheric Administration.

(d) RESPONSIBILITIES.—The Council shall have the following responsibilities:

(1) To prescribe policies and procedures to implement the National Oceanographic Partnership Program.

(2) To review, select, and identify and allocate funds for partnership projects for implementation under the program, based on the following criteria:

(A) Whether the project addresses critical research objectives or operational goals, such as data accessibility and quality assurance, sharing of resources, education, or communication.

(B) Whether the project has, or is designed to have, broad participation within the oceanographic community.

(C) Whether the partners have a long-term commitment to the objectives of the project.

(D) Whether the resources supporting the project are shared among the partners.

(E) Whether the project has been subjected to adequate peer review.

(3) To assess whether there is a need for a facility (or facilities) to provide national centralization of oceanographic data, and to establish such a facility or facilities if determined necessary. In conducting the assessment, the Council shall review, at a minimum, the following:

(A) The need for a national oceanographic data center.

(B) The need for a national coastal data center.

(C) Accessibility by potential users of such centers.

(D) Preexisting facilities and expertise.

(e) ANNUAL REPORT.—Not later than March 1 of each year, the Council shall submit to Congress a report on the National Oceanographic Partnership Program. The report shall contain the following:

(1) A description of activities of the program carried out during the fiscal year before the fiscal year in which the report is prepared, together with a list of the members of the Ocean

Research Advisory Panel and any working groups in existence during the fiscal year covered.

(2) A general outline of the activities planned for the program during the fiscal year in which the report is prepared.

(3) A summary of projects continued from the fiscal year before the fiscal year in which the report is prepared and projects expected to be started during the fiscal year in which the report is prepared and during the following fiscal year.

(4) A description of the involvement of the program with Federal interagency coordinating entities.

(5) The amounts requested, in the budget submitted to Congress pursuant to section 1105(a) of title 31 for the fiscal year following the fiscal year in which the report is prepared, for the programs, projects, and activities of the program and the estimated expenditures under such programs, projects, and activities during such following fiscal year.

(f) PARTNERSHIP PROGRAM OFFICE.—(1) The Council shall establish a partnership program office for the National Oceanographic Partnership Program. The Council shall use competitive procedures in selecting an operator for the partnership program office.

(2) The Council shall assign the following duties to the partnership program office:

(A) To establish and oversee working groups to propose partnership projects to the Council and advise the Council on such projects.

(B) To manage the process for proposing partnership projects to the Council, including managing peer review of such projects.

(C) To submit to the Council an annual report on the status of all partnership projects and activities of the office.

(D) Any additional duties for the administration of the National Oceanographic Partnership Program that the Council considers appropriate.

(3) The Council shall supervise the performance of duties by the partnership program office.

(g) CONTRACT AND GRANT AUTHORITY.—The Council may authorize one or more of the departments or agencies represented on the Council to enter into contracts and make grants, using funds appropriated pursuant to an authorization of appropriations for the National Oceanographic Partnership Program, for the purpose of implementing the program and carrying out the responsibilities of the Council.

(h) ESTABLISHMENT AND FORMS OF PARTNERSHIP PROJECTS.—

(1) A partnership project under the National Oceanographic Partnership Program may be established by any instrument that the Council considers appropriate, including a memorandum of understanding, a cooperative research and development agreement, and any similar instrument.

(2) Projects under the program may include demonstration projects.

(Added Pub. L. 104–201, div. A, title II, Sec. 282(a)(1), Sept. 23, 1996, 110 Stat. 2470; Pub. L. 105–85, div. A, title II, Sec. 241(a), title X, Sec. 1073(a)(64), Nov. 18, 1997, 111 Stat. 1665, 1903; Pub. L. 106–65, div. A, title X, Sec. 1066(a)(30), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107–296, title XVII, Sec. 1713, Nov. 25, 2002, 116 Stat. 2320.)

§ 7903. Ocean Research Advisory Panel

(a) ESTABLISHMENT.—The Council shall establish an Ocean Research Advisory Panel consisting of not less than 10 and not more than 18 members appointed by the chairman, including the following:

(1) One member who will represent the National Academy of Sciences.

(2) One member who will represent the National Academy of Engineering.

(3) One member who will represent the Institute of Medicine.

(4) Members selected from among individuals who will represent the views of ocean industries, State governments, academia, and such other views as the chairman considers appropriate.

(5) Members selected from among individuals eminent in the fields of marine science or marine policy, or related fields.

(b) RESPONSIBILITIES.—The Council shall assign the following responsibilities to the Advisory Panel:

(1) To advise the Council on policies and procedures to implement the National Oceanographic Partnership Program.

(2) To advise the Council on selection of partnership projects and allocation of funds for partnership projects for implementation under the program.

(3) To advise the Council on matters relating to national oceanographic data requirements.

(4) Any additional responsibilities that the Council considers appropriate.

(c) FUNDING.—The Secretary of the Navy annually shall make funds available to support the activities of the Advisory Panel.

(Added Pub. L. 104–201, div. A, title II, Sec. 282(a)(1), Sept. 23, 1996, 110 Stat. 2473; amended Pub. L. 105–85, div. A, title II, Sec. 241(b)(1), Nov. 18, 1997, 111 Stat. 1666.)

CHAPTER 667—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

- Sec.
7911. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.
7912. Rifles and ammunition for target practice: educational institutions having corps of midshipmen.
7913. Supplies: military instruction camps.

§ 7911. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Navy may issue arms, tentage, and equipment that the Secretary considers necessary for proper military training, to any educational institution at which no unit of the Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 50 physically fit students over 14 years of age.

(Added Pub. L. 110–181, div. A, title III, Sec. 377(a), Jan. 28, 2008, 122 Stat. 84.)

§ 7912. Rifles and ammunition for target practice: educational institutions having corps of midshipmen

(a) **AUTHORITY TO LEND.**—The Secretary of the Navy may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of midshipmen of sufficient number for target practice. The Secretary may also issue 40 rounds of ball cartridges for each midshipman for each range at which target practice is held, but not more than 120 rounds each year for each midshipman participating in target practice.

(b) **RESPONSIBILITIES OF INSTITUTIONS.**—The institutions to which property is lent under subsection (a) shall—

- (1) use the property for target practice;
- (2) take proper care of the property; and
- (3) return the property when required.

(c) **REGULATIONS.**—The Secretary of the Navy shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States.

(Added Pub. L. 110–181, div. A, title III, Sec. 377(a), Jan. 28, 2008, 122 Stat. 85.)

§ 7913. Supplies: military instruction camps

Under such conditions as he may prescribe, the Secretary of the Navy may issue, to any educational institution at which an officer of the naval service is detailed as professor of naval science, such supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall re-

quire a bond in the value of the property issued under this section, for the care and safekeeping of that property and except for property properly expended, for its return when required.

(Added Pub. L. 110–181, div. A, title III, Sec. 377(a), Jan. 28, 2008, 122 Stat. 85.)

Subtitle D—Air Force

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CHAPTER 803—DEPARTMENT OF THE AIR FORCE

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[§ 8010. Renumbered 8011]

§ 8011. Organization

The Department of the Air Force is separately organized under the Secretary of the Air Force. It operates under the authority, direction, and control of the Secretary of Defense.

(Added Pub. L. 87-651, title II, Sec. 213(a), Sept. 7, 1962, 76 Stat. 524, Sec. 8010; renumbered Sec. 8011, Pub. L. 99-433, title V, Sec. 521(a)(1), Oct. 1, 1986, 100 Stat. 1055.)

§ 8012. Department of the Air Force: seal

The Secretary of the Air Force shall have a seal for the Department of the Air Force. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 488, Sec. 8011; renumbered Sec. 8012, Pub. L. 99-433, title V, Sec. 521(a)(1), Oct. 1, 1986, 100 Stat. 1055.)

§ 8013. Secretary of the Air Force

(a)(1) There is a Secretary of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Air Force.

(2) A person may not be appointed as Secretary of the Air Force within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Air Force is responsible for, and has the

authority necessary to conduct, all affairs of the Department of the Air Force, including the following functions:

- (1) Recruiting.
- (2) Organizing.
- (3) Supplying.
- (4) Equipping (including research and development).
- (5) Training.
- (6) Servicing.
- (7) Mobilizing.
- (8) Demobilizing.
- (9) Administering (including the morale and welfare of personnel).
- (10) Maintaining.
- (11) The construction, outfitting, and repair of military equipment.
- (12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Air Force is also responsible to the Secretary of Defense for—

- (1) the functioning and efficiency of the Department of the Air Force;
- (2) the formulation of policies and programs by the Department of the Air Force that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;
- (3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Air Force;
- (4) carrying out the functions of the Department of the Air Force so as to fulfill the current and future operational requirements of the unified and specified combatant commands;
- (5) effective cooperation and coordination between the Department of the Air Force and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;
- (6) the presentation and justification of the positions of the Department of the Air Force on the plans, programs, and policies of the Department of Defense; and
- (7) the effective supervision and control of the intelligence activities of the Department of the Air Force.

(d) The Secretary of the Air Force is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Air Force may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Air Force may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Air Force and to the Assistant Secretaries of the

Air Force. Officers of the Air Force shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Air Force may—

(1) assign, detail, and prescribe the duties of members of the Air Force and civilian personnel of the Department of the Air Force;

(2) change the title of any officer or activity of the Department of the Air Force not prescribed by law; and

(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Added Pub. L. 99-433, title V, Sec. 521(a)(3), Oct. 1, 1986, 100 Stat. 1055; amended Pub. L. 99-661, div. A, title V, Sec. 534, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 108-136, div. A, title IX, Sec. 901, Nov. 24, 2003, 117 Stat. 1558.)

§ 8014. Office of the Secretary of the Air Force

(a) There is in the Department of the Air Force an Office of the Secretary of the Air Force. The function of the Office is to assist the Secretary of the Air Force in carrying out his responsibilities.

(b) The Office of the Secretary of the Air Force is composed of the following:

(1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries of the Air Force.

(3) The General Counsel of the Department of the Air Force.

(4) The Inspector General of the Air Force.

(5) The Chief of Legislative Liaison.

(6) The Air Reserve Forces Policy Committee.

(7) Such other offices and officials as may be established by law or as the Secretary of the Air Force may establish or designate.

(c)(1) The Office of the Secretary of the Air Force shall have sole responsibility within the Office of the Secretary and the Air Staff for the following functions:

(A) Acquisition.

(B) Auditing.

(C) Comptroller (including financial management).

(D) Information management.

(E) Inspector General.

(F) Legislative affairs.

(G) Public affairs.

(2) The Secretary of the Air Force shall establish or designate a single office or other entity within the Office of the Secretary of the Air Force to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Air Staff to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall prescribe the relationship of each office or other entity established or designated under paragraph (2) to the Chief of Staff and to the Air Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Air Force of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Air Force (including the Air Staff) from providing advice or assistance to the Chief of Staff or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Air Force.

(5) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Air Force shall have sole responsibility within the Office of the Secretary and the Air Staff for the function of research and development.

(2) The Secretary of the Air Force may assign to the Air Staff responsibility for those aspects of the function of research and development that relate to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Air Force to conduct the function specified in paragraph (1).

(4) The Secretary shall prescribe the relationship of the office or other entity established or designated under paragraph (3) to the Chief of Staff of the Air Force and to the Air Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(e) The Secretary of the Air Force shall ensure that the Office of the Secretary of the Air Force and the Air Staff do not duplicate specific functions for which the Secretary has assigned responsibility to the other.

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Air Force assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 2,639.

(2) Not more than 1,585 officers of the Air Force on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff.

(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 60.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force or on the Air Staff.

(Added Pub. L. 99-433, title V, Sec. 521(a)(3), Oct. 1, 1986, 100 Stat. 1057; amended Pub. L. 100-180, div. A, title XIII, Sec. 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100-456, div. A, title III, Sec. 325(c), Sept. 29, 1988, 102 Stat. 1955; Pub. L. 101-189, div. A, title VI, Sec. 652(a)(4), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 107-107, div. A, title X, Sec. 1048(a)(29), Dec.

28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title V, Sec. 504(e)(2), Dec. 2, 2002, 116 Stat. 2533.)

§ 8015. Under Secretary of the Air Force

(a) There is an Under Secretary of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Air Force may prescribe.

(Added Pub. L. 99–433, title V, Sec. 521(a)(3), Oct. 1, 1986, 100 Stat. 1058.)

§ 8016. Assistant Secretaries of the Air Force

(a) There are four Assistant Secretaries of the Air Force. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Air Force may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Air Force.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Air Force, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Air Force and shall advise the Secretary of the Air Force on financial management.

(4)(A) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Acquisition. The principal duty of the Assistant Secretary shall be the overall supervision of acquisition matters of the Department of the Air Force.

(B) The Assistant Secretary shall have a Principal Military Deputy, who shall be a lieutenant general of the Air Force on active duty. The Principal Military Deputy shall be appointed from among officers who have significant experience in the areas of acquisition and program management. The position of Principal Military Deputy shall be designated as a critical acquisition position under section 1733 of this title.

(Added Pub. L. 99–433, title V, Sec. 521(a)(3), Oct. 1, 1986, 100 Stat. 1058; amended Pub. L. 100–456, div. A, title VII, Sec. 702(c)(1)), (d), Sept. 29, 1988, 102 Stat. 1995, 1996; Pub. L. 110–181, div. A, title IX, Sec. 908(c), Jan. 28, 2008, 122 Stat. 278.)

§ 8017. Secretary of the Air Force: successors to duties

If the Secretary of the Air Force dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347 of title 5, directs another person to perform those duties or until the absence or disability ceases:

- (1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries of the Air Force, in the order prescribed by the Secretary of the Air Force and approved by the Secretary of Defense.

(3) The General Counsel of the Department of the Air Force.

(4) The Chief of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 489; Pub. L. 89-718, Sec. 23, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 90-235, Sec. 4(a)(9), Jan. 2, 1968, 81 Stat. 760; Pub. L. 99-433, title V, Sec. 521(a)(4), Oct. 1, 1986, 100 Stat. 1058; Pub. L. 103-337, div. A, title IX, Sec. 902(c), Oct. 5, 1994, 108 Stat. 2823.)

§ 8018. Administrative Assistant

The Secretary of the Air Force may appoint an Administrative Assistant in the Office of the Secretary of the Air Force. The Administrative Assistant shall perform such duties as the Secretary may prescribe.

(Added Pub. L. 99-433, title V, Sec. 521(a)(5), Oct. 1, 1986, 100 Stat. 1059.)

§ 8019. General Counsel

(a) There is a General Counsel of the Department of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Air Force may prescribe.

(Added Pub. L. 99-433, title V, Sec. 521(a)(5), Oct. 1, 1986, 100 Stat. 1059; amended Pub. L. 100-456, div. A, title VII, Sec. 703(a), Sept. 29, 1988, 102 Stat. 1996.)

§ 8020. Inspector General

(a) There is an Inspector General of the Air Force who shall be detailed to such position by the Secretary of the Air Force from the general officers of the Air Force. An officer may not be detailed to such position for a tour of duty of more than four years, except that the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest.

(b) When directed by the Secretary or the Chief of Staff, the Inspector General shall—

(1) inquire into and report upon the discipline, efficiency, and economy of the Air Force; and

(2) perform any other duties prescribed by the Secretary or the Chief of Staff.

(c) The Inspector General shall periodically propose programs of inspections to the Secretary of the Air Force and shall recommend additional inspections and investigations as may appear appropriate.

(d) The Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Air Force.

(e) The Inspector General shall have such deputies and assistants as the Secretary of the Air Force may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Air Force for a tour of duty

of not more than four years, under a procedure prescribed by the Secretary.

(Added Pub. L. 99-433, title V, Sec. 521(a)(5), Oct. 1, 1986, 100 Stat. 1059.)

§ 8021. Air Force Reserve Forces Policy Committee

There is in the Office of the Secretary of the Air Force an Air Force Reserve Forces Policy Committee. The functions, membership, and organization of that committee are set forth in section 10305 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(b)(4)(B), Oct. 5, 1994, 108 Stat. 2982.)

§ 8022. Financial management

(a) The Secretary of the Air Force shall provide that the Assistant Secretary of the Air Force for Financial Management shall direct and manage financial management activities and operations of the Department of the Air Force, including ensuring that financial management systems of the Department of the Air Force comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Air Force and otherwise carry out, with respect to the Department of the Air Force, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Air Force; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Air Force, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Air Force (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Air Force proposes to

conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Air Force for Financial Management shall transmit to the Secretary of the Air Force a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of Department of the Air Force financial management.

(Added Pub. L. 100-456, div. A, title VII, Sec. 702(c)(2), Sept. 29, 1988, 102 Stat. 1995; amended Pub. L. 103-337, div. A, title X, Sec. 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104-106, div. A, title XV, Sec. 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

§ 8023. Chief of Legislative Liaison

(a) There is a Chief of Legislative Liaison in the Department of the Air Force. An officer assigned to that position shall be an officer in the grade of major general.

(b) The Chief of Legislative Liaison shall perform legislative affairs functions as specified for the Office of the Secretary of the Air Force by section 8014(c)(1)(F) of this title.

(Added Pub. L. 107-314, div. A, title V, Sec. 504(e)(1)(A), Dec. 2, 2002, 116 Stat. 2532.)

§ 8024. Director of Small Business Programs

(a) DIRECTOR.—There is a Director of Small Business Programs in the Department of the Air Force. The Director is appointed by the Secretary of the Air Force.

(b) OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of the Air Force is the office that is established within the Department of the Air Force under section 15(k) of the Small Business Act (15 U.S.C. 644(k)). The Director of Small Business Programs is the head of such office.

(c) DUTIES AND POWERS.—(1) The Director of Small Business Programs shall, subject to paragraph (2), perform such duties regarding small business programs of the Department of the Air Force, and shall exercise such powers regarding those programs, as the Secretary of the Air Force may prescribe.

(2) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)), except for the designations of the Director and the Office, applies to the Director of Small Business Programs.

(Added Pub. L. 109-163, div. A, title IX, Sec. 904(e)(1), Jan. 6, 2006, 119 Stat. 3401.)

CHAPTER 805—THE AIR STAFF

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§ 8031. The Air Staff: function; composition

(a) There is in the executive part of the Department of the Air Force an Air Staff. The function of the Air Staff is to assist the Secretary of the Air Force in carrying out his responsibilities.

(b) The Air Staff is composed of the following:

- (1) The Chief of Staff.
- (2) The Vice Chief of Staff.
- (3) The Deputy Chiefs of Staff.
- (4) The Assistant Chiefs of Staff.
- (5) The Surgeon General of the Air Force.
- (6) The Judge Advocate General of the Air Force.
- (7) The Chief of the Air Force Reserve.
- (8) Other members of the Air Force assigned or detailed to the Air Staff.

(9) Civilian employees in the Department of the Air Force assigned or detailed to the Air Staff.

(c) Except as otherwise specifically prescribed by law, the Air Staff shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 490; Pub. L. 89-718, Sec. 45, Nov. 2, 1966, 80 Stat. 1121; Pub. L. 93-608, Sec. 1(5), Jan. 2, 1975, 88 Stat. 1968; Pub. L. 98-525, title V, Sec. 515, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-433, title V, Sec. 522(a), Oct. 1, 1986, 100 Stat. 1060.)

§ 8032. The Air Staff: general duties

(a) The Air Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Air Force, and the Chief of Staff of the Air Force.

(b) Under the authority, direction, and control of the Secretary of the Air Force, the Air Staff shall—

- (1) subject to subsections (c) and (d) of section 8014 of this title, prepare for such employment of the Air Force, and for such recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary of the Air Force), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Air Force, as will

assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;

(2) investigate and report upon the efficiency of the Air Force and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Staff, coordinate the action of organizations of the Air Force; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 490; Pub. L. 85-599, Sec. 4(h), Aug. 6, 1958, 72 Stat. 517; Pub. L. 99-433, title V, Sec. 522(b), Oct. 1, 1986, 100 Stat. 1060.)

§ 8033. Chief of Staff

(a)(1) There is a Chief of Staff of the Air Force, appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Chief of Staff only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Staff, while so serving, has the grade of general without vacating his permanent grade.

(c) Except as otherwise prescribed by law and subject to section 8013(f) of this title, the Chief of Staff performs his duties under the authority, direction, and control of the Secretary of the Air Force and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Air Force, the Chief of Staff shall—

(1) preside over the Air Staff;

(2) transmit the plans and recommendations of the Air Staff to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Air Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Air Force as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Air Force.

(e)(1) The Chief of Staff shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Staff in the performance of his duties as a member of the Joint Chiefs of Staff, the Chief of Staff shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Air Force.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Staff shall keep the Secretary of the Air Force fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 492, Sec. 8034; Pub. L. 85-599, Sec. 4(d), (e), Aug. 6, 1958, 72 Stat. 517; Pub. L. 87-651, title I, Sec. 114, Sept. 7, 1962, 76 Stat. 513; Pub. L. 90-22, title IV, Sec. 403, June 5, 1967, 81 Stat. 53; Pub. L. 96-513, title V, Sec. 504(2), Dec. 12, 1980, 94 Stat. 2915; Pub. L. 97-22, Sec. 10(b)(9), July 10, 1981, 95 Stat. 137; renumbered Sec. 8033 and amended Pub. L. 99-433, title V, Sec. 522(c), Oct. 1, 1986, 100 Stat. 1061; Pub. L. 100-456, div. A, title V, Sec. 519(a)(3), Sept. 29, 1988, 102 Stat. 1972.)

§ 8034. Vice Chief of Staff

(a) There is a Vice Chief of Staff of the Air Force, appointed by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force.

(b) The Vice Chief of Staff of the Air Force, while so serving, has the grade of general without vacating his permanent grade.

(c) The Vice Chief of Staff has such authority and duties with respect to the Department of the Air Force as the Chief of Staff, with the approval of the Secretary of the Air Force, may delegate to or prescribe for him. Orders issued by the Vice Chief of Staff in performing such duties have the same effect as those issued by the Chief of Staff.

(d) When there is a vacancy in the office of Chief of Staff or during the absence or disability of the Chief of Staff—

(1) the Vice Chief of Staff shall perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Staff or the Vice Chief of Staff is absent or disabled, unless the President directs otherwise, the most senior officer of the Air Force in the Air Staff who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Staff until a successor to the Chief of Staff or the Vice Chief of Staff is appointed or until the absence or disability of the Chief of Staff or Vice Chief of Staff ceases, whichever occurs first.

(Aug. 10, 1956, ch. 1041, 70A Stat. 492, Sec. 8035; Pub. L. 85-599, Sec. 6(d), Aug. 6, 1958, 72 Stat. 519; renumbered Sec. 8034 and amended Pub. L. 99-433, title V, Sec. 522(d), Oct. 1, 1986, 100 Stat. 1062.)

§ 8035. Deputy Chiefs of Staff and Assistant Chiefs of Staff

(a) The Deputy Chiefs of Staff and the Assistant Chiefs of Staff shall be general officers detailed to those positions.

(b) The Secretary of the Air Force shall prescribe the number of Deputy Chiefs of Staff and Assistant Chiefs of Staff, for a total of not more than eight positions.

(Added Pub. L. 99-433, title V, Sec. 522(e), Oct. 1, 1986, 100 Stat. 1062; amended Pub. L. 110-181, div. A, title IX, Sec. 902(c), Jan. 28, 2008, 122 Stat. 273.)

§ 8036. Surgeon General: appointment; grade

There is a Surgeon General of the Air Force who is appointed by the President by and with the advice and consent of the Senate from officers of the Air Force who are in the Air Force medical department. The Surgeon General, while so serving, has the grade of lieutenant general.

(Added Pub. L. 89-288, Sec. 5(a), Oct. 22, 1965, 79 Stat. 1050; amended Pub. L. 99-433, title V, Sec. 522(g)(2), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 104-106, div. A, title V, Sec. 506(c), Feb. 10, 1996, 110 Stat. 296.)

§ 8037. Judge Advocate General, Deputy Judge Advocate General: appointment; duties

(a) There is a Judge Advocate General in the Air Force, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Air Force. The term of office is four years. The Judge Advocate General, while so serving, has the grade of lieutenant general.

(b) The Judge Advocate General of the Air Force shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State, and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General, in addition to other duties prescribed by law—

(1) is the legal adviser of the Secretary of the Air Force and of all officers and agencies of the Department of the Air Force;

(2) shall direct the officers of the Air Force designated as judge advocates in the performance of their duties; and

(3) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions.

(d)(1) There is a Deputy Judge Advocate General in the Air Force, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Air Force who have the qualifications prescribed in subsection (b) for the Judge Advocate General. The term of office of the Deputy Judge Advocate General is four years. An officer appointed as Deputy Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

(2) When there is a vacancy in the office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Deputy Judge Advocate General shall perform the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

(3) When paragraph (2) cannot be complied with because of the absence or disability of the Deputy Judge Advocate General, the heads of the major divisions of the Office of the Judge Advocate General, in the order directed by the Secretary of the Air Force,

shall perform the duties of the Judge Advocate General, unless otherwise directed by the President.

(e) Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or under subsection (d) for appointment as the Deputy Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(f) No officer or employee of the Department of Defense may interfere with—

(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Air Force or the Chief of Staff of the Air Force; or

(2) the ability of officers of the Air Force who are designated as judge advocates who are assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 495, Sec. 8072; Pub. L. 96-343, Sec. 12(a), (b)(1), Sept. 8, 1980, 94 Stat. 1130, 1131; renumbered Sec. 8037, Pub. L. 99-433, title V, Sec. 522(f), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103-337, div. A, title V, Sec. 504(c), Oct. 5, 1994, 108 Stat. 2751; Pub. L. 104-106, div. A, title V, Sec. 507(a), Feb. 10, 1996, 110 Stat. 296; Pub. L. 108-375, div. A, title V, Sec. 574(c), Oct. 28, 2004, 118 Stat. 1922; Pub. L. 109-163, div. A, title V, Sec. 508(c), title X, Sec. 1057(a)(2), Jan. 6, 2006, 119 Stat. 3229, 3440; Pub. L. 110-181, div. A, title V, Sec. 543(c), Jan. 28, 2008, 122 Stat. 115.)

§ 8038. Office of Air Force Reserve: appointment of Chief

(a) There is in the executive part of the Department of the Air Force an Office of Air Force Reserve which is headed by a chief who is the adviser to the Chief of Staff on Air Force Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Air Force Reserve from general officers of the Air Force Reserve who have had at least 10 years of commissioned service in the Air Force.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Air Force Reserve unless the officer—

(A) is recommended by the Secretary of the Air Force; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Air Force Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2006, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Air Force Reserve if the Secretary of the Air Force requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) **TERM; REAPPOINTMENT; GRADE.**—(1) The Chief of Air Force Reserve is appointed for a period of four years, but may be removed for cause at any time. An officer serving as Chief of Air Force Reserve may be reappointed for one additional four-year period.

(2) The Chief of Air Force Reserve, while so serving, holds the grade of lieutenant general.

(d) **BUDGET.**—The Chief of Air Force Reserve is the official within the executive part of the Department of the Air Force who, subject to the authority, direction, and control of the Secretary of the Air Force and the Chief of Staff, is responsible for preparation, justification, and execution of the personnel, operation and maintenance, and construction budgets for the Air Force Reserve. As such, the Chief of Air Force Reserve is the director and functional manager of appropriations made for the Air Force Reserve in those areas.

(e) **FULL TIME SUPPORT PROGRAM.**—The Chief of Air Force Reserve manages, with respect to the Air Force Reserve, the personnel program of the Department of Defense known as the Full Time Support Program.

(f) **ANNUAL REPORT.**—(1) The Chief of Air Force Reserve shall submit to the Secretary of Defense, through the Secretary of the Air Force, an annual report on the state of the Air Force Reserve and the ability of the Air Force Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Staff of the Air Force and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Air Force Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 90-168, Sec. 2(19), Dec. 1, 1967, 81 Stat. 524, Sec. 8019; renumbered Sec. 8038 and amended Pub. L. 99-433, title V, Sec. 521(a)(2), 522(g)(3), Oct. 1, 1986, 100 Stat. 1055, 1063; Pub. L. 103-337, div. A, title XVI, Sec. 1674(c)(1), Oct. 5, 1994, 108 Stat. 3016; Pub. L. 104-201, div. A, title XII, Sec. 1212(d), Sept. 23, 1996, 110 Stat. 2693; Pub. L. 105-85, div. A, title X, Sec. 1073(a)(65), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 106-65, div. A, title V, Sec. 554(e), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106-398, Sec. 1[[div. A], title V, Sec. 507(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-104; Pub. L. 107-314, div. A, title V, Sec. 501(a), Dec. 2, 2002, 116 Stat. 2529; Pub. L. 108-375, div. A, title V, Sec. 536(a), Oct. 28, 2004, 118 Stat. 1901.)

CHAPTER 807—THE AIR FORCE

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§ 8061. Regulations

The President may prescribe regulations for the government of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 493.)

§ 8062. Policy; composition; aircraft authorization

(a) It is the intent of Congress to provide an Air Force that is capable, in conjunction with the other armed forces, of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Commonwealths and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) There is a United States Air Force within the Department of the Air Force.

(c) In general, the Air Force includes aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. It is responsible for the preparation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

(d) The Air Force consists of—

(1) the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve;

(2) all persons appointed or enlisted in, or conscripted into, the Air Force without component; and

(3) all Air Force units and other Air Force organizations, with their installations and supporting and auxiliary combat,

training, administrative, and logistic elements; and all members of the Air Force, including those not assigned to units; necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

(e) Subject to subsection (f) of this section, chapter 831 of this title, and the strength authorized by law pursuant to section 115 of this title, the authorized strength of the Air Force is 70 Regular Air Force groups and such separate Regular Air Force squadrons, reserve groups, and supporting and auxiliary regular and reserve units as required.

(f) There are authorized for the Air Force 24,000 serviceable aircraft or 225,000 airframe tons of serviceable aircraft, whichever the Secretary of the Air Force considers appropriate to carry out this section. This subsection does not apply to guided missiles.

(g)(1) Effective October 1, 2009, the Secretary of the Air Force shall maintain a total aircraft inventory of strategic airlift aircraft of not less than 316 aircraft.

(2) In this subsection:

(A) The term “strategic airlift aircraft” means an aircraft—

(i) that has a cargo capacity of at least 150,000 pounds; and

(ii) that is capable of transporting outsized cargo an unrefueled range of at least 2,400 nautical miles.

(B) The term “outsized cargo” means any single item of equipment that exceeds 1,090 inches in length, 117 inches in width, or 105 inches in height.

(Aug. 10, 1956, ch. 1041, 70A Stat. 493; Pub. L. 96-513, title V, Sec. 504(4), Dec. 12, 1980, 94 Stat. 2916; Pub. L. 99-433, title I, Sec. 110(g)(10), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100-26, Sec. 7(g)(3), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100-180, div. A, title XIII, Sec. 1314(b)(9), Dec. 4, 1987, 101 Stat. 1176; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(6), Jan. 6, 2006, 119 Stat. 3441; Pub. L. 109-364, div. A, title I, Sec. 132, Oct. 17, 2006, 120 Stat. 2112; Pub. L. 111-84, div. A, title I, Sec. 139, Oct. 28, 2009, 123 Stat. 2223.)

[§ 8066. Repealed. Pub. L. 96-513, title II, Sec. 201, Dec. 12, 1980, 94 Stat. 2878]

§ 8067. Designation: officers to perform certain professional functions

(a) Medical functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary of the Air Force and who are designated as medical officers.

(b) Dental functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary and who are designated as dental officers.

(c) Veterinary functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as veterinary officers.

(d) Medical service functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as medical service officers.

(e) Nursing functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary and who are designated as Air Force nurses.

(f) Biomedical science functions, including physician assistant functions and chiropractic functions, in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as biomedical science officers.

(g) Judge advocate functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as judge advocates.

(h) Chaplain functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary and who are designated as chaplains.

(i) Other functions in the Air Force requiring special training or experience shall be performed by members of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as being in named categories.

(Aug. 10, 1956, ch. 1041, 70A Stat. 494; Sept. 2, 1958, Pub. L. 85–861, Sec. 1(156), 72 Stat. 1513; Dec. 12, 1980, Pub. L. 96–513, title V, Sec. 504(5), 94 Stat. 2916; Dec. 1, 1981, Pub. L. 97–86, title IV, Sec. 403, 95 Stat. 1105; Oct. 23, 1992, Pub. L. 102–484, div. A, title V, Sec. 505(c), 106 Stat. 2404.)

§ 8069. Air Force nurses: Chief and assistant chief; appointment; grade

(a) POSITIONS OF CHIEF AND ASSISTANT CHIEF.—There are a Chief and assistant chief of the Air Force Nurse Corps.

(b) CHIEF.—The Secretary of the Air Force shall appoint the Chief from the officers of the Regular Air Force designated as Air Force nurses whose regular grade is above lieutenant colonel and who are recommended by the Surgeon General. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general. The Chief serves during the pleasure of the Secretary.

(c) ASSISTANT CHIEF.—The Surgeon General shall appoint the assistant chief from the officers of the Regular Air Force designated as Air Force nurses whose regular grade is above lieutenant colonel.

(Added Pub. L. 104–201, div. A, title V, Sec. 502(b), Sept. 23, 1996, 110 Stat. 2511; Pub. L. 105–261, div. A, title V, Sec. 505, Oct. 17, 1998, 112 Stat. 2004; Pub. L. 107–314, div. A, title V, Sec. 504(a)(3), Dec. 2, 2002, 116 Stat. 2531.)

[§ 8071. Repealed. Pub. L. 90–130, Sec. 1(25), Nov. 8, 1967, 81 Stat. 382]

[§ 8072. Renumbered 8037]

§ 8074. Commands: territorial organization

(a) Except as otherwise prescribed by law or by the Secretary of Defense, the Air Force shall be divided into such organizations as the Secretary of the Air Force may prescribe.

(b) For Air Force purposes, the United States, its possessions, and other places in which the Air Force is stationed or is operating,

may be divided into such areas as directed by the Secretary. Officers of the Air Force may be assigned to command Air Force activities, installations, and personnel in those areas. In the discharge of the Air Force's functions or other functions authorized by law, officers so assigned have the duties and powers prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 495; Aug. 6, 1958, Pub. L. 85-599, Sec. 4(f), 72 Stat. 517; June 11, 1965, Pub. L. 89-37, title III, Sec. 306(a), 79 Stat. 129; Oct. 1, 1986, Pub. L. 99-433, title V, Sec. 523, 100 Stat. 1063; Dec. 28, 2001, Pub. L. 107-107, div. A, title IX, Sec. 931(b), 115 Stat. 1200; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

§ 8075. Regular Air Force: composition

(a) The Regular Air Force is the component of the Air Force that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Air Force.

(b) The Regular Air Force includes—

(1) the officers and enlisted members of the Regular Air Force;

(2) the professors, registrar, and cadets at the United States Air Force Academy; and

(3) the retired officers and enlisted members of the Regular Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 496; Pub. L. 85-600, Sec. 1(13), Aug. 6, 1958, 72 Stat. 523.)

[§§ 8076 to 8080. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

§ 8081. Assistant Surgeon General for Dental Services

There is an Assistant Surgeon General for Dental Services in the Air Force who is appointed by the Secretary of the Air Force upon the recommendation of the Surgeon General from officers of the Air Force above the grade of lieutenant colonel who are designated as dental officers under section 8067(b) of this title. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general. The Assistant Surgeon General for Dental Services serves at the pleasure of the Secretary.

(Added Pub. L. 95-485, title VIII, Sec. 805(c)(1), Oct. 20, 1978, 92 Stat. 1622; amended Pub. L. 105-261, div. A, title V, Sec. 506, Oct. 17, 1998, 112 Stat. 2004; Pub. L. 109-364, div. A, title V, Sec. 504(a), Oct. 17, 2006, 120 Stat. 2179.)

§ 8084. Officer career field for space

The Secretary of the Air Force shall establish and implement policies and procedures to develop a career field for officers in the Air Force with technical competence in space-related matters to have the capability to—

(1) develop space doctrine and concepts of space operations;

(2) develop space systems; and

(3) operate space systems.

(Added Pub. L. 107-107, div. A, title IX, Sec. 912(a), Dec. 28, 2001, 115 Stat. 1196; amended Pub. L. 108-375, div. A, title X, Sec. 1084(d)(32), Oct. 28, 2004, 118 Stat. 2063.)

PART II—PERSONNEL

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CHAPTER 831—STRENGTH

Sec.

[8201 to 8209. Repealed.]

8210. Regular Air Force: strength in grade; general officers.

[8211 to 8230. Repealed.]

[§ 8201. Repealed. Pub. L. 96-513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 8202. Repealed. Pub. L. 101-510, div. A, title IV, Sec. 403(b)(3)(A), Nov. 5, 1990, 104 Stat. 1545]

[§§ 8203 to 8209. Repealed. Pub. L. 96-513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

§ 8210. Regular Air Force: strength in grade; general officers

(a) Subject to section 526 of this title, the authorized strength of the Regular Air Force in general officers on the active-duty list is 75/10,000 of the authorized strength of the Regular Air Force in commissioned officers on the active-duty list. Of this authorized strength, not more than one-half may be in a regular grade above brigadier general.

(b) When the application of subsection (a) results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(c) General officers on the active-duty list of the Regular Air Force who are specifically authorized by law to hold a civil office under the United States, or an instrumentality thereof, are not counted in determining authorized strength under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 500; Pub. L. 85-861, Sec. 1(161), Sept. 2, 1958, 72 Stat. 1514; Pub. L. 96-513, title V, Sec. 504(7), Dec. 12, 1980, 94 Stat. 2916; Pub. L. 102-190, div. A, title X, Sec. 1061(a)(23)(A), Dec. 5, 1991, 105 Stat. 1473.)

[§ 8211. Repealed. Pub. L. 96-513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

[§ 8212. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§§ 8213 to 8215. Repealed. Pub. L. 96-513, title II, Sec. 202, Dec. 12, 1980, 94 Stat. 2878]

[§§ 8217 to 8225. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

[§ 8230. Repealed. Pub. L. 96-513, title II, Sec. 232, Dec. 12, 1980, 94 Stat. 2886]

CHAPTER 833—ENLISTMENTS

- Sec.
8251. Definition.
8252. Regular Air Force: gender-free basis for acceptance of original enlistments.
[8253 to 8256. Repealed.]
8257. Regular Air Force: aviation cadets; qualifications, grade, limitations.
8258. Regular Air Force: reenlistment after service as an officer.
[8259 to 8263. Repealed.]

§ 8251. Definition

In this chapter, the term “enlistment” means original enlistment or reenlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 503; Pub. L. 100–180, div. A, title XII, Sec. 1231(19)(A), Dec. 4, 1987, 101 Stat. 1161.)

§ 8252. Regular Air Force: gender-free basis for acceptance of original enlistments

In accepting persons for original enlistment in the Regular Air Force, the Secretary of the Air Force may not—

- (1) set a minimum or maximum percentage of persons who may be accepted for such an enlistment according to gender for skill categories or jobs; or
- (2) in any other way base the acceptance of a person for such an enlistment on gender.

(Added Pub. L. 100–456, div. A, title V, Sec. 522(a)(1), Sept. 29, 1988, 102 Stat. 1973; amended Pub. L. 102–484, div. A, title X, Sec. 1052(40), Oct. 23, 1992, 106 Stat. 2501.)

[§ 8253. Repealed. Pub. L. 109–163, div. A, title V, Sec. 542(b)(1), Jan. 6, 2006, 119 Stat. 3253]

[§§ 8254 to 8256. Repealed. Pub. L. 90–235, Sec. 2(a) (4)(B), Jan. 2, 1968, 81 Stat. 756]

§ 8257. Regular Air Force: aviation cadets; qualifications, grade, limitations

(a) The grade of aviation cadet is a special enlisted grade in the Regular Air Force.

(b) Any citizen of the United States may be enlisted as an aviation cadet, if he is otherwise qualified.

(c) Any enlisted member of the Regular Air Force who is otherwise qualified may be designated, with his consent, as an aviation cadet by the Secretary of the Air Force.

(d) Except in time of war or of emergency declared by Congress, at least 20 percent of the aviation cadets designated in each fiscal year shall be selected from members of the Regular Air Force or the Regular Army who are eligible and qualified. No person may be enlisted or designated as an aviation cadet unless—

- (1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will ac-

cept a commission as second lieutenant in the Air Force Reserve, and will serve on active duty as such for a period of three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(e) While on active duty, an aviation cadet is entitled to uniforms, clothing, and equipment at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 504; Pub. L. 85-861, Sec. 33(a)(37), Sept. 2, 1958, 72 Stat. 1566; Pub. L. 96-513, title II, Sec. 237, Dec. 12, 1980, 94 Stat. 2887.)

§ 8258. Regular Air Force: reenlistment after service as an officer

(a) Any former enlisted member of the Regular Air Force who has served on active duty as an officer of the Air Force, or who was discharged as an enlisted member to accept an appointment as an officer of the Air Force, is entitled to be reenlisted in the Regular Air Force in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Air Force prescribes for exceptional circumstances) after termination of that service.

(b) A person is not entitled to be reenlisted under this section if—

(1) the person was discharged or released from active duty as an officer on the basis of a determination of—

(A) misconduct;

(B) moral or professional dereliction;

(C) duty performance below prescribed standards for the grade held; or

(D) retention being inconsistent with the interests of national security; or

(2) the person's former enlisted status and grade was based solely on the participation by that person in a precommissioning program that resulted in the commission held by that person during the active duty from which the person was released or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 505; Pub. L. 85-603, Sec. 1(3), Aug. 8, 1958, 72 Stat. 526; Pub. L. 102-484, div. A, title V, Sec. 520(b), Oct. 23, 1992, 106 Stat. 2409; Pub. L. 110-181, div. A, title V, Sec. 506(b), Jan. 28, 2008, 122 Stat. 96.)

[§§ 8259 to 8261. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(b)(3), Oct. 5, 1994, 108 Stat. 2990]

[§§ 8262, 8263. Repealed. Pub. L. 90-235, Sec. 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756]

CHAPTER 835—APPOINTMENTS IN THE REGULAR AIR FORCE

Sec.

8281. Commissioned officer grades.

[8284 to 8309. Repealed.]

8310. Warrant officers: original appointment; qualifications.

[8312 to 8314. Repealed.]

§ 8281. Commissioned officer grades

The commissioned grades in the Regular Air Force are:

- (1) Major general.
- (2) Brigadier general.
- (3) Colonel.
- (4) Lieutenant colonel.
- (5) Major.
- (6) Captain.
- (7) First lieutenant.
- (8) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 507.)

[§§ 8284 to 8289. Repealed. Pub. L. 96-513, title II, Sec. 204, Dec. 12, 1980, 94 Stat. 2880]

[§ 8291. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]

[§§ 8293 to 8303. Repealed. Pub. L. 96-513, title II, Sec. 204, Dec. 12, 1980, 94 Stat. 2880]

[§ 8304. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]

[§§ 8305 to 8309. Repealed. Pub. L. 96-513, title II, Sec. 204, Dec. 12, 1980, 94 Stat. 2880]

§ 8310. Warrant officers: original appointment; qualifications

Original appointments as warrant officers in the Regular Air Force shall be made from persons who have served on active duty at least one year in the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 518.)

[§§ 8312 to 8314. Repealed. Pub. L. 96-513, title II, Sec. 204, Dec. 12, 1980, 94 Stat. 2880]

[CHAPTER 837—REPEALED]

[§ 8351. Renumbered 12212]

[§ 8352. Renumbered 12214]

[§§ 8353, 8354. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(c)(1), Oct. 5, 1994, 108 Stat. 2963]

[§ 8355. Repealed. Pub. L. 88-647, title III, Sec. 301(21), Oct. 13, 1964, 78 Stat. 1073]

[§ 8356. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1636(b), Oct. 5, 1994, 108 Stat. 2968]

[§§ 8358 to 8368. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(c)(1), Oct. 5, 1994, 108 Stat. 2963]

[§ 8370. Repealed. Pub. L. 90-130, Sec. 1(28)(C), Nov. 8, 1967, 81 Stat. 382]

[§§ 8371 to 8378. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(c)(1), Oct. 5, 1994, 108 Stat. 2963]

[§ 8379. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1636(c), Oct. 5, 1994, 108 Stat. 2968]

[§§ 8380 to 8396. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(c)(1), Oct. 5, 1994, 108 Stat. 2963]

CHAPTER 839—TEMPORARY APPOINTMENTS

Sec.

[8441 to 8445. Repealed.]

8446. Retention on active duty.

[8447 to 8452. Repealed.]

[§§ 8441, 8442. Repealed. Pub. L. 96-513, title II, Sec. 207, Dec. 12, 1980, 94 Stat. 2884]

[§ 8443. Repealed. Pub. L. 85-861, Sec. 36B(25), Sept. 2, 1958, 72 Stat. 1571]

[§§ 8444, 8445. Repealed. Pub. L. 96-513, title II, Sec. 207, Dec. 12, 1980, 94 Stat. 2884]

§ 8446. Retention on active duty

The President may retain on active duty a disabled officer until—

(1) the physical condition of the officer is such that the officer will not be further benefited by retention in a military hospital or a medical facility of the Department of Veterans Affairs; or

(2) the officer is processed for physical disability benefits provided by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 522; Pub. L. 85-861, Sec. 1(180)(C), Sept. 2, 1958, 72 Stat. 1532; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(10), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 102-25, title VII, Sec. 701(j)(6), Apr. 6, 1991, 105 Stat. 116.)

[§ 8447. Repealed. Pub. L. 96-513, title II, Sec. 207, Dec. 12, 1980, 94 Stat. 2884]

[§ 8448. Repealed. Pub. L. 96-513, title II, Sec. 208, Dec. 12, 1980, 94 Stat. 2884]

[§ 8450. Repealed. Pub. L. 90-235, Sec. 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

[§§ 8451, 8452. Repealed. Pub. L. 96-513, title II, Sec. 207, Dec. 12, 1980, 94 Stat. 2884]

CHAPTER 841—ACTIVE DUTY

Sec.	
8491.	Non-regular officers: status.
	[8492 to 8502. Repealed.]
8503.	Retired commissioned officers: status.
	[8504. Repealed.]

§ 8491. Non-regular officers: status

A commissioned officer of the Air Force, other than of the Regular Air Force, who is on active duty in any commissioned grade has the rights and privileges, and is entitled to the benefits, provided by law for a commissioned officer of the Air Force Reserve—

- (1) whose reserve grade is that in which the officer not of the Regular Air Force is serving;
- (2) who has the same length of service as the officer not of the Regular Air Force; and
- (3) who is on active duty in his reserve grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 524.)

[§ 8492. Repealed. Pub. L. 90-235, Sec. 1(a)(2), Jan. 2, 1968, 81 Stat. 753]

[§ 8494. Repealed. Pub. L. 96-513, title II, Sec. 209(a), Dec. 12, 1980, 94 Stat. 2884]

[§§ 8495 to 8502. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(f)(2), Oct. 5, 1994, 108 Stat. 2994]

§ 8503. Retired commissioned officers: status

A retired commissioned officer of the Air Force who is on active duty is considered, for all purposes except promotion, to be an officer of the organization to which he is assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 526.)

[§ 8504. Repealed. Pub. L. 96-513, title II, Sec. 210, Dec. 12, 1980, 94 Stat. 2884]

**CHAPTER 843—SPECIAL APPOINTMENTS,
ASSIGNMENTS, DETAILS, AND DUTIES**

Sec.

[8531 to 8542. Repealed.]

8543. Aides: detail; number authorized.

[8544 to 8546. Repealed.]

8547. Duties: chaplains; assistance required of commanding officers.

8548. Duties: warrant officers; limitations.

[8549. Repealed.]

[§ 8531. Repealed. Pub. L. 96-513, title II, Sec. 233(b), Dec. 12, 1980, 94 Stat. 2887]

[§ 8537. Repealed. Pub. L. 90-235, Sec. 4(b)(1), Jan. 2, 1968, 81 Stat. 760]

[§ 8540. Repealed. Pub. L. 88-647, title III, Sec. 301(23), Oct. 13, 1964, 78 Stat. 1073]

[§§ 8541, 8542. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1661(c)(2), 1662(g)(2), Oct. 5, 1994, 108 Stat. 2982, 2996]

§ 8543. Aides: detail; number authorized

(a) Each major general of the Air Force is entitled to three aides selected by him from commissioned officers of the Air Force in any grade below major.

(b) Each brigadier general of the Air Force is entitled to two aides selected by him from commissioned officers of the Air Force in any grade below captain.

(Aug. 10, 1956, ch. 1041, 70A Stat. 527.)

[§§ 8544, 8545. Repealed. Pub. L. 90-235, Sec. 4(a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

[§ 8546. Repealed. Pub. L. 85-861, Sec. 36B(26), Sept. 2, 1958, 72 Stat. 1571]

§ 8547. Duties: chaplains; assistance required of commanding officers

(a) Each chaplain shall, when practicable, hold appropriate religious services at least once on each Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Air Force who die while in that command.

(b) Each commanding officer shall furnish facilities, including necessary transportation, to any chaplain assigned to his command, to assist the chaplain in performing his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

§ 8548. Duties: warrant officers; limitations

Under regulations prescribed by the President, a warrant officer may be assigned to perform duties that necessarily include those normally performed by a commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

[§ 8549. Repealed. Pub. L. 102-190, div. A, title V, Sec. 531(a)(1), Dec. 5, 1991, 105 Stat. 1365]

CHAPTER 845—RANK AND COMMAND

- Sec.
[8571. Repealed.]
8572. Rank: commissioned officers serving under temporary appointments.
[8573, 8574. Repealed.]
8575. Rank: warrant officers.
[8576 to 8578. Repealed.]
8579. Command: commissioned officers in certain designated categories.
[8580. Repealed.]
8581. Command: chaplains.
[8582. Repealed.]
8583. Requirement of exemplary conduct.

[§ 8571. Repealed. Pub. L. 96-513, title II, Sec. 211, Dec. 12, 1980, 94 Stat. 2885]

§ 8572. Rank: commissioned officers serving under temporary appointments

The President may, in accordance with the needs of the Air Force, adjust dates of rank of commissioned officers of the Air Force serving in temporary grades.

(Aug. 10, 1956, ch. 1041, 70A Stat. 529.)

[§§ 8573, 8574. Repealed. Pub. L. 96-513, title II, Sec. 211, Dec. 12, 1980, 94 Stat. 2885]

§ 8575. Rank: warrant officers

Warrant officers rank next below second lieutenants and rank among themselves within each warrant officer grade under regulations to be prescribed by the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 530.)

[§ 8576. Repealed. Pub. L. 90-235, Sec. 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

[§ 8577. Repealed. Pub. L. 93-525, Dec. 18, 1974, 88 Stat. 1695]

[§ 8578. Repealed. Pub. L. 90-235, Sec. 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

§ 8579. Command: commissioned officers in certain designated categories

An officer designated as a medical, dental, veterinary, medical service, or biomedical sciences officer or as a nurse is not entitled to exercise command because of rank, except within the categories prescribed in subsection (a), (b), (c), (d), (e), (f), or (i) of section 8067 of this title, or over persons placed under his charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 531; Pub. L. 85-861, Sec. 1(156), (185), Sept. 2, 1958, 72 Stat. 1513, 1533; Pub. L. 96-513, title II, Sec. 212(b), Dec. 12, 1980, 94 Stat. 2885.)

[§ 8580. Repealed. Pub. L. 90-130, Sec. 1(30), Nov. 8, 1967, 81 Stat. 382]

§ 8581. Command: chaplains

An officer designated as a chaplain has rank without command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 531.)

[§ 8582. Repealed. Pub. L. 96-513, title II, Sec. 211, Dec. 12, 1980, 94 Stat. 2885]

§ 8583. Requirement of exemplary conduct

All commanding officers and others in authority in the Air Force are required—

(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;

(2) to be vigilant in inspecting the conduct of all persons who are placed under their command;

(3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Air Force, all persons who are guilty of them; and

(4) to take all necessary and proper measures, under the laws, regulations, and customs of the Air Force, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Added Pub. L. 105-85, div. A, title V, Sec. 507(b)(1), Nov. 18, 1997, 111 Stat. 1727.)

[CHAPTER 847—REPEALED]

[§§ 8611, 8612. Repealed. Pub. L. 90-235, Sec. 8(2), Jan. 2, 1968, 81 Stat. 764]

CHAPTER 849—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.

[8631 to 8638. Repealed.]

8639. Enlisted members: officers not to use as servants.

[§ 8631. Repealed. Pub. L. 90-235, Sec. 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§§ 8632, 8633. Repealed. Pub. L. 87-649, Sec. 14c(54), (55), Sept. 7, 1962, 76 Stat. 501, 502]

[§ 8634. Repealed. Pub. L. 110-181, div. A, title V, Sec. 590(b)(1), Jan. 28, 2008, 122 Stat. 138]

[§ 8635. Repealed. Pub. L. 90-235, Sec. 6(a)(7), Jan. 2, 1968, 81 Stat. 762]

[§ 8636. Repealed. Pub. L. 87-649, Sec. 14c(56), Sept. 7, 1962, 76 Stat. 502]

[§ 8637. Repealed. Pub. L. 90-235, Sec. 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

[§ 8638. Repealed. Pub. L. 85-861, Sec. 36B(27), Sept. 2, 1958, 72 Stat. 1571]

§ 8639. Enlisted members: officers not to use as servants

No officer of the Air Force may use an enlisted member of the Air Force as a servant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 533.)

[CHAPTER 851—REPEALED]

[§§ 8662, 8663. Repealed. Pub. L. 90-377, Sec. 6(3), July 5, 1968, 82 Stat. 288]

CHAPTER 853—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.

8681. Presentation of United States flag upon retirement.

[8682, 8683. Repealed.]

8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.

[8685 to 8690. Repealed.]

8691. Flying officer rating: qualifications.

[8692, 8693. Repealed.]

§ 8681. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Air Force from active duty for retirement, the Secretary of the Air Force shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 105-261, div. A, title VI, Sec. 644(c)(1), Oct. 17, 1998, 112 Stat. 2049; amended Pub. L. 106-65, div. A, title VI, Sec. 652(e), Oct. 5, 1999, 113 Stat. 666.)

[§ 8682. Repealed. Pub. L. 90-235, Sec. 6(a)(2), Jan. 2, 1968, 81 Stat. 761]

[§ 8683. Repealed. Pub. L. 99-145, title XIII, Sec. 1301(d)(1)(A), Nov. 8, 1985, 99 Stat. 736]

§ 8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service

An enlisted member of the Regular Air Force is entitled to count active service as an officer in the Air Force, and in the Army, as enlisted service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 535.)

[§ 8685. Repealed. Pub. L. 90-235, Sec. 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

[§ 8686. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

[§ 8687. Repealed. Pub. L. 99-661, div. A, title VI, Sec. 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

[§ 8688. Repealed. Pub. L. 85-861, Sec. 36B(29), Sept. 2, 1958, 72 Stat. 1571]

[§ 8689. Repealed. Pub. L. 87-649, Sec. 14c(57), Sept. 7, 1962, 76 Stat. 502]

[§ 8690. Repealed. Pub. L. 90-235, Sec. 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

§ 8691. Flying officer rating: qualifications

Only officers of the Air Force in the following categories may be rated as flying officers:

(1) Officers who have aeronautical ratings as pilots of service types of aircraft or as aircraft observers.

(2) Flight surgeons.

(3) Officers undergoing flight training.

(4) Officers who are members of combat crews, other than pilots of service types of aircraft, aircraft observers, and observers.

(5) In time of war, officers who have aeronautical ratings as observers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 538.)

[§ 8692. Repealed. Pub. L. 92-168, Sec. 3(1), Nov. 24, 1971, 85 Stat. 489]

[§ 8693. Repealed. Pub. L. 90-235, Sec. 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

CHAPTER 855—HOSPITALIZATION

Sec.

[8721, 8722. Repealed.]

8723. When Secretary may require.

[§§ 8721, 8722. Repealed. Pub. L. 99-661, div. A, title VI, Sec. 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

§ 8723. When Secretary may require

The Secretary of the Air Force may order the hospitalization, medical and surgical treatment, and domiciliary care for as long as necessary, of any member of the Air Force on active duty, and may incur obligations with respect thereto, whether or not the member incurred an injury, illness, or disease in line of duty, except in the case of a member treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours.

(Aug. 10, 1956, ch. 1041, 70A Stat. 539; Pub. L. 99-661, div. A, title VI, Sec. 604(f)(1)(D), Nov. 14, 1986, 100 Stat. 3878; Pub. L. 100-26, Sec. 7(j)(11), Apr. 21, 1987, 101 Stat. 283.)

CHAPTER 857—DECORATIONS AND AWARDS

Sec.	
8741.	Medal of honor: award.
8742.	Air Force cross: award.
8743.	Distinguished-service medal: award.
8744.	Medal of honor; Air Force cross; distinguished-service medal: limitations on award.
8745.	Medal of honor; Air Force cross; distinguished-service medal: delegation of power to award.
8746.	Silver star: award.
8747.	Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: replacement.
8748.	Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.
8749.	Distinguished flying cross: award; limitations.
8750.	Airman's Medal: award; limitations.
8751.	Service medals: issue; replacement; availability of appropriations.
8752.	Medals: posthumous award and presentation.
8754.	Medal of honor: duplicate medal.
8755.	Medal of honor: presentation of Medal of Honor Flag.
8756.	Korea Defense Service Medal.

§ 8741. Medal of honor: award

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who, while a member of the Air Force, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; Pub. L. 88-77, Sec. 3(1), July 25, 1963, 77 Stat. 94.)

§ 8742. Air Force cross: award

The President may award an Air Force cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Air Force, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; Pub. L. 86-593, Sec. 1(1), July 6, 1960, 74 Stat. 331; Pub. L. 88-77, Sec. 3(2), July 25, 1963, 77 Stat. 94.)

§ 8743. Distinguished-service medal: award

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to a person who, while serving in any capacity with the Air Force, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540.)

§ 8744. Medal of honor; Air Force cross; distinguished-service medal: limitations on award

(a) No more than one medal of honor, Air Force cross, or distinguished-service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded to a person unless—

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Air Force that the person is entitled to the award.

(c) No medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Air Force determines that—

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; Pub. L. 86-582, Sec. 1(3), July 5, 1960, 74 Stat. 320; Pub. L. 86-593, Sec. 1(2), July 6, 1960, 74 Stat. 331.)

§ 8745. Medal of honor; Air Force cross; distinguished-service medal: delegation of power to award

The President may delegate his authority to award the medal of honor, Air Force cross, and distinguished-service medal, to a commanding general of a separate air force or higher unit in the field.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; Pub. L. 86-593, Sec. 1(3), July 6, 1960, 74 Stat. 332.)

§ 8746. Silver star: award

The President may award a silver star of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Air Force, is cited for gallantry in action that does not warrant a medal of honor or Air Force cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; Pub. L. 88-77, Sec. 3(3), July 25, 1963, 77 Stat. 95.)

§ 8747. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: replacement

Any medal of honor, Air Force cross, distinguished-service cross, distinguished-service medal, or silver star, or any bar, ribbon, rosette, or other device issued for wear with or in place of any of them, that is stolen, lost, or destroyed, or becomes unfit for use, without fault or neglect of the person to whom it was awarded, shall be replaced without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; Pub. L. 86-593, Sec. 1(4), July 6, 1960, 74 Stat. 332; Pub. L. 107-107, div. A, title V, Sec. 553(c)(2), Dec. 28, 2001, 115 Stat. 1116.)

§ 8748. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations

The Secretary of the Air Force may spend, from any appropriation for contingent expenses of the Department of the Air Force, amounts necessary to provide medals and devices under sections 8741, 8742, 8743, 8744, 8746, 8747, and 8752 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; Pub. L. 86-593, Sec. 1(5), July 6, 1960, 74 Stat. 332.)

§ 8749. Distinguished flying cross: award; limitations

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Air Force, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

(c) No distinguished flying cross, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541.)

§ 8750. Airman's Medal: award; limitations

(a)(1) The President may award a decoration called the "Airman's Medal", of appropriate design with accompanying ribbon, to

any person who, while serving in any capacity with the Air Force, distinguishes himself by heroism not involving actual conflict with an enemy.

(2) The authority in paragraph (1) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(b) Not more than one Airman's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542; Pub. L. 86-593, Sec. 1(6), July 6, 1960, 74 Stat. 332; Pub. L. 105-85, div. A, title V, Sec. 574(c), Nov. 18, 1997, 111 Stat. 1758.)

§ 8751. Service medals: issue; replacement; availability of appropriations

(a) The Secretary of the Air Force shall procure, and issue without charge to any person entitled thereto, any service medal authorized for members of the Air Force after September 26, 1947, and any ribbon, clasp, star, or similar device prescribed as a part of that medal.

(b) Under such regulations as the Secretary may prescribe, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Air Force, the medal or device may be replaced without charge.

(c) The Secretary may spend, from any appropriation for the support of the Air Force, amounts necessary to provide medals and devices under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542.)

§ 8752. Medals: posthumous award and presentation

(a) If a person dies before the award of a medal of honor, distinguished-service cross, distinguished-service medal, distinguished flying cross, or device in place thereof, to which he is entitled, the award may be made and the medal or device presented to his representative, as designated by the President.

(b) If a person dies before an authorized service medal or device prescribed as a part thereof is presented to him under section 8751 of this title, it shall be presented to his family.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542; Pub. L. 85-861, Sec. 33(a)(23), Sept. 2, 1958, 72 Stat. 1565.)

§ 8754. Medal of honor: duplicate medal

A person awarded a medal of honor shall, upon written application of that person, be issued, without charge, one duplicate medal of honor with ribbons and appurtenances. Such duplicate medal of honor shall be marked, in such manner as the Secretary of the Air Force may determine, as a duplicate or for display purposes only.

(Added Pub. L. 107-107, title V, Sec. 553(c)(1)(A), Dec. 28, 2001, 115 Stat. 1116.)

§ 8755. Medal of honor: presentation of Medal of Honor Flag

The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 8741 of this title. Presentation of the flag shall be made at the same time as the presentation of the medal under section 8741 or 8752(a) of this title. In the case of a posthumous presentation of the medal, the flag shall be presented to the person to whom the medal is presented.

(Added Pub. L. 107-248, title VIII, Sec. 8143(c)(3)(A), Oct. 23, 2002, 116 Stat. 1570; amended Pub. L. 107-314, div. A, title X, Sec. 1062(a)(16), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 109-364, div. A, title V, Sec. 555(a), Oct. 17, 2006, 120 Stat. 2217.)

§ 8756. Korea Defense Service Medal

(a) The Secretary of the Air Force shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Air Force served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

(b) In this section, the term “KDSM eligibility period” means the period beginning on July 28, 1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

(c) The Secretary of the Air Force shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.

(Added Pub. L. 107-314, div. A, title V, Sec. 543(d)(1), Dec. 2, 2002, 116 Stat. 2550, Sec. 8755; renumbered Sec. 8756, Pub. L. 108-375, div. A, title X, Sec. 1084(d)(33), Oct. 28, 2004, 118 Stat. 2063.)

[CHAPTER 859—REPEALED]

[[§§ 8781 to 8787. Repealed. Pub. L. 96-513, title II, Sec. 213, Dec. 12, 1980, 94 Stat. 2885]

[CHAPTER 860—REPEALED]

[[§§ 8791 to 8797. Repealed. Pub. L. 96-513, title II, Sec. 213, Dec. 12, 1980, 94 Stat. 2885]

CHAPTER 861—SEPARATION FOR VARIOUS REASONS

Sec.

[8811 to 8816. Repealed.]

8817. Aviation cadets: discharge.

[8818 to 8820. Repealed.]

[[§§ 8811 to 8813. Repealed. Pub. L. 90-235, Sec. 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

[§ 8814. Repealed. Pub. L. 96-513, title II, Sec. 214, Dec. 12, 1980, 94 Stat. 2885]

[[§§ 8815, 8816. Repealed. Pub. L. 90-235, Sec. 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

§ 8817. Aviation cadets: discharge

The Secretary of the Air Force may discharge an aviation cadet at any time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 545.)

[§ 8818. Repealed. Pub. L. 96-513, title II, Sec. 236, Dec. 12, 1980, 94 Stat. 2887]

[[§§ 8819, 8820. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(c)(2), Oct. 5, 1994, 108 Stat. 2963]

[CHAPTER 863—REPEALED]

- [§§ 8841, 8842. Repealed. Pub. L. 86-559, Sec. 1(66), June 30, 1960, 74 Stat. 278]**
- [§§ 8843 to 8846. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(c)(3), Oct. 5, 1994, 108 Stat. 2963]**
- [§ 8847. Repealed. Pub. L. 90-130, Sec. 1(31)(A), Nov. 8, 1967, 81 Stat. 382]**
- [§ 8848. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(c)(3), Oct. 5, 1994, 108 Stat. 2963]**
- [§ 8849. Repealed. Pub. L. 86-559, Sec. 1(72), June 30, 1960, 74 Stat. 279]**
- [§§ 8850 to 8855. Repealed. Pub. L. 103-337, div. A, title XVI, Sec. 1629(c)(3), Oct. 5, 1994, 108 Stat. 2963]**

[CHAPTER 865—REPEALED]

- [§§ 8881, 8882. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]**
- [§§ 8883 to 8886. Repealed. Pub. L. 96-513, title II, Sec. 216, Dec. 12, 1980, 94 Stat. 2886]**
- [§ 8887. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]**
- [§§ 8888, 8889. Repealed. Pub. L. 96-513, title II, Sec. 216, Dec. 12, 1980, 94 Stat. 2886]**

CHAPTER 867—RETIREMENT FOR LENGTH OF SERVICE

- Sec.
8911. Twenty years or more: regular or reserve commissioned officers.
[8912, 8913. Repealed.]
8914. Twenty to thirty years: enlisted members.
[8915, 8916. Repealed.]
8917. Thirty years or more: regular enlisted members.
8918. Thirty years or more: regular commissioned officers.
[8919. Repealed.]
8920. More than thirty years: permanent professors and the Director of Admissions of the United States Air Force Academy.
8921. Mandatory retirement: Superintendent of the United States Air Force Academy; waiver authority.
[8922, 8923. Repealed.]
8924. Forty years or more: Air Force officers.
8925. Computation of years of service: voluntary retirement; enlisted members.
8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
[8927, 8928. Repealed.]
8929. Computation of retired pay: law applicable.

§ 8911. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who has at least 20 years of service computed under section 8926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b)(1) The Secretary of Defense may authorize the Secretary of the Air Force, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Air Force) of not less than eight years.

(2) The period specified in this paragraph is the period beginning on the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013.

(Aug. 10, 1956, ch. 1041, 70A Stat. 549; Pub. L. 101-510, div. A, title V, Sec. 523(c), Nov. 5, 1990, 104 Stat. 1562; Pub. L. 103-160, div. A, title V, Sec. 561(c), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105-261, div. A, title V, Sec. 561(e), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 571(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134; Pub. L. 109-163, div. A, title V, Sec. 502(c), Jan. 6, 2006, 119 Stat. 3225; Pub. L. 109-364, div. A, title X, Sec. 1071(a)(37), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 111-383, div. A, title V, Sec. 506(c), Jan. 7, 2011, 124 Stat. 4210.)

[§ 8912. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]

[§ 8913. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 8914. Twenty to thirty years: enlisted members

Under regulations to be prescribed by the Secretary of the Air Force, an enlisted member of the Air Force who has at least 20, but less than 30, years of service computed under section 8925 of this title may, upon his request, be retired.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550; Pub. L. 96-343, Sec. 9(b)(1), Sept. 8, 1980, 94 Stat. 1128; Pub. L. 103-337, div. A, title V, Sec. 515(b), Oct. 5, 1994, 108 Stat. 2753.)

[§§ 8915, 8916. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]**§ 8917. Thirty years or more: regular enlisted members**

A regular enlisted member of the Air Force who has at least 30 years of service computed under section 8925 of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

§ 8918. Thirty years or more: regular commissioned officers

A regular commissioned officer of the Air Force who has at least 30 years of service computed under section 8926 of this title may be retired upon his request, in the discretion of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

[§ 8919. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]**§ 8920. More than thirty years: permanent professors and the Director of Admissions of the United States Air Force Academy**

(a) The Secretary of the Air Force may retire an officer specified in subsection (b) who has more than 30 years of service as a commissioned officer.

(b) Subsection (a) applies in the case of the following officers:

(1) Any permanent professor of the United States Air Force Academy.

(2) The Director of Admissions of the United States Air Force Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 551; Pub. L. 104-106, div. A, title V, Sec. 509(b)(1), Feb. 10, 1996, 110 Stat. 298.)

§ 8921. Mandatory retirement: Superintendent of the United States Air Force Academy; waiver authority

(a) MANDATORY RETIREMENT.—Upon the termination of the detail of an officer to the position of Superintendent of the United States Air Force Academy, the Secretary of the Air Force shall retire the officer under any provision of this chapter under which the officer is eligible to retire.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer

not retire, and a written notification of the intent of the President to nominate the officer for reassignment.

(Added Pub. L. 106–65, div. A, title V, Sec. 532(a)(3)(A), Oct. 5, 1999, 113 Stat. 603; Pub. L. 108–375, div. A, title V, Sec. 541(a)(3), (c)(3)(A), Oct. 28, 2004, 118 Stat. 1902, 1904.)

[§§ 8922, 8923. Repealed. Pub. L. 96–513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]

§ 8924. Forty years or more: Air Force officers

(a) Except as provided in section 1186 of this title, a commissioned officer of the Air Force who has at least 40 years of service computed under section 8926 of this title shall be retired upon his request.

(b) Any warrant officer of the Air Force who has at least 40 years of service computed under section 8926(a) of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Pub. L. 96–513, title V, Sec. 504(18), Dec. 12, 1980, 94 Stat. 2917.)

§ 8925. Computation of years of service: voluntary retirement; enlisted members

(a) For the purpose of determining whether an enlisted member of the Air Force may be retired under section 8914 or 8917 of this title, his years of service are computed by adding all active service in the armed forces.

(b) Time required to be made up under section 972(a) of this title may not be counted in computing years of service under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Pub. L. 85–861, Sec. 1(195), Sept. 2, 1958, 72 Stat. 1540; Pub. L. 96–343, Sec. 9(b)(2), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 99–348, title II, Sec. 204(c), July 1, 1986, 100 Stat. 698; Pub. L. 101–189, div. A, title VI, Sec. 652(a)(6), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 103–337, div. A, title VI, Sec. 635(c)(1), Oct. 5, 1994, 108 Stat. 2789; Pub. L. 104–106, div. A, title V, Sec. 561(d)(4)(A), Feb. 10, 1996, 110 Stat. 323.)

§ 8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers

(a) For the purpose of determining whether an officer of the Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding—

(1) all active service performed as a member of the Army or the Air Force; and

(2) all service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement.

(b) For the purpose of determining whether a medical officer of the Regular Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding to his service under subsection (a) all service performed as a contract surgeon, acting assistant surgeon, or contract physician, under a contract to serve full time and to take and change station as ordered.

(c) For the purpose of determining whether a dental officer of the Regular Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding to his service under subsection (a) all service as a contract dental surgeon or acting dental surgeon.

(d) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Pub. L. 86-197, Sec. 1(8), Aug. 25, 1959, 73 Stat. 426; Pub. L. 101-189, div. A, title VI, Sec. 652(a)(7), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 104-106, div. A, title V, Sec. 561(d)(4)(B), Feb. 10, 1996, 110 Stat. 323.)

[§ 8927. Repealed. Pub. L. 96-513, title II, Sec. 217(a), Dec. 12, 1980, 94 Stat. 2886]

[§ 8928. Repealed. Pub. L. 85-155, title IV, Sec. 401(1), Aug. 21, 1957, 71 Stat. 390]

§ 8929. Computation of retired pay: law applicable

A member of the Air Force retired under this chapter is entitled to retired pay computed under chapter 871 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554.)

CHAPTER 869—RETIRED GRADE

- Sec.
8961. General rule.
8962. Higher grade for service in special positions.
8963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.
8964. Higher grade after 30 years of service: warrant officers and enlisted members.
8965. Restoration to former grade: retired warrant officers and enlisted members.
8966. Retired lists.

§ 8961. General rule

(a) The retired grade of a regular commissioned officer of the Air Force who retires other than for physical disability, and the retired grade of a reserve commissioned officer of the Air Force who retires other than for physical disability, is determined under section 1370 of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force not covered by subsection (a) who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554; Pub. L. 96-513, title V, Sec. 504(19), Dec. 12, 1980, 94 Stat. 2917; Pub. L. 103-337, div. A, title XVI, Sec. 1674(c)(2), Oct. 5, 1994, 108 Stat. 3016; Pub. L. 106-398, Sec. 1 [div. A], title V, Sec. 506(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-102.)

§ 8962. Higher grade for service in special positions

Upon retirement, any permanent professor of the United States Air Force Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554; Pub. L. 85-861, Sec. 1(197), Sept. 2, 1958, 72 Stat. 1541; Pub. L. 89-288, Sec. 6, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 96-343, Sec. 13(b)(1), (2), Sept. 8, 1980, 94 Stat. 1131; Pub. L. 96-513, title V, Sec. 504(20), Dec. 12, 1980, 94 Stat. 2917; Pub. L. 104-106, div. A, title V, Sec. 502(c), (d)(1), Feb. 10, 1996, 110 Stat. 293.)

§ 8963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A Reserve enlisted member of the Air Force described in subsection (b) who is retired under section 8914 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National Guard, in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Air Force.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of retirement is serving on active duty (or, in the case of a member of the National Guard, on full-time National Guard duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or full-time National Guard duty); and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Air Force.

(c) This section applies with respect to Reserve enlisted members who are retired under section 8914 of this title after September 30, 1996.

(Added Pub. L. 104–201, div. A, title V, Sec. 532(c)(1), Sept. 23, 1996, 110 Stat. 2519.)

§ 8964. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each retired member of the Air Force covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Air Force.

(b) This section applies to—

(1) warrant officers of the Air Force;

(2) enlisted members of the Regular Air Force; and

(3) reserve enlisted members of the Air Force who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time duty).

(Aug. 10, 1956, ch. 1041, 70A Stat. 555; Pub. L. 85–861, Sec. 1(198A), Sept. 2, 1958, 72 Stat. 1541; Pub. L. 98–525, title V, Sec. 533(c), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 100–180, div. A, title V, Sec. 512(c), Dec. 4, 1987, 101 Stat. 1090.)

§ 8965. Restoration to former grade: retired warrant officers and enlisted members

Each retired warrant officer or enlisted member of the Air Force who has been advanced on the retired list to a higher commissioned grade under section 8964 of this title, and who applies to the Secretary of the Air Force within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant-officer or enlisted status, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 555; Pub. L. 100–180, div. A, title V, Sec. 512(d)(3), Dec. 4, 1987, 101 Stat. 1090; Pub. L. 100–456, div. A, title XII, Sec. 1233(i)(2)(A), Sept. 29, 1988, 102 Stat. 2058.)

§ 8966. Retired lists

(a) The Secretary of the Air Force shall maintain a retired list containing the name of each retired commissioned officer of the Regular Air Force.

(b) The Secretary shall maintain a retired list containing the name of—

(1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Air Force, other than of the Regular Air Force; and

(2) each retired warrant officer or enlisted member of the Air Force who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Air Force.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 556; Pub. L. 85-861, Sec. 1(199), Sept. 2, 1958, 72 Stat. 1541; Pub. L. 100-180, div. A, title V, Sec. 512(d)(3), Dec. 4, 1987, 101 Stat. 1090.)

CHAPTER 871—COMPUTATION OF RETIRED PAY

Sec.	
8991.	Computation of retired pay.
8992.	Recomputation of retired pay to reflect advancement on retired list.

§ 8991. Computation of retired pay

(a) COMPUTATION.—

(1) FORMULA.—The monthly retired pay of a member entitled to such pay under this subtitle is computed by multiplying—

(A) the member's retired pay base (as computed under section 1406(e) or 1407 of this title), by

(B) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(2) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—If a member who is retired under section 8914 of this title has been credited by the Secretary of the Air Force with extraordinary heroism in the line of duty, the member's retired pay shall be increased by 10 percent of the amount determined under paragraph (1) (but to not more than 75 percent of the retired pay base upon which the computation of such retired pay is based). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(b) GENERAL RULES.—

(1) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula in subsection (a) or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him.

(2) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (a), if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(c) SPECIAL RULE FOR RETIRED RESERVE ENLISTED MEMBERS COVERED BY SECTION 8963.—In the case of a Reserve enlisted member retired under section 8914 of this title whose retired grade is determined under section 8963 of this title and who first became a member of a uniformed service before September 8, 1980, the retired pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the member's retired grade (determined based upon the rates of basic pay applicable on the date of the member's retirement), and that amount shall be used for the purposes of subsection (a)(1)(A) rather than the amount computed under section 1406(e) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 556; Pub. L. 85-155, title III, Sec. 301(22), Aug. 21, 1957, 71 Stat. 389; Pub. L. 85-422, Sec. 6(6), (8), 11(a)(9), May 20, 1958, 72 Stat. 129, 131; Pub. L. 85-861, Sec. 1(199A), Sept. 2, 1958, 72 Stat. 1541; Pub. L. 87-651, title I, Sec. 127, Sept. 7,

1962, 76 Stat. 514; Pub. L. 88-132, Sec. 5(h)(2), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90-207, Sec. 3(5), Dec. 16, 1967, 81 Stat. 654; Pub. L. 96-342, title VIII, Sec. 813(e), Sept. 8, 1980, 94 Stat. 1109; Pub. L. 96-513, title V, Sec. 504(22), 514(8), Dec. 12, 1980, 94 Stat. 2917, 2935; Pub. L. 98-94, title IX, Sec. 922(a)(12), 923(a)(1), (2)(H), Sept. 24, 1983, 97 Stat. 642, 643; Pub. L. 99-348, title II, Sec. 204(a), July 1, 1986, 100 Stat. 697; Pub. L. 103-337, div. A, title VI, Sec. 635(c)(2), Oct. 5, 1994, 108 Stat. 2789; Pub. L. 104-201, div. A, title V, Sec. 532(d)(3), Sept. 23, 1996, 110 Stat. 2520.)

§ 8992. Recomputation of retired pay to reflect advancement on retired list

(a) ENTITLEMENT TO RECOMPUTATION.—An enlisted member or warrant officer of the Air Force who is advanced on the retired list under section 8964 of this title is entitled to recompute his retired pay in accordance with this section.

(b) FORMULA.—The monthly retired pay of a member entitled to recompute that pay under this section is computed by multiplying—

(1) the member's retired pay base (as computed under section 1406(e) or 1407 of this title), by

(2) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(c) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (b), if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 557; Pub. L. 96-342, title VIII, Sec. 813(e), Sept. 8, 1980, 94 Stat. 1109; Pub. L. 96-513, title V, Sec. 514(8), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 97-295, Sec. 1(52), Oct. 12, 1982, 96 Stat. 1300; Pub. L. 98-94, title IX, Sec. 922(a)(13), 923(a)(1), (2)(I), Sept. 24, 1983, 97 Stat. 642, 643; Pub. L. 99-348, title II, Sec. 204(b), July 1, 1986, 100 Stat. 698; Pub. L. 103-337, div. A, title VI, Sec. 635(c)(3), Oct. 5, 1994, 108 Stat. 2789.)

CHAPTER 873—CIVILIAN EMPLOYEES

Sec.

9021. Air University: civilian faculty members.

[9022, 9023. Repealed.]

9025. Production of supplies and munitions: hours and pay of laborers and mechanics.

9027. Civilian special agents of the Office of Special Investigations: authority to execute warrants and make arrests.

§ 9021. Air University: civilian faculty members

(a) **AUTHORITY OF SECRETARY.**—The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at a school of the Air University as the Secretary considers necessary.

(b) **COMPENSATION OF FACULTY MEMBERS.**—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) **APPLICATION TO CERTAIN FACULTY MEMBERS.**—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at a school of the Air University after February 27, 1990.

(2) This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Air University if the duration of the principal course of instruction offered at that school is less than 10 months.

(Added Pub. L. 101–189, div. A, title XI, Sec. 1124(d)(1), Nov. 29, 1989, 103 Stat. 1559; amended Pub. L. 103–337, div. A, title X, Sec. 1070(a)(17), Oct. 5, 1994, 108 Stat. 2856.)

[§ 9022. Repealed. Pub. L. 98–94, title IX, Sec. 932(c)(1), Sept. 24, 1983, 97 Stat. 650]

[§ 9023. Repealed. Pub. L. 87–651, title I, Sec. 128(1), Sept. 7, 1962, 76 Stat. 514]

§ 9025. Production of supplies and munitions: hours and pay of laborers and mechanics

During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Air Force producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Air Force these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 558.)

§ 9027. Civilian special agents of the Office of Special Investigations: authority to execute warrants and make arrests

(a) **AUTHORITY.**—The Secretary of the Air Force may authorize any Department of the Air Force civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) **AGENTS TO HAVE AUTHORITY.**—Subsection (a) applies to any employee of the Department of the Air Force who is a special agent of the Air Force Office of Special Investigations (or a successor to that office) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Air Force.

(c) **GUIDELINES FOR EXERCISE OF AUTHORITY.**—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Air Force and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Air Force, the Secretary of Defense, or the Attorney General.

(Added Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 554(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-127.)

CHAPTER 875—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.
9061. Fatality reviews.

§ 9061. Fatality reviews

(a) REVIEW OF FATALITIES.—The Secretary of the Air Force shall conduct a multidisciplinary, impartial review (referred to as a “fatality review”) in the case of each fatality known or suspected to have resulted from domestic violence or child abuse against any of the following:

- (1) A member of the Air Force on active duty.
- (2) A current or former dependent of a member of the Air Force on active duty.
- (3) A current or former intimate partner who has a child in common or has shared a common domicile with a member of the Air Force on active duty.

(b) MATTERS TO BE INCLUDED.—The report of a fatality review under subsection (a) shall, at a minimum, include the following:

- (1) An executive summary.
- (2) Data setting forth victim demographics, injuries, autopsy findings, homicide or suicide methods, weapons, police information, assailant demographics, and household and family information.
- (3) Legal disposition.
- (4) System intervention and failures, if any, within the Department of Defense.
- (5) A discussion of significant findings.
- (6) Recommendations for systemic changes, if any, within the Department of the Air Force and the Department of Defense.

(c) OSD GUIDANCE.—The Secretary of Defense shall prescribe guidance, which shall be uniform for the military departments, for the conduct of reviews by the Secretary under subsection (a).

(Added Pub. L. 108–136, div. A, title V, Sec. 576(c)(1), Nov. 24, 2003, 117 Stat. 1488.)

PART III—TRAINING

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CHAPTER 901—TRAINING GENERALLY

- Sec.
9301. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.
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9320. Recruit basic training: privacy.

§ 9301. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Air Force may detail members of the Air Force as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Air Force on the active-duty list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Air Force may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Air National Guard of the United States, without the approval of the governor or other appropriate authority of the State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands of whose Air National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Air Force under subsection (a) during one enlistment period may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Air Force, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Air Force, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 559; Pub. L. 93-169, Nov. 29, 1973, 87 Stat. 689; Pub. L. 96-513, title V, Sec. 504(23), Dec. 12, 1980, 94 Stat. 2917; Pub. L. 100-456, div. A, title XII, Sec. 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(9), Jan. 6, 2006, 119 Stat. 3441.)

§ 9302. Enlisted members of Air Force: schools

(a) So far as consistent with the requirements of military training and service, and under regulations to be prescribed by the Secretary of the Air Force with the approval of the President, enlisted members of the Air Force shall be permitted to study and receive instruction to increase their military efficiency and to enable them to return to civilian life better equipped for industrial, commercial, and business occupations. Part of this instruction may be vocational education in agriculture or the mechanic arts. Civilian teachers may be employed to aid Air Force officers in this instruction.

(b) Schools for the instruction of enlisted members of the Air Force in the common branches of education, including United States history, shall be maintained at all air bases at which members of the Air Force are stationed. The Secretary may detail members of the Air Force to carry out this subsection. The commander of each air base where schools are maintained under this subsection shall provide a suitable room or building for school and religious purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

§ 9303. Aviation cadets and aviation students: schools

The Secretary of the Air Force shall establish and maintain—

- (1) one or more schools for the training and instruction of aviation cadets; and
- (2) courses of instruction for aviation students at one or more established flying schools.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

§ 9304. Aviation students: detail of enlisted members of Air Force

The Secretary of the Air Force may detail enlisted Regulars of the Air Force, and enlisted Reserves of the Air Force who are on active duty, for training and instruction as aviation students in their respective grades at schools selected by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

§ 9305. Civilian flying school instructors: instruction at Air Force training commands

(a) The Secretary of the Air Force may provide for the instruction and training, at Air Force training commands, of civilians selected from the instructional staffs of civilian flying schools that are accredited by the Department of the Air Force for the education and training of members of the Air Force.

(b) The training of civilians under subsection (a) shall be without cost to the United States, except for supplies necessary for training purposes.

(c) A civilian undergoing training under subsection (a) may be treated in a Government hospital if he becomes sick or is injured. However, that treatment shall be without cost to the United States except for services of Government medical personnel and the use of hospital equipment other than medicine or supplies.

(d) No civilian who sustains a personal injury, and no dependent of a civilian who dies of disease or injury, while undergoing training under subsection (a), is entitled to any compensation, pension, or gratuity for that injury or death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

§ 9306. Service schools: leaves of absence for instructors

The officer in charge of an Air Force service school may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to any officer on duty exclusively as an instructor at the school.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561.)

§ 9314. Degree granting authority for United States Air Force Institute of Technology

(a) **AUTHORITY.**—Under regulations prescribed by the Secretary of the Air Force, the commander of the Air University may, upon the recommendation of the faculty of the United States Air Force Institute of Technology, confer appropriate degrees upon graduates of the United States Air Force Institute of Technology who meet the degree requirements.

(b) **LIMITATION.**—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the United States Air Force Institute of Technology is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) **CONGRESSIONAL NOTIFICATION REQUIREMENTS.**—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to

the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the United States Air Force Institute of Technology to award any new or existing degree.

(d) CIVILIAN FACULTY.—(1) The Secretary of the Air Force may employ as many civilian faculty members at the United States Air Force Institute of Technology as is consistent with the needs of the Air Force and with Department of Defense personnel limits.

(2) The Secretary shall prescribe regulations determining—

(A) titles and duties of civilian members of the faculty; and

(B) pay of civilian members of the faculty, notwithstanding chapter 53 of title 5, but subject to the limitation set out in section 5373 of title 5.

(e) REIMBURSEMENT AND TUITION.—(1) The Department of the Army, the Department of the Navy, and the Department of Homeland Security shall bear the cost of the instruction at the Air Force Institute of Technology that is received by members of the armed forces detailed for that instruction by the Secretaries of the Army, Navy, and Homeland Security, respectively.

(2) Members of the Army, Navy, Marine Corps, and Coast Guard may only be detailed for instruction at the Institute on a space-available basis.

(3) In the case of an enlisted member of the Army, Navy, Marine Corps, and Coast Guard permitted to receive instruction at the Institute, the Secretary of the Air Force shall charge that member only for such costs and fees as the Secretary considers appropriate (taking into consideration the admission of enlisted members on a space-available basis).

(4)(A) The Institute shall charge tuition for the cost of providing instruction at the Institute for any civilian employee of a military department (other than a civilian employee of the Department of the Air Force), of another component of the Department of Defense, or of another Federal agency who receives instruction at the Institute.

(B) The cost of any tuition charged an individual under this paragraph shall be borne by the department, agency, or component sending the individual for instruction at the Institute.

(5) Amounts received by the Institute for the instruction of students under this subsection shall be retained by the Institute. Such amounts shall be available to the Institute to cover the costs of

such instruction. The source and disposition of such amounts shall be specifically identified in the records of the Institute.

(f) ACCEPTANCE OF RESEARCH GRANTS.—(1) The Secretary of the Air Force may authorize the Commandant of the United States Air Force Institute of Technology to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Institute for a scientific, literary, or educational purpose.

(2) A qualifying research grant under this subsection is a grant that is awarded on a competitive basis by an entity referred to in paragraph (3) for a research project with a scientific, literary, or educational purpose.

(3) A grant may be accepted under this subsection only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(4) The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant of the Institute shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(5) Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Institute may be used to pay expenses incurred by the Institute in applying for, and otherwise pursuing, the award of qualifying research grants.

(6) The Secretary shall prescribe regulations for the administration of this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561; Pub. L. 99-145, title V, Sec. 504(a)(1), (2)(A), Nov. 8, 1985, 99 Stat. 622; Pub. L. 99-661, div. A, title V, Sec. 510, Nov. 14, 1986, 100 Stat. 3868; Pub. L. 101-509, title V, Sec. 529 [title I, Sec. 106(b)(6)(C)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 105-261, div. A, title XI, Sec. 1102, Oct. 17, 1998, 112 Stat. 2141; Pub. L. 108-136, div. A, title V, Sec. 533, Nov. 24, 2003, 117 Stat. 1473; Pub. L. 109-163, div. A, title V, Sec. 522(e), Jan. 6, 2006, 119 Stat. 3243; Pub. L. 110-417, [div. A], title V, Secs. 543(h)(1), 544, Oct. 14, 2008, 122 Stat. 4463, 4465.)

§ 9314a. United States Air Force Institute of Technology: admission of defense industry civilians

(a) ADMISSION AUTHORIZED.—(1) The Secretary of the Air Force may permit defense industry employees described in subsection (b) to receive instruction at the United States Air Force Institute of Technology in accordance with this section. Any such defense industry employee may be enrolled in, and may be provided instruction in, a program leading to a graduate degree in a defense focused curriculum related to aeronautics and astronautics, electrical and computer engineering, engineering physics, mathematics and statistics, operational sciences, or systems and engineering management.

(2) No more than 125 defense industry employees may be enrolled at the United States Air Force Institute of Technology at any one time under the authority of paragraph (1).

(3) Upon successful completion of the course of instruction at the United States Air Force Institute of Technology in which a defense industry employee is enrolled, the defense industry employee may be awarded an appropriate degree under section 9314 of this title.

(b) **ELIGIBLE DEFENSE INDUSTRY EMPLOYEES.**—For purposes of this section, an eligible defense industry employee is an individual employed by a private firm that is engaged in providing to the Department of Defense significant and substantial defense-related systems, products, or services. A defense industry employee admitted for instruction at the United States Air Force Institute of Technology remains eligible for such instruction only so long as that person remains employed by the same firm.

(c) **ANNUAL DETERMINATION BY THE SECRETARY OF THE AIR FORCE.**—Defense industry employees may receive instruction at the United States Air Force Institute of Technology during any academic year only if, before the start of that academic year, the Secretary of the Air Force, or the designee of the Secretary, determines that providing instruction to defense industry employees under this section during that year—

(1) will further the military mission of the United States Air Force Institute of Technology; and

(2) will be done on a space-available basis and not require an increase in the size of the faculty of the school, an increase in the course offerings of the school, or an increase in the laboratory facilities or other infrastructure of the school.

(d) **PROGRAM REQUIREMENTS.**—The Secretary of the Air Force shall ensure that—

(1) the curriculum in which defense industry employees may be enrolled under this section is not readily available through other schools and concentrates on the areas of focus specified in subsection (a)(1) that are conducted by military organizations and defense contractors working in close cooperation; and

(2) the course offerings at the United States Air Force Institute of Technology continue to be determined solely by the needs of the Department of Defense.

(e) **TUITION.**—(1) The United States Air Force Institute of Technology shall charge tuition for students enrolled under this section at a rate not less than the rate charged for employees of the United States outside the Department of the Air Force.

(2) Amounts received by the United States Air Force Institute of Technology for instruction of students enrolled under this section shall be retained by the school to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the school.

(f) **STANDARDS OF CONDUCT.**—While receiving instruction at the United States Air Force Institute of Technology, defense industry employees enrolled under this section, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the school.

(Added Pub. L. 111–383, div. A, title V, Sec. 593(a), Jan. 7, 2011, 124 Stat. 4232.)

§ 9315. Community College of the Air Force: associate degrees

(a) **ESTABLISHMENT AND MISSION.**—There is in the Air Force a Community College of the Air Force. Such college, in cooperation with civilian colleges and universities, shall—

(1) prescribe programs of higher education for enlisted members described in subsection (b) designed to improve the technical, managerial, and related skills of such members and to prepare such members for military jobs which require the utilization of such skills; and

(2) monitor on a continuing basis the progress of members pursuing such programs.

(b) MEMBERS ELIGIBLE FOR PROGRAMS.—Subject to such other eligibility requirements as the Secretary concerned may prescribe, the following members of the armed forces are eligible to participate in programs of higher education under subsection (a)(1):

(1) Enlisted members of the Air Force.

(2) Enlisted members of the armed forces other than the Air Force who are serving as instructors at Air Force training schools.

(c) ASSOCIATE DEGREES.—(1) Subject to paragraph (2), an academic degree at the level of associate may be conferred under section 9317 of this title upon any enlisted member who has completed a program prescribed by the Community College of the Air Force.

(2) No degree may be conferred upon any enlisted member under this section unless the Secretary of Education determines that the standards for the award of academic degrees in agencies of the United States have been met.

(Added Pub. L. 94-361, title VI, Sec. 602, July 14, 1976, 90 Stat. 928; amended Pub. L. 96-513, title V, Sec. 514(9), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 103-160, div. A, title XI, Sec. 1182(a)(12), Nov. 30, 1993, 107 Stat. 1772; Pub. L. 104-106, div. A, title X, Sec. 1078(a), Feb. 10, 1996, 110 Stat. 451; Pub. L. 105-85, div. A, title V, Sec. 552(a), (b), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 108-375, div. A, title V, Sec. 556(b), Oct. 28, 2004, 118 Stat. 1915.)

[§ 9316. Repealed. Pub. L. 110-417, [div. A], title III, Sec. 353(a), Oct. 14, 2008, 122 Stat. 4425]

§ 9317. Degree granting authority for Air University

(a) AUTHORITY.—Except as provided in sections 9314 and 9315 of this title, under regulations prescribed by the Secretary of the Air Force, the commander of the Air University may, upon the recommendation of the faculty of the Air University components, confer appropriate degrees upon graduates who meet the degree requirements.

(b) LIMITATION.—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the Air University is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to

the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the Air University to award any new or existing degree.

(Added Pub. L. 103-337, div. A, title IX, Sec. 913(a)(1), Oct. 5, 1994, 108 Stat. 2828; amended Pub. L. 106-65, div. A, title V, Sec. 543(a), (b)(1), Oct. 5, 1999, 113 Stat. 607; Pub. L. 108-375, div. A, title V, Sec. 556(a), (c)(1), Oct. 28, 2004, 118 Stat. 1914, 1915; Pub. L. 110-181, div. A, title V, Sec. 527, Jan. 28, 2008, 122 Stat. 105; Pub. L. 110-417, [div. A], title V, Sec. 543(i)(1), Oct. 14, 2008, 122 Stat. 4464.)

§ 9319. Recruit basic training: separate housing for male and female recruits

(a) PHYSICALLY SEPARATE HOUSING.—(1) The Secretary of the Air Force shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2), the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) ALTERNATIVE SEPARATE HOUSING.—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Air Force shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) CONSTRUCTION PLANNING.—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Air Force shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) BASIC TRAINING DEFINED.—In this section, the term “basic training” means the initial entry training program of the Air Force that constitutes the basic training of new recruits.

(Added Pub. L. 105–261, div. A, title V, Sec. 521(c)(1), Oct. 17, 1998, 112 Stat. 2011.)

§ 9320. Recruit basic training: privacy

The Secretary of the Air Force shall require that access by military training instructors and other training personnel to a living area in which recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to military training instructors and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added Pub. L. 105–261, div. A, title V, Sec. 522(c)(1), Oct. 17, 1998, 112 Stat. 2013.)

CHAPTER 903—UNITED STATES AIR FORCE ACADEMY

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§ 9331. Establishment; Superintendent; faculty

(a) There is in the Department of the Air Force an Air Force Academy (hereinafter in this chapter referred to as the “Academy”) for the instruction and preparation for military service of selected persons called “Air Force cadets”. The organization of the Academy shall be prescribed by the Secretary of the Air Force.

(b) There shall be at the Academy the following:

- (1) A Superintendent.
- (2) A Dean of the Faculty.
- (3) A Commandant of Cadets.
- (4) 23 permanent professors.
- (5) A chaplain.
- (6) A director of admissions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561; Pub. L. 85–600, Sec. 1(19), Aug. 6, 1958, 72 Stat. 523; Pub. L. 96–513, title V, Sec. 514(10), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 101–189, div. A, title V, Sec. 515(a)(1), Nov. 29, 1989, 103 Stat. 1441; Pub. L. 102–484, div. A, title V, Sec. 523(b), Oct. 23, 1992, 106 Stat. 2410; Pub. L. 103–160, div. A, title V, Sec. 533(b)(3), Nov. 30, 1993,

107 Stat. 1658; Pub. L. 108–136, div. A, title V, Sec. 529(c)(1), Nov. 24, 2003, 117 Stat. 1471; Pub. L. 110–417, [div. A], title V, Sec. 545, Oct. 14, 2008, 122 Stat. 4466.)

§ 9332. Departments and professors: titles

The Secretary of the Air Force may prescribe the titles of each of the departments of instruction and the professors of the Academy. However, the change of the title of a department or officer does not affect the status, rank, or eligibility for promotion or retirement of, or otherwise prejudice, a professor at the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562.)

§ 9333. Superintendent; faculty: appointment and detail

(a) The Superintendent and the Commandant of Cadets of the Academy shall be detailed to those positions by the President from the officers of the Air Force.

(b) The permanent professors of the Academy shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The director of admissions of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 85–600, Sec. 1(20), Aug. 6, 1958, 72 Stat. 523; Pub. L. 101–189, div. A, title V, Sec. 515(a)(2), Nov. 29, 1989, 103 Stat. 1441.)

§ 9333a. Superintendent: condition for detail to position

(a) RETIREMENT.—As a condition for detail to the position of Superintendent of the Academy, an officer shall acknowledge that upon termination of that detail the officer shall be retired pursuant to section 8921(a) of this title, unless such retirement is waived under section 8921(b) of this title.

(b) MINIMUM TOUR OF DUTY.—An officer who is detailed to the position of Superintendent of the Academy shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Air Force shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.

(Added Pub. L. 106–65, div. A, title V, Sec. 532(a)(3)(B), Oct. 5, 1999, 113 Stat. 603; amended Pub. L. 108–375, div. A, title V, Sec. 541(b)(3), Oct. 28, 2004, 118 Stat. 1903.)

§ 9334. Command and supervision

(a) The immediate government of the Academy is under the Superintendent, who is also the commanding officer of the Academy and of the military post.

(b) The permanent professors and the director of admissions exercise command only in the academic department of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 85–600, Sec. 1(21), Aug. 6, 1958, 72 Stat. 524; Pub. L. 101–189, div. A, title V, Sec. 515(a)(3), Nov. 29, 1989, 103 Stat. 1441.)

§ 9335. Dean of the Faculty

(a) The Dean of the Faculty is responsible to the Superintendent for developing and sustaining the curriculum and overseeing the faculty of the Academy. The qualifications, selection procedures, training, pay grade, and retention of the Dean shall be prescribed by the Secretary of the Air Force, except that a person may not be appointed or assigned as Dean unless that person holds the highest academic degree in that person's academic field. If a person appointed as the Dean is not an officer on active duty, the person shall be appointed as a member of the Senior Executive Service.

(b) While serving as Dean of the Faculty, an officer on active duty who holds a grade lower than brigadier general (or the equivalent) shall hold the grade of brigadier general (or the equivalent), if appointed to that grade by the President, by and with the advice and consent of the Senate. The retirement age of an officer so appointed is that of a permanent professor of the Academy. An officer so appointed is counted for purposes of the applicable limitation in section 526(a) of this title on general officers on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 85-861, Sec. 33(a)(46)(A), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 99-661, div. A, title V, Sec. 508(c), Nov. 14, 1986, 100 Stat. 3867; Pub. L. 102-484, div. A, title V, Sec. 521(b), Oct. 23, 1992, 106 Stat. 2409; Pub. L. 106-65, div. A, title V, Sec. 533(b), Oct. 5, 1999, 113 Stat. 605; Pub. L. 108-136, div. A, title V, Sec. 529(a), (b), Nov. 24, 2003, 117 Stat. 1471; Pub. L. 108-375, div. A, title V, Sec. 542, Oct. 28, 2004, 118 Stat. 1904.)

§ 9336. Permanent professors; director of admissions

(a) A permanent professor of the Academy who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Air Force has the grade of colonel after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Air Force has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 85-600, Sec. 1(22), Aug. 6, 1958, 72 Stat. 524; Pub. L. 85-861, Sec. 33(a)(46)(B), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 96-513, title II, Sec. 218(b), title V, Sec. 504(24), Dec. 12, 1980, 94 Stat. 2886, 2917; Pub. L. 98-525, title V, Sec. 533(d)(2), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 101-189, div. A, title V, Sec. 515(a)(4), (b)(1), Nov. 29, 1989, 103 Stat. 1441; Pub. L. 108-136, div. A, title V, Sec. 529(c)(2), Nov. 24, 2003, 117 Stat. 1472.)

§ 9337. Chaplain

There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as

are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 87-651, title I, Sec. 117, Sept. 7, 1962, 76 Stat. 513.)

§ 9338. Civilian faculty: number; compensation

(a) The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at the Academy as the Secretary considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Air Force may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(Added Pub. L. 103-160, div. A, title V, Sec. 533(b)(1), Nov. 30, 1993, 107 Stat. 1658; amended Pub. L. 106-65, div. A, title XI, Sec. 1107(c), Oct. 5, 1999, 113 Stat. 778.)

§ 9341. Faculty and other officers: leaves of absence

The Superintendent of the Academy may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to a professor, assistant professor, instructor, or other officer of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 563.)

§ 9341a. Cadets: appointment by the President

Cadets at the Academy shall be appointed by the President alone. An appointment is conditional until the cadet is admitted.

(Added Pub. L. 97-60, title II, Sec. 203(c)(2)(A), Oct. 14, 1981, 95 Stat. 1006.)

§ 9342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of Air Force Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,400 or such lower number as may be prescribed by the Secretary of the Air Force under subsection (j). Subject to that limitation, Air Force Cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examination from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a "missing status" as defined in section 551(2) of title 37, and children of civilian employees who are in "missing status" as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or

disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Air Force.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Three cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Three cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) Two cadets from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) Two cadets from the Commonwealth of the Northern Mariana Islands, nominated by the Delegate in Congress from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Air Force from enlisted members of the Regular Air Force.

(3) 85 nominated by the Secretary of the Air Force from enlisted members of reserve components of the Air Force.

(4) 20 nominated by the Secretary of the Air Force, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Air Force Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Air Force in order of merit (prescribed pursuant to section 9343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy children of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) The Superintendent may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of Air Force Cadets to exceed the authorized number.

(e) If the annual quota of cadets under subsection (b)(1), (2), or (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Air Force may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy as determined by the Secretary after consulting with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a)(3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a)(3) or (4), appointments under subsection (b)(1)–(4) are limited as follows:

- (A) 27 appointments under subsection (b)(1);
- (B) 27 appointments under subsection (b)(2);
- (C) 27 appointments under subsection (b)(3); and
- (D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b)(2)–(4) are limited as follows:

- (A) 27 appointments under subsection (b)(2);
- (B) 27 appointments under subsection (b)(3); and
- (C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) The Superintendent shall furnish to any Member of Congress, upon the written request of such Member, the name of the

Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(i) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of Air Force Cadets, the Secretary of the Air Force may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(j)(1) Beginning with the 2003–2004 academic year, the Secretary of the Air Force may prescribe annual increases in the cadet strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 cadets or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the cadet strength limit is 4,400.

(2) Any increase in the cadet strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under sections 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the cadet strength limit and the new cadet strength limit, as so increased, and the amount of the increase in Senior Air Force Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

(3) The amount of an increase under paragraph (1) in the cadet strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of cadets enrolled in the Air Force Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

(4) In this subsection, the term “cadet strength limit” means the authorized maximum strength of Air Force Cadets of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 563; Pub. L. 87–663, Sec. 1(5), (6), Sept. 14, 1962, 76 Stat. 547; Pub. L. 88–276, Sec. 4(1), Mar. 3, 1964, 78 Stat. 151; Pub. L. 89–650, Sec. 1(1)–(3), (5), Oct. 13, 1966, 80 Stat. 896; Pub. L. 90–374, July 5, 1968, 82 Stat. 283; Pub. L. 90–623, Sec. 2(8), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 91–405, title II, Sec. 204(c), Sept. 22, 1970, 84 Stat. 852; Pub. L. 92–365, Sec. 1(3), Aug. 7, 1972, 86 Stat. 505; Pub. L. 93–171, Sec. 3(1)–(4), Nov. 29, 1973, 87 Stat. 690; Pub. L. 94–106, title VIII, Sec. 803(b)(1), Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–513, title V, Sec. 514(11), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 96–600, Sec. 2(c), Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97–60, title II, Sec. 203(c)(1), Oct. 14, 1981, 95 Stat. 1006; Pub. L. 98–94, title X, Sec. 1005(a)(3), (b)(3), Sept. 24, 1983, 97 Stat. 660, 661; Pub. L. 101–189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101–510, div. A, title V, Sec. 532(c)(1), Nov. 5, 1990, 104 Stat. 1563; Pub. L. 103–160, div. A, title V, Sec. 531, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 103–337, div. A, title XVI, Sec. 1674(c)(3), Oct. 5, 1994, 108 Stat. 3017; Pub. L. 104–106, div. A, title V, Sec. 532(c), title XV, Sec. 1502(a)(1), Feb. 10, 1996, 110 Stat. 315, 502; Pub. L. 105–85, div. A, title X, Sec. 1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–65, div. A, title V, Sec. 531(b)(3), title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 602, 774; Pub. L. 106–398, Sec. 1 [[div. A], title V, Sec. 531(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110; Pub. L. 107–314, div. A, title V, Sec. 532(c), Dec. 2, 2002, 116 Stat. 2546; Pub. L. 108–136, div. A, title V, Sec. 524(c), title X, Sec. 1031(a)(58), Nov. 24, 2003, 117 Stat. 1464, 1603; Pub. L. 109–364, div. A, title X, Sec. 1071(a)(38), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 110–229, title VII, Sec. 718(c), May 8, 2008, 122 Stat. 869; Pub. L. 110–417, [div. A], title V, Sec. 540(c), Oct. 14, 2008, 122 Stat. 4454; Pub. L. 111–84, div. A, title V, Sec. 527(c), Oct. 28, 2009, 123 Stat. 2288.)

§ 9343. Cadets: appointment; to bring to full strength

If it is determined that, upon the admission of a new class to the Academy, the number of cadets at the Academy will be below the authorized number, the Secretary of the Air Force may fill the vacancies by nominating additional cadets from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academy Board. At least three-fourths of those nominated under this section shall be selected from qualified alternates nominated by the persons named in clauses (2) through (8) of section 9342(a) of this title, and the remainder from qualified candidates holding competitive nominations under any other provision of law. An appointment under this section is an additional appointment and is not in place of an appointment otherwise authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 564; Pub. L. 88-276, Sec. 4(2), Mar. 3, 1964, 78 Stat. 153; Pub. L. 89-718, Sec. 46, Nov. 2, 1966, 80 Stat. 1121; Pub. L. 93-171, Sec. 3(5), Nov. 29, 1973, 87 Stat. 691; Pub. L. 101-510, div. A, title V, Sec. 532(a)(2), (c)(2), Nov. 5, 1990, 104 Stat. 1563, 1564.)

§ 9344. Selection of persons from foreign countries

(a)(1) The Secretary of the Air Force may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Air Force Cadets of the Academy under section 9342 of this title.

(2) The Secretary of the Air Force, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Air Force may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Air Force shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Air Force shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.

(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a

cadet under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.

(c)(1) Except as the Secretary of the Air Force determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 9346(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 564; Pub. L. 98–94, title X, Sec. 1004(c)(1), Sept. 24, 1983, 97 Stat. 659; Pub. L. 105–85, div. A, title V, Sec. 543(c), Nov. 18, 1997, 111 Stat. 1744; Pub. L. 106–65, div. A, title V, Sec. 534(c), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106–398, Sec. 1 [[div. A], title V, Sec. 532(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110; Pub. L. 107–107, div. A, title V, Sec. 533(c)(1), (2), Dec. 28, 2001, 115 Stat. 1106.)

§ 9345. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Air Force may permit a student enrolled at a military academy of a foreign country to receive instruction at the Air Force Academy in exchange for an Air Force cadet receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 9344 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 100 Air Force cadets and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Air Force Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of an Air Force cadet by reason of attendance at the Air Force Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged Air Force cadet in that foreign country.

(3) The Air Force Academy shall bear all costs of the exchange program from funds appropriated for the Academy and such additional funds as may be available to the Academy from a source other than appropriated funds to support cultural immersion, regional awareness, or foreign language training activities in connection with the exchange program.

(4) Expenditures in support of the exchange program from funds appropriated for the Academy may not exceed \$1,000,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 9344 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Air Force Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added Pub. L. 105–85, div. A, title V, Sec. 542(c)(1), Nov. 18, 1997, 111 Stat. 1742; amended Pub. L. 106–65, div. A, title V, Sec. 535(c), Oct. 5, 1999, 113 Stat. 606; Pub. L. 109–364, div. A, title V, Sec. 531(c), Oct. 17, 2006, 120 Stat. 2199.)

§ 9345a. Foreign and cultural exchange activities

(a) ATTENDANCE AUTHORIZED.—The Secretary of the Air Force may authorize the Air Force Academy to permit students, officers, and other representatives of a foreign country to attend the Air Force Academy for periods of not more than two weeks if the Secretary determines that the attendance of such persons contributes significantly to the development of foreign language, cross cultural interactions and understanding, and cultural immersion of cadets.

(b) COSTS AND EXPENSES.—The Secretary may pay the travel, subsistence, and similar personal expenses of persons incurred to attend the Air Force Academy under subsection (a).

(c) EFFECT OF ATTENDANCE.—Persons attending the Air Force Academy under subsection (a) are not considered to be students enrolled at the Air Force Academy and are in addition to persons receiving instruction at the Air Force Academy under section 9344 or 9345 of this title.

(d) SOURCE OF FUNDS; LIMITATION.—(1) The Air Force Academy shall bear the costs of the attendance of persons under subsection (a) from funds appropriated for the Air Force Academy and from such additional funds as may be available to the Air Force Academy from a source, other than appropriated funds, to support cultural immersion, regional awareness, or foreign language training activities in connection with their attendance.

(2) Expenditures from appropriated funds in support of activities under this section may not exceed \$40,000 during any fiscal year.

(Added Pub. L. 110–417, [div. A], title V, Sec. 541(c)(1), Oct. 14, 2008, 122 Stat. 4456.)

§ 9346. Cadets: requirements for admission

(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Air Force, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to an oath prescribed by the Secretary of the Air Force. If a candidate for admission refuses to take and subscribe to the prescribed oath, his appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565; Pub. L. 89-718, Sec. 47, Nov. 2, 1966, 80 Stat. 1121; Pub. L. 104-201, div. A, title V, Sec. 555(d), Sept. 23, 1996, 110 Stat. 2527.)

§ 9347. Cadets; nominees: effect of redistricting of States

If as a result of redistricting a State the domicile of a cadet, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of cadets otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a cadet or when he is finally separated from the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565.)

§ 9348. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer before completion of the commissioned service obligation of the cadet, the cadet—

(A) will accept an appointment as a commissioned officer as a Reserve in the Air Force for service in the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the cadet.

(4) That if an appointment described in paragraph (2) or (3) is tendered and the cadet participates in a program under section 2121 of this title, the cadet will fulfill any unserved obligation incurred under this section on active duty, regardless of the type of appointment held, upon completion of, and in addition to, any service obligation incurred under section 2123 of this title for participation in such program.

(b)(1) The Secretary of the Air Force may transfer to the Air Force Reserve, and may order to active duty for such period of time

as the Secretary prescribes (but not to exceed four years), a cadet who breaches an agreement under subsection (a). The period of time for which a cadet is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A cadet who is transferred to the Air Force Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a cadet shall be considered to have breached an agreement under subsection (a) if the cadet is separated from the Academy under circumstances which the Secretary determines constitute a breach by the cadet of the cadet's agreement to complete the course of instruction at the Academy and accept an appointment as a commissioned officer upon graduation from the Academy.

(c) The Secretary of the Air Force shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, the term “commissioned service obligation”, with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a cadet who is not a citizen or national of the United States.

(2) In the case of a cadet who is a minor and who has parents or a guardian, the cadet may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(f) A cadet or former cadet who does not fulfill the terms of the agreement as specified under subsection (a), or the alternative obligation imposed under subsection (b), shall be subject to the repayment provisions of section 303a(e) of title 37.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565; Pub. L. 88-276, Sec. 5(a), Mar. 3, 1964, 78 Stat. 153; Pub. L. 88-647, title III, Sec. 301(25), Oct. 13, 1964, 78 Stat. 1073; Pub. L. 98-525, title V, Sec. 541(c), 542(d), Oct. 19, 1984, 98 Stat. 2529; Pub. L. 99-145, title V, Sec. 512(c), Nov. 8, 1985, 99 Stat. 625; Pub. L. 101-189, div. A, title V, Sec. 511(d), title XVI, Sec. 1622(e)(5), Nov. 29, 1989, 103 Stat. 1439, 1605; Pub. L. 104-106, div. A, title V, Sec. 531(c), Feb. 10, 1996, 110 Stat. 314; Pub. L. 109-163, div. A, title VI, Sec. 687(c)(11), Jan. 6, 2006, 119 Stat. 3335; Pub. L. 111-84, div. A, title X, Sec. 1073(a)(29), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111-383, div. A, title V, Sec. 554(c), Jan. 7, 2011, 124 Stat. 4221.)

§ 9349. Cadets: organization; service; instruction

(a) A cadet shall perform duties at such places and of such type as the President may direct.

(b) The course of instruction at the Academy is four years.

(c) The Secretary of the Air Force shall so arrange the course of studies at the Academy that cadets are not required to pursue their studies on Sunday.

(d) Cadets shall be trained in the duties of members of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

§ 9350. Cadets: clothing and equipment

(a) The Secretary of the Air Force may prescribe the amount to be credited to a cadet, upon original admission to the Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a cadet is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in so much of his clothing and equipment of a distinctive military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(b) Under such regulations as the Secretary may prescribe, uniforms and equipment shall be furnished to a cadet at the Academy upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

§ 9351. Cadets: deficiencies in conduct or studies; effect of failure on successor

(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academy Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Superintendent within 10 days after he is officially notified of his failure. The reexamination shall be held within 60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

§ 9352. Cadets: hazing

(a) Subject to the approval of the Secretary of the Air Force, the Superintendent of the Academy shall issue regulations—

- (1) defining hazing;
- (2) designed to prevent that practice; and
- (3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed as an Air Force cadet, and is ineligible for appointment as a commissioned officer in a regular component of the Army,

Navy, Air Force, or Marine Corps, until two years after the graduation of his class.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

§ 9353. Cadets: degree and commission on graduation

(a) The Superintendent of the Academy may, under such conditions as the Secretary of the Air Force may prescribe, confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Air Force under section 531 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567; Pub. L. 85-861, Sec. 1(201), 33(a)(43), Sept. 2, 1958, 72 Stat. 1541, 1567; Pub. L. 96-513, title V, Sec. 504(25), Dec. 12, 1980, 94 Stat. 2917; Pub. L. 105-85, div. A, title V, Sec. 542(d), Nov. 18, 1997, 111 Stat. 1743.)

§ 9354. Buildings and grounds: buildings for religious worship

The Secretary of the Air Force may authorize any denomination, sect, or religious body to erect a building for religious worship at the Air Force Academy, if its erection will not interfere with the use of the reservation for military purposes and will be without expense to the United States. Such a building shall be removed, or its location changed, without compensation for it and without expense to the United States, by the denomination, sect, or religious body that erected it, whenever in the opinion of the Secretary public or military necessity so requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567.)

§ 9355. Board of Visitors

(a) A Board of Visitors to the Academy is constituted annually. The Board consists of the following members:

- (1) Six persons designated by the President.
- (2) The chairman of the Committee on Armed Services of the House of Representatives, or his designee.
- (3) Four persons designated by the Speaker of the House of Representatives, three of whom shall be members of the House of Representatives and the fourth of whom may not be a member of the House of Representatives.
- (4) The chairman of the Committee on Armed Services of the Senate, or his designee.
- (5) Three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate.

(b)(1) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is designated. The President shall designate persons each year to succeed the members designated by the President whose terms expire that year.

(2) At least two of the members designated by the President shall be graduates of the Academy.

(c)(1) If a member of the Board dies or resigns or is terminated as a member of the Board under paragraph (2), a successor shall

be designated for the unexpired portion of the term by the official who designated the member.

(2)(A) If a member of the Board fails to attend two successive Board meetings, except in a case in which an absence is approved in advance, for good cause, by the Board chairman, such failure shall be grounds for termination from membership on the Board. A person designated for membership on the Board shall be provided notice of the provisions of this paragraph at the time of such designation.

(B) Termination of membership on the Board under subparagraph (A)—

(i) in the case of a member of the Board who is not a member of Congress, may be made by the Board chairman; and

(ii) in the case of a member of the Board who is a member of Congress, may be made only by the official who designated the member.

(C) When a member of the Board is subject to termination from membership on the Board under subparagraph (A), the Board chairman shall notify the official who designated the member. Upon receipt of such a notification with respect to a member of the Board who is a member of Congress, the official who designated the member shall take such action as that official considers appropriate.

(d) The Board should meet at least four times a year, with at least two of those meetings at the Academy. The Board or its members may make other visits to the Academy in connection with the duties of the Board. Board meetings should last at least one full day. Board members shall have access to the Academy grounds and the cadets, faculty, staff, and other personnel of the Academy for the purposes of the duties of the Board.

(e)(1) The Board shall inquire into the morale, discipline, and social climate, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(2) The Secretary of the Air Force and the Superintendent of the Academy shall provide the Board candid and complete disclosure, consistent with applicable laws concerning disclosure of information, with respect to institutional problems.

(3) The Board shall recommend appropriate action.

(f) The Board shall prepare a semiannual report containing its views and recommendations pertaining to the Academy, based on its meeting since the last such report and any other considerations it determines relevant. Each such report shall be submitted concurrently to the Secretary of Defense, through the Secretary of the Air Force, and to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing duties as a member of the Board, each member of the Board and each adviser shall be reimbursed under Government travel regulations for travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567; Pub. L. 96-579, Sec. 13(c), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 104-106, div. A, title X, Sec. 1061(e)(2), title XV, Sec. 1502(a)(12), Feb. 10, 1996, 110 Stat. 443, 503; Pub. L. 106-65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub.

L. 108–375, div. A, title V, Sec. 543, Oct. 28, 2004, 118 Stat. 1904; Pub. L. 109–364, div. A, title X, Sec. 1071(a)(39), Oct. 17, 2006, 120 Stat. 2400.)

§ 9356. Acceptance of guarantees with gifts for major projects

(a) **ACCEPTANCE AUTHORITY.**—Subject to subsection (c), the Secretary of the Air Force may accept from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the Academy.

(b) **OBLIGATION AUTHORITY.**—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) **NOTICE OF PROPOSED ACCEPTANCE.**—The Secretary of the Air Force may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress or, if earlier, the expiration of 14 days following the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) **PROHIBITION ON COMMINGLING OF FUNDS.**—The Secretary of the Air Force may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) **DEFINITIONS.**—In this section:

(1) **MAJOR PROJECT.**—The term “major project” means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least \$1,000,000.

(2) **QUALIFIED GUARANTEE.**—The term “qualified guarantee”, with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in cash or securities that, as determined by the Secretary of the Air Force, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor’s other gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources

in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term “qualified account control agreement”, with respect to a guarantee of a donor, means an agreement among the donor, the Secretary of the Air Force, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term “major United States commercial bank” means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Air Force to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term “major United States investment management firm” means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Air Force to qualify the firm as a major investment management firm.

(Added Pub. L. 106-65, div. B, title XXVIII, Sec. 2871(c)(1), Oct. 5, 1999, 113 Stat. 875; amended Pub. L. 106-398, Sec. 1[[div. A], title X, Sec. 1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A-291; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(59), Nov. 24, 2003, 117 Stat. 1603.)

§ 9357. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Air Force may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Air Force shall prescribe regulations for the administration of this section.

(Added Pub. L. 105-261, div. A, title X, Sec. 1063(c)(1), Oct. 17, 1998, 112 Stat. 2131.)

§ 9359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds

(a) AUTHORITY.—In the case of an Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Air Force may designate funds appropriated to the Department of the Air Force and available for that program to be treated as non-appropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds. Appropriated funds so designated shall be considered to be non-appropriated funds for all purposes and shall remain available until expended.

(b) COVERED PROGRAMS.—In this section, the term “Academy mixed-funded athletic or recreational extracurricular program” means an athletic or recreational extracurricular program of the Academy to which each of the following applies:

(1) The program is not considered a morale, welfare, or recreation program.

- (2) The program is supported through appropriated funds.
- (3) The program is supported by a nonappropriated fund instrumentality.
- (4) The program is not a private organization and is not operated by a private organization.

(Added Pub. L. 108–375, div. A, title V, Sec. 544(c)(1), Oct. 28, 2004, 118 Stat. 1907.)

§ 9360. Cadets: charges and fees for attendance; limitation

(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.

(Added Pub. L. 108–375, div. A, title V, Sec. 545(c)(1), Oct. 28, 2004, 118 Stat. 1908.)

§ 9361. Policy on sexual harassment and sexual violence

(a) REQUIRED POLICY.—Under guidance prescribed by the Secretary of Defense, the Secretary of the Air Force shall direct the Superintendent of the Academy to prescribe a policy on sexual harassment and sexual violence applicable to the cadets and other personnel of the Academy.

(b) MATTERS TO BE SPECIFIED IN POLICY.—The policy on sexual harassment and sexual violence prescribed under this section shall include specification of the following:

(1) Programs to promote awareness of the incidence of rape, acquaintance rape, and other sexual offenses of a criminal nature that involve cadets or other Academy personnel.

(2) Procedures that a cadet should follow in the case of an occurrence of sexual harassment or sexual violence, including—

(A) if the cadet chooses to report an occurrence of sexual harassment or sexual violence, a specification of the person or persons to whom the alleged offense should be reported and the options for confidential reporting;

(B) a specification of any other person whom the victim should contact; and

(C) procedures on the preservation of evidence potentially necessary for proof of criminal sexual assault.

(3) Procedures for disciplinary action in cases of alleged criminal sexual assault involving a cadet or other Academy personnel.

(4) Any other sanction authorized to be imposed in a substantiated case of sexual harassment or sexual violence involving a cadet or other Academy personnel in rape, acquaintance rape, or any other criminal sexual offense, whether forcible or nonforcible.

(5) Required training on the policy for all cadets and other Academy personnel, including the specific training required for

personnel who process allegations of sexual harassment or sexual violence involving Academy personnel.

(c) ANNUAL ASSESSMENT.—(1) The Secretary of Defense, through the Secretary of the Air Force, shall direct the Superintendent to conduct at the Academy during each Academy program year an assessment, to be administered by the Department of Defense, to determine the effectiveness of the policies, training, and procedures of the Academy with respect to sexual harassment and sexual violence involving Academy personnel.

(2) For the assessment at the Academy under paragraph (1) with respect to an Academy program year that begins in an odd-numbered calendar year, the Secretary of the Air Force shall conduct a survey, to be administered by the Department of Defense, of Academy personnel—

(A) to measure—

(i) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have been reported to officials of the Academy; and

(ii) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have not been reported to officials of the Academy; and

(B) to assess the perceptions of Academy personnel of—

(i) the policies, training, and procedures on sexual harassment and sexual violence involving Academy personnel;

(ii) the enforcement of such policies;

(iii) the incidence of sexual harassment and sexual violence involving Academy personnel; and

(iv) any other issues relating to sexual harassment and sexual violence involving Academy personnel.

(d) ANNUAL REPORT.—(1) The Secretary of the Air Force shall direct the Superintendent of the Academy to submit to the Secretary a report on sexual harassment and sexual violence involving cadets or other personnel at the Academy for each Academy program year.

(2) Each report under paragraph (1) shall include, for the Academy program year covered by the report, the following:

(A) The number of sexual assaults, rapes, and other sexual offenses involving cadets or other Academy personnel that have been reported to Academy officials during the program year and, of those reported cases, the number that have been substantiated.

(B) The policies, procedures, and processes implemented by the Secretary of the Air Force and the leadership of the Academy in response to sexual harassment and sexual violence involving cadets or other Academy personnel during the program year.

(C) A plan for the actions that are to be taken in the following Academy program year regarding prevention of and response to sexual harassment and sexual violence involving cadets or other Academy personnel.

(3) Each report under paragraph (1) for an Academy program year that begins in an odd-numbered calendar year shall include

the results of the survey conducted in that program year under subsection (c)(2).

(4)(A) The Secretary of the Air Force shall transmit to the Secretary of Defense, and to the Board of Visitors of the Academy, each report received by the Secretary under this subsection, together with the Secretary's comments on the report.

(B) The Secretary of Defense shall transmit each such report, together with the Secretary's comments on the report, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 109-364, div. A, title V, Sec. 532(a)(3), Oct. 17, 2006, 120 Stat. 2203.)

§ 9362. Support of athletic programs

(a) CORPORATION FOR SUPPORT AUTHORIZED.—(1) The Secretary of the Air Force may, in accordance with the laws of the State of incorporation, establish a corporation (in this section referred to as the "corporation") to support the athletic programs of the Academy. All stock of the corporation shall be owned by the United States and held in the name of and voted by the Secretary of the Air Force.

(2) The corporation shall operate exclusively for charitable, educational, and civic purposes to support the athletic programs of the Academy.

(b) CORPORATE ORGANIZATION.—The corporation shall be organized and operated—

(1) as a nonprofit corporation under section 501 (c)(3) of the Internal Revenue Code of 1986;

(2) in accordance with this section; and

(3) pursuant to the laws of the State of incorporation, its articles of incorporation, and its bylaws.

(c) CORPORATE BOARD OF DIRECTORS.—(1) The members of the board of directors of the corporation shall serve without compensation as members of the board, except for reasonable travel and other related expenses for attendance at meetings of the board.

(2) The Secretary of the Air Force may authorize military and civilian personnel of the Air Force under section 1033 of this title to serve, in their official capacities, as members of the board of directors of the corporation, but such personnel shall not hold more than one-third of the directorships.

(d) TRANSFERS FROM NONAPPROPRIATED FUND OPERATION.—The Secretary of the Air Force may, subject to the acceptance of the corporation, transfer to the corporation all title to and ownership of the assets and liabilities of the Air Force nonappropriated fund instrumentality whose functions include providing support for the athletic programs of the Academy, including bank accounts and financial reserves in its accounts, equipment, supplies, and other personal property, but excluding any interest in real property.

(e) ACCEPTANCE OF GIFTS.—The Secretary of the Air Force may accept from the corporation funds, supplies, and services for the support of cadets and Academy personnel during their participation in Academy or corporate events related to the athletic programs of the Academy.

(f) LEASES.—The Secretary of the Air Force may, in accordance with section 2667 of this title, lease real and personal property to

the corporation for purposes related to the athletic programs of the Academy. Funds received from any such lease may be retained and spent by the Secretary to support athletic programs of the Academy.

(g) COOPERATIVE AGREEMENTS.—The Secretary of the Air Force may enter into cooperative agreements (as described in section 6305 of title 31) with the corporation for purposes related to the athletic programs of the Academy.

(Added Pub. L. 111-84, div. A, title V, Sec. 528(a), Oct. 28, 2009, 123 Stat. 2289.)

CHAPTER 905—AVIATION LEADERSHIP PROGRAM

Sec.	
9381.	Establishment of program.
9382.	Supplies and clothing.
9383.	Allowances.

§ 9381. Establishment of program

Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force may establish and maintain an Aviation Leadership Program to provide undergraduate pilot training and necessary related training to personnel of the air forces of friendly, less-developed foreign nations. Training under this chapter shall include language training and programs to promote better awareness and understanding of the democratic institutions and social framework of the United States.

(Added Pub. L. 103–160, div. A, title XI, Sec. 1178(b), Nov. 30, 1993, 107 Stat. 1769.)

§ 9382. Supplies and clothing

(a) The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving training under this chapter—

- (1) transportation incident to the training;
- (2) supplies and equipment to be used during the training;
- (3) flight clothing and other special clothing required for the training; and
- (4) billeting, food, and health services.

(b) The Secretary of the Air Force may authorize such expenditures from the appropriations of the Air Force as the Secretary considers necessary for the efficient and effective maintenance of the Program in accordance with this chapter.

(Added Pub. L. 103–160, div. A, title XI, Sec. 1178(b), Nov. 30, 1993, 107 Stat. 1769.)

§ 9383. Allowances

The Secretary of the Air Force may pay to a person receiving training under this chapter a living allowance at a rate to be prescribed by the Secretary, taking into account the amount of living allowances authorized for a member of the armed forces under similar circumstances.

(Added Pub. L. 103–160, div. A, title XI, Sec. 1178(b), Nov. 30, 1993, 107 Stat. 1769.)

CHAPTER 907—SCHOOLS AND CAMPS

Sec.	
9411.	Establishment: purpose.
9412.	Operation.
9413.	Transportation and subsistence during travel.
9414.	Quartermaster and ordnance property: sales.
9415.	Inter-American Air Forces Academy.
9417.	Air War College: acceptance of grants for faculty research for scientific, literary, and educational purposes.

§ 9411. Establishment: purpose

The Secretary of the Air Force may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Air Force and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Air Force Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 571.)

§ 9412. Operation

In maintaining camps established under section 9411 of this title, the Secretary of the Air Force may—

- (1) prescribe the periods during which they will be operated;
- (2) prescribe regulations for their administration;
- (3) prescribe the courses to be taught;
- (4) detail members of the Regular Air Force to designated duties relating to the camps;
- (5) use necessary supplies and transportation;
- (6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camp; and
- (7) authorize necessary expenditures from proper Air Force funds for—
 - (A) water;
 - (B) fuel;
 - (C) light;
 - (D) temporary structures, except barracks and officers' quarters;
 - (E) screening;
 - (F) damages resulting from field exercises;
 - (G) expenses incident to theoretical winter instruction of trainees; and
 - (H) other expenses incident to maintaining the camps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 571.)

§ 9413. Transportation and subsistence during travel

(a) There may be furnished to a person attending a school or camp established under section 9411 of this title, for travel to and from that school or camp—

- (1) transportation and subsistence;
- (2) transportation in kind and a subsistence allowance of one cent a mile; or
- (3) a travel allowance of five cents a mile.

(b) The travel allowance for the return trip may be paid in advance.

(c) For the purposes of this section, distance is computed by the shortest usually traveled route, within such territorial limits as the Secretary of the Air Force may prescribe, from the authorized starting point to the school or camp and return.

(Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

§ 9414. Quartermaster and ordnance property: sales

The Secretary of the Air Force may sell to a person attending a school or camp established under section 9411 of this title quartermaster and ordnance property necessary for his proper equipment. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

§ 9415. Inter-American Air Forces Academy

(a) OPERATION.—The Secretary of the Air Force may operate the Air Force education and training facility known as the Inter-American Air Forces Academy for the purpose of providing military education and training to military personnel of Central and South American countries, Caribbean countries, and other countries eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).

(b) COSTS.—The fixed costs of operating and maintaining the Inter-American Air Forces Academy may be paid from funds available for operation and maintenance of the Air Force.

(Added Pub. L. 101-510, div. A, title III, Sec. 330(a), Nov. 5, 1990, 104 Stat. 1535.)

§ 9417.¹ Air War College: acceptance of grants for faculty research for scientific, literary, and educational purposes

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Air Force may authorize the Commandant of the Air War College to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the College for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation,

¹ So in original. No section 9416 has been enacted.

fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Air War College may be used to pay expenses incurred by the College in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

(Added Pub. L. 109–163, div. A, title V, Sec. 522(f)(1), Jan. 6, 2006, 119 Stat. 3243.)

CHAPTER 909—CIVIL AIR PATROL

Sec.	
9441.	Status as federally chartered corporation; purposes.
9442.	Status as volunteer civilian auxiliary of the Air Force.
9443.	Activities performed as federally chartered nonprofit corporation.
9444.	Activities performed as auxiliary of the Air Force.
9445.	Funds appropriated for the Civil Air Patrol.
9446.	Miscellaneous personnel authorities.
9447.	Board of Governors.
9448.	Regulations.

§ 9441. Status as federally chartered corporation; purposes

(a) STATUS.—(1) The Civil Air Patrol is a nonprofit corporation that is federally chartered under section 40301 of title 36.

(2) Except as provided in section 9442(b)(2) of this title, the Civil Air Patrol is not an instrumentality of the Federal Government for any purpose.

(b) PURPOSES.—The purposes of the Civil Air Patrol are set forth in section 40302 of title 36.

(Added Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–295.)

§ 9442. Status as volunteer civilian auxiliary of the Air Force

(a) VOLUNTEER CIVILIAN AUXILIARY.—The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force when the services of the Civil Air Patrol are used by any department or agency in any branch of the Federal Government.

(b) USE BY AIR FORCE.—(1) The Secretary of the Air Force may use the services of the Civil Air Patrol to fulfill the noncombat programs and missions of the Department of the Air Force.

(2) The Civil Air Patrol shall be deemed to be an instrumentality of the United States with respect to any act or omission of the Civil Air Patrol, including any member of the Civil Air Patrol, in carrying out a mission assigned by the Secretary of the Air Force.

(Added Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–295.)

§ 9443. Activities performed as federally chartered nonprofit corporation

(a) USE OF FEDERALLY PROVIDED RESOURCES.—In its status as a federally chartered nonprofit corporation, the Civil Air Patrol may use equipment, supplies, and other resources, including aircraft, motor vehicles, computers, and communications equipment, provided to the Civil Air Patrol by a department or agency of the Federal Government or acquired by or for the Civil Air Patrol with appropriated funds (or with funds of the Civil Air Patrol, but reimbursed from appropriated funds)—

(1) to provide assistance requested by State or local governmental authorities to perform disaster relief missions and activities, other emergency missions and activities, and non-emergency missions and activities; and

(2) to fulfill its other purposes set forth in section 40302 of title 36.

(b) USE SUBJECT TO APPLICABLE LAWS.—The use of equipment, supplies, or other resources under subsection (a) is subject to the laws and regulations that govern the use by nonprofit corporations of federally provided assets or of assets purchased with appropriated funds, as the case may be.

(c) AUTHORITY NOT CONTINGENT ON REIMBURSEMENT.—The authority for the Civil Air Patrol to provide assistance under subsection (a)(1) is not contingent on the Civil Air Patrol being reimbursed for the cost of providing the assistance. If the Civil Air Patrol elects to require reimbursement for the provision of assistance under such subsection, the Civil Air Patrol may establish the reimbursement rate at a rate less than the rates charged by private sector sources for equivalent services.

(d) LIABILITY INSURANCE.—The Secretary of the Air Force may provide the Civil Air Patrol with funds for paying the cost of liability insurance to cover missions and activities carried out under this section.

(Added Pub. L. 106-398, Sec. 1 [[div. A], title X, Sec. 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-295.)

§ 9444. Activities performed as auxiliary of the Air Force

(a) AIR FORCE SUPPORT FOR ACTIVITIES.—The Secretary of the Air Force may furnish to the Civil Air Patrol in accordance with this section any equipment, supplies, and other resources that the Secretary determines necessary to enable the Civil Air Patrol to fulfill the missions assigned by the Secretary to the Civil Air Patrol as an auxiliary of the Air Force.

(b) FORMS OF AIR FORCE SUPPORT.—The Secretary of the Air Force may, under subsection (a)—

(1) give, lend, or sell to the Civil Air Patrol without regard to subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41—

(A) major items of equipment (including aircraft, motor vehicles, computers, and communications equipment) that are excess to the military departments; and

(B) necessary related supplies and training aids that are excess to the military departments;

(2) permit the use, with or without charge, of services and facilities of the Air Force;

(3) furnish supplies (including fuel, lubricants, and other items required for vehicle and aircraft operations) or provide funds for the acquisition of supplies;

(4) establish, maintain, and supply liaison officers of the Air Force at the national, regional, State, and territorial headquarters of the Civil Air Patrol;

(5) detail or assign any member of the Air Force or any officer, employee, or contractor of the Department of the Air

Force to any liaison office at the national, regional, State, or territorial headquarters of the Civil Air Patrol;

(6) detail any member of the Air Force or any officer, employee, or contractor of the Department of the Air Force to any unit or installation of the Civil Air Patrol to assist in the training programs of the Civil Air Patrol;

(7) authorize the payment of travel expenses and allowances, at rates not to exceed those paid to employees of the United States under subchapter I of chapter 57 of title 5, to members of the Civil Air Patrol while the members are carrying out programs or missions specifically assigned by the Air Force;

(8) provide funds for the national headquarters of the Civil Air Patrol, including—

(A) funds for the payment of staff compensation and benefits, administrative expenses, travel, per diem and allowances, rent, utilities, other operational expenses of the national headquarters; and

(B) to the extent considered necessary by the Secretary of the Air Force to fulfill Air Force requirements, funds for the payment of compensation and benefits for key staff at regional, State, or territorial headquarters;

(9) authorize the payment of expenses of placing into serviceable condition, improving, and maintaining equipment (including aircraft, motor vehicles, computers, and communications equipment) owned or leased by the Civil Air Patrol;

(10) provide funds for the lease or purchase of items of equipment that the Secretary determines necessary for the Civil Air Patrol;

(11) support the Civil Air Patrol cadet program by furnishing—

(A) articles of the Air Force uniform to cadets without cost; and

(B) any other support that the Secretary of the Air Force determines is consistent with Air Force missions and objectives; and

(12) provide support, including appropriated funds, for the Civil Air Patrol aerospace education program to the extent that the Secretary of the Air Force determines appropriate for furthering the fulfillment of Air Force missions and objectives.

(c) ASSISTANCE BY OTHER AGENCIES.—(1) The Secretary of the Air Force may arrange for the use by the Civil Air Patrol of such facilities and services under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, or the head of any other department or agency of the United States as the Secretary of the Air Force considers to be needed by the Civil Air Patrol to carry out its mission.

(2) An arrangement for use of facilities or services of a military department or other department or agency under this subsection shall be subject to the agreement of the Secretary of the military department or head of the other department or agency, as the case may be.

(3) Each arrangement under this subsection shall be made in accordance with regulations prescribed under section 9448 of this title.

(Added Pub. L. 106–398, Sec. 1[[div. A], title X, Sec. 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–296; amended Pub. L. 107–217, Sec. 3(b)(35), Aug. 21, 2002, 116 Stat. 1298; Pub. L. 111–350, Sec. 5(b)(54), Jan. 4, 2011, 124 Stat. 3847.)

§ 9445. Funds appropriated for the Civil Air Patrol

Funds appropriated for the Civil Air Patrol shall be available only for the exclusive use of the Civil Air Patrol.

(Added Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–297.)

§ 9446. Miscellaneous personnel authorities

(a) USE OF RETIRED AIR FORCE PERSONNEL.—(1) Upon the request of a person retired from service in the Air Force, the Secretary of the Air Force may enter into a personal services contract with that person providing for the person to serve as an administrator or liaison officer for the Civil Air Patrol. The qualifications of a person to provide the services shall be determined and approved in accordance with regulations prescribed under section 9448 of this title.

(2) To the extent provided in a contract under paragraph (1), a person providing services under the contract may accept services on behalf of the Air Force.

(3) A person, while providing services under a contract authorized under paragraph (1), may not be considered to be on active duty or inactive-duty training for any purpose.

(b) USE OF CIVIL AIR PATROL CHAPLAINS.—The Secretary of the Air Force may use the services of Civil Air Patrol chaplains in support of the Air Force active duty and reserve component forces to the extent and under conditions that the Secretary determines appropriate.

(Added Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–297.)

§ 9447. Board of Governors

(a) GOVERNING BODY.—The Board of Governors of the Civil Air Patrol is the governing body of the Civil Air Patrol.

(b) COMPOSITION.—The Board of Governors is composed of 11 members as follows:

(1) Four members appointed by the Secretary of the Air Force, who may be active or retired officers of the Air Force (including reserve components of the Air Force), employees of the United States, or private citizens.

(2) Four members of the Civil Air Patrol, selected in accordance with the constitution and bylaws of the Civil Air Patrol.

(3) Three members appointed or selected as provided in subsection (c) from among personnel of any Federal Government agencies, public corporations, nonprofit associations, and other organizations that have an interest and expertise in civil aviation and the Civil Air Patrol mission.

(c) APPOINTMENTS FROM INTERESTED ORGANIZATIONS.—(1) Subject to paragraph (2), the members of the Board of Governors re-

ferred to in subsection (b)(3) shall be appointed jointly by the Secretary of the Air Force and the National Commander of the Civil Air Patrol.

(2) Any vacancy in the position of a member referred to in paragraph (1) that is not filled under that paragraph within 90 days shall be filled by majority vote of the other members of the Board.

(d) CHAIRMAN.—The Chairman of the Board of Governors shall be chosen by the members of the Board of Governors from among the members of the Board referred to in paragraphs (1) and (2) of subsection (b) and shall serve for a term of two years. The position of Chairman shall be held on a rotating basis between members of the Board appointed by the Secretary of the Air Force under paragraph (1) of subsection (b) and members of the Board selected under paragraph (2) of that subsection.

(e) POWERS.—(1) The Board of Governors shall, subject to paragraphs (2) and (3), exercise the powers granted to the Civil Air Patrol under section 40304 of title 36.

(2) Any exercise by the Board of the power to amend the constitution or bylaws of the Civil Air Patrol or to adopt a new constitution or bylaws shall be subject to approval by a majority of the members of the Board.

(3) Neither the Board of Governors nor any other component of the Civil Air Patrol may modify or terminate any requirement or authority set forth in this section.

(f) PERSONAL LIABILITY FOR BREACH OF A FIDUCIARY DUTY.—(1) Subject to paragraph (2), the Board of Governors may take such action as is necessary to limit the personal liability of a member of the Board of Governors to the Civil Air Patrol, or to any of its members, for monetary damages for a breach of fiduciary duty while serving as a member of the Board.

(2) The Board may not limit the liability of a member of the Board of Governors to the Civil Air Patrol, or to any of its members, for monetary damages for any of the following:

(A) A breach of the member's duty of loyalty to the Civil Air Patrol or its members.

(B) Any act or omission that is not in good faith or that involves intentional misconduct or a knowing violation of law.

(C) Participation in any transaction from which the member directly or indirectly derives an improper personal benefit.

(3) Nothing in this subsection shall be construed as rendering section 207 or 208 of title 18 inapplicable in any respect to a member of the Board of Governors who is a member of the Air Force on active duty, an officer on a retired list of the Air Force, or an employee of the United States.

(g) PERSONAL LIABILITY FOR BREACH OF A FIDUCIARY DUTY.—(1) Except as provided in paragraph (2), no member of the Board of Governors or officer of the Civil Air Patrol shall be personally liable for damages for any injury or death or loss or damage of property resulting from a tortious act or omission of an employee or member of the Civil Air Patrol.

(2) Paragraph (1) does not apply to a member of the Board of Governors or officer of the Civil Air Patrol for a tortious act or omission in which the member or officer, as the case may be, was

personally involved, whether in breach of a civil duty or in commission of a criminal offense.

(3) Nothing in this subsection shall be construed to restrict the applicability of common law protections and rights that a member of the Board of Governors or officer of the Civil Air Patrol may have.

(4) The protections provided under this subsection are in addition to the protections provided under subsection (f).

(Added Pub. L. 106-398, Sec. 1 [[div. A], title X, Sec. 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-298.)

§ 9448. Regulations

(a) **AUTHORITY.**—The Secretary of the Air Force shall prescribe regulations for the administration of this chapter.

(b) **REQUIRED REGULATIONS.**—The regulations shall include the following:

(1) Regulations governing the conduct of the activities of the Civil Air Patrol when it is performing its duties as a volunteer civilian auxiliary of the Air Force under section 9442 of this title.

(2) Regulations for providing support by the Air Force and for arranging assistance by other agencies under section 9444 of this title.

(3) Regulations governing the qualifications of retired Air Force personnel to serve as an administrator or liaison officer for the Civil Air Patrol under a personal services contract entered into under section 9446(a) of this title.

(c) **APPROVAL BY SECRETARY OF DEFENSE.**—The regulations required by subsection (b)(2) shall be subject to the approval of the Secretary of Defense.

(Added Pub. L. 106-398, Sec. 1 [[div. A], title X, Sec. 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-299.)

**PART IV—SERVICE, SUPPLY, AND
PROCUREMENT**

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CHAPTER 931—CIVIL RESERVE AIR FLEET

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§ 9511. Definitions

In this chapter:

(1) The terms “aircraft”, “citizen of the United States”, “civil aircraft”, “person”, and “public aircraft” have the meanings given those terms by section 40102(a) of title 49.

(2) The term “passenger-cargo combined aircraft” means a civil aircraft equipped so that its main deck can be used to carry both passengers and property (including mail) simultaneously.

(3) The term “cargo-capable aircraft” means a civil aircraft equipped so that all or substantially all of the aircraft’s capacity can be used for the carriage of property or mail.

(4) The term “passenger aircraft” means a civil aircraft equipped so that its main deck can be used for the carriage of individuals and cannot be used principally, without major modification, for the carriage of property or mail.

(5) The term “cargo-convertible aircraft” means a passenger aircraft equipped or designed so that all or substantially all of the main deck of the aircraft can be readily converted for the carriage of property or mail.

(6) The term “Civil Reserve Air Fleet” means those aircraft allocated, or identified for allocation, to the Department of Defense under section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071), or made available (or agreed to be made available) for use by the Department of Defense under a contract made under this title, as part of the program developed by the Department of Defense through which the Department of Defense augments its airlift capability by use of civil aircraft.

(7) The term “contractor” means a citizen of the United States (A) who owns or controls, or who will own or control, a new or existing aircraft and who contracts with the Secretary under section 9512 of this title to modify that aircraft by including or incorporating specified defense features in that aircraft and to commit that aircraft to the Civil Reserve Air Fleet, (B) who subsequently obtains ownership or control of a civil aircraft covered by such a contract and assumes all existing obligations under that contract, or (C) who owns or controls, or

will own or control, new or existing aircraft and who, by contract, commits some or all of such aircraft to the Civil Reserve Air Fleet.

(8) The term “existing aircraft” means a civil aircraft other than a new aircraft.

(9) The term “new aircraft” means a civil aircraft that a manufacturer has not begun to assemble before the aircraft is covered by a contract under section 9512 of this title.

(10) The term “Secretary” means the Secretary of the Air Force.

(11) The term “defense feature” means equipment or design features included or incorporated in a civil aircraft which ensures the compatibility of such aircraft with the Department of Defense airlift system. Such term includes any equipment or design feature which enables such aircraft to be readily modified for use as an aeromedical aircraft or a cargo-convertible, cargo-capable, or passenger-cargo combined aircraft.

(Added Pub. L. 97–86, title IX, Sec. 915(2), Dec. 1, 1981, 95 Stat. 1125; amended Pub. L. 100–180, div. A, title XII, Sec. 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, Sec. 1233(k)(2), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title XVI, Sec. 1636(a), Nov. 29, 1989, 103 Stat. 1609; Pub. L. 103–272, Sec. 5(b)(2), July 5, 1994, 108 Stat. 1373; Pub. L. 103–355, title III, Sec. 3031, Oct. 13, 1994, 108 Stat. 3334.)

§ 9512. Contracts for the inclusion or incorporation of defense features

(a) **AUTHORITY TO CONTRACT.**—Subject to the provisions of chapter 137 of this title, and to the extent that funds are otherwise available for obligation, the Secretary—

(1) may contract with any citizen of the United States for the inclusion or incorporation of defense features in any new or existing aircraft to be owned or controlled by that citizen; and

(2) may contract with United States aircraft manufacturers for the inclusion or incorporation of defense features in new aircraft to be operated by a United States air carrier.

(b) **COMMITMENT TO CIVIL RESERVE AIR FLEET.**—Each contract entered into under this section shall provide—

(1) that any aircraft covered by the contract shall be committed to the Civil Reserve Air Fleet;

(2) that, so long as the aircraft is owned or controlled by a contractor, the contractor shall operate the aircraft for the Department of Defense as needed during any activation of the Civil Reserve Air Fleet, notwithstanding any other contract or commitment of that contractor; and

(3) that the contractor operating the aircraft for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(c) **TERMS AND REQUIRED REPAYMENT.**—Each contract entered into under subsection (a) shall include a provision that requires the contractor to repay to the United States a percentage (to be established in the contract) of any amount paid by the United States to the contractor under the contract with respect to any aircraft if—

(1) the aircraft is destroyed or becomes unusable, as defined in the contract;

(2) the defense features specified in the contract are rendered unusable or are removed from the aircraft;

(3) control over the aircraft is transferred to any person that is unable or unwilling to assume the contractor's obligations under the contract; or

(4) the registration of the aircraft under section 44103 of title 49 is terminated for any reason not beyond the control of the contractor.

(d) **AUTHORITY TO CONTRACT AND PAY DIRECTLY.**—(1) A contract under subsection (a) for the inclusion or incorporation of defense features in an aircraft may include a provision authorizing the Secretary—

(A) to contract, with the concurrence of the contractor, directly with another person for the performance of the work necessary for the inclusion or incorporation of defense features in such aircraft; and

(B) to pay such other person directly for such work.

(2) A contract entered into pursuant to paragraph (1) may include such specifications for work and equipment as the Secretary considers necessary to meet the needs of the United States.

(e) **EXCLUSIVITY OF COMMITMENT TO CIVIL RESERVE AIR FLEET.**—Notwithstanding section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071), each aircraft covered by a contract entered into under this section shall be committed exclusively to the Civil Reserve Air Fleet for use by the Department of Defense as needed during any activation of the Civil Reserve Air Fleet unless the aircraft is released from that use by the Secretary of Defense.

(Added Pub. L. 97–86, title IX, Sec. 915(2), Dec. 1, 1981, 95 Stat. 1126; amended Pub. L. 98–525, title XIV, Sec. 1405(57), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 101–189, div. A, title XVI, Sec. 1636(b), Nov. 29, 1989, 103 Stat. 1609; Pub. L. 103–272, Sec. 5(b)(3), July 5, 1994, 108 Stat. 1373; Pub. L. 103–355, title III, Sec. 3032(1)–(8), Oct. 13, 1994, 108 Stat. 3334, 3335; Pub. L. 104–106, div. A, title X, Sec. 1087, Feb. 10, 1996, 110 Stat. 458.)

§ 9513. Use of military installations by Civil Reserve Air Fleet contractors

(a) **CONTRACT AUTHORITY.**—(1) The Secretary of the Air Force—

(A) may, by contract entered into with any contractor, authorize such contractor to use one or more Air Force installations designated by the Secretary; and

(B) with the consent of the Secretary of another military department, may, by contract entered into with any contractor, authorize the contractor to use one or more installations, designated by the Secretary of the Air Force, that is under the jurisdiction of the Secretary of such other military department.

(2) The Secretary of the Air Force may include in the contract such terms and conditions as the Secretary determines appropriate to promote the national defense or to protect the interests of the United States.

(b) **PURPOSES OF USE.**—A contract entered into under subsection (a) may authorize use of a designated installation as a weather alternate, as a technical stop not involving the enplaning or deplaning of passengers or cargo, or, in the case of an installation within the United States, for other commercial purposes. Not-

withstanding any other provision of the law, the Secretary may establish different levels and types of uses for different installations for commercial operations not required by the Department of Defense and may provide in contracts under subsection (a) for different levels and types of uses by different contractors.

(c) DISPOSITION OF PAYMENTS FOR USE.—Notwithstanding any other provision of law, amounts collected from the contractor for landing fees, services, supplies, or other charges authorized to be collected under the contract shall be credited to the appropriations of the armed forces having jurisdiction over the military installation to which the contract pertains. Amounts so credited to an appropriation shall be available for obligation for the same period as the appropriation to which credited.

(d) HOLD HARMLESS REQUIREMENT.—A contract entered into under subsection (a) shall provide that the contractor agrees to indemnify and hold harmless the United States from any action, suit, or claim of any sort resulting from, relating to, or arising out of any activities conducted, or services or supplies furnished, in connection with the contract.

(e) RESERVATION OF RIGHT TO EXCLUDE CONTRACTOR.—A contract entered into under subsection (a) shall provide that the Secretary concerned may, without providing prior notice, deny access to an installation designated under the contract when the Secretary determines that it is necessary to do so in order to meet military exigencies.

(Added Pub. L. 103-355, title III, Sec. 3033(a), Oct. 13, 1994, 108 Stat. 3335.)

§ 9514. Indemnification of Department of Transportation for losses covered by defense-related aviation insurance

(a) PROMPT INDEMNIFICATION REQUIRED.—(1) In the event of a loss that is covered by defense-related aviation insurance, the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification—

(A) in the case of a claim for the loss of an aircraft hull, not later than 30 days after the date on which the Secretary of Transportation determines the claim to be payable or that amounts are due under the policy that provided the defense-related aviation insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of an aircraft hull that is (or may be) covered by defense-related aviation insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such aircraft. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the aircraft hull to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is pay-

able, any amount paid under this paragraph arising from such claim shall be credited against the amount payable under the aviation insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) SOURCE OF FUNDS FOR PAYMENT OF INDEMNITY.—The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

(c) NOTICE TO CONGRESS.—In the event of a loss that is covered by defense-related aviation insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of \$1,000,000, the Secretary of Defense shall submit to Congress notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss.

(d) IMPLEMENTING MATTERS.—(1) Payment of indemnification under this section is not subject to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

(e) CONSTRUCTION WITH OTHER TRANSFER AUTHORITY.—Authority to transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

[(f) Repealed. Pub. L. 108–136, div. A, title X, Sec. 1031(a)(60)(B), Nov. 24, 2003, 117 Stat. 1603.]

(g) DEFINITIONS.—In this section:

(1) DEFENSE-RELATED AVIATION INSURANCE.—The term “defense-related aviation insurance” means aviation insurance and reinsurance provided through policies issued by the Secretary of Transportation under chapter 443 of title 49 that pursuant to section 44305(b) of that title is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) LOSS.—The term “loss” includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the defense-related aviation insurance.

§ 9515. Charter air transportation services: minimum annual purchase amount for carriers participating in Civil Reserve Air Fleet

(a) IN GENERAL.—The Secretary of Defense shall take steps to—

(1) improve the predictability in Department of Defense charter requirements;

(2) strengthen Civil Reserve Airlift Fleet participation to assure adequate capacity is available to meet steady-state, surge and mobilization requirements; and

(3) provide incentives for commercial air passenger carriers to provide newer, more efficient and reliable aircraft for Department of Defense service rather than older, fully depreciated aircraft.

(b) CONSIDERATION OF RECOMMENDATIONS.—In carrying out subsection (a), the Secretary of Defense shall consider the recommendations on courses of action for the Civil Reserve Air Fleet as outlined in the report required by section 356 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181).

(c) CONTRACTS FOR CHARTER AIR TRANSPORTATION SERVICES.—The Secretary of Defense may award to an air carrier or an air carrier contractor team arrangement participating in the Civil Reserve Air Fleet on a fiscal year basis a one-year contract for charter air transportation services with a minimum purchase amount under such contract determined in accordance with this section.

(d) ELIGIBLE CHARTER AIR TRANSPORTATION CARRIERS.—In order to be eligible for payments under the minimum purchase amount provided by this section, an air carrier (or any air carrier participating in an air carrier contractor team arrangement)—

(1) if under contract with the Department of Defense in the prior fiscal year, shall have an average on-time pick up rate, based on factors within such air carrier's control, of at least 90 percent;

(2) shall offer such amount of commitment to the Civil Reserve Air Fleet in excess of the minimum required for participation in the Civil Reserve Air Fleet as the Secretary of Defense shall specify for purposes of this section; and

(3) may not have refused a Department of Defense request to act as a host for other Civil Reserve Air Fleet carriers at intermediate staging bases during the prior fiscal year.

(e) AGGREGATE MINIMUM PURCHASE AMOUNT.—(1) The aggregate amount of the minimum purchase amount for all contracts awarded under subsection (c) for a fiscal year shall be based on forecast needs, but may not exceed the amount equal to 80 percent of the average annual expenditure of the Department of Defense for charter air transportation services during the five-fiscal year period ending in the fiscal year before the fiscal year for which such contracts are awarded.

(2) In calculating the average annual expenditure of the Department of Defense for charter air transportation services for purposes of paragraph (1), the Secretary of Defense shall omit from the calculation any fiscal year exhibiting unusually high demand for

charter air transportation services if the Secretary determines that the omission of such fiscal year from the calculation will result in a more accurate forecast of anticipated charter air transportation services for purposes of that paragraph.

(f) ALLOCATION OF MINIMUM PURCHASE AMONG CHARTER AIR TRANSPORTATION CONTRACTS.—(1) The aggregate amount of the minimum purchase amount for all contracts awarded under subsection (c) for a fiscal year, as determined under subsection (e), shall be allocated among all air carriers and air carrier contractor team arrangements awarded contracts under subsection (c) for such fiscal year in proportion to the commitments of such carriers to the Civil Reserve Air Fleet for such fiscal year.

(2) In determining the minimum purchase amount payable under paragraph (1) under a contract under subsection (c) for charter air transportation services provided by an air carrier or air carrier contractor team arrangement during the fiscal year covered by such contract, the Secretary of Defense may adjust the amount allocated to such carrier or arrangement under paragraph (1) to take into account periods during such fiscal year when charter air transportation services of such carrier or a carrier in such arrangement are unavailable for usage by the Department of Defense, including during periods of refused business or suspended operations or when such carrier is placed in nonuse status pursuant to section 2640 of this title for safety reasons.

(g) DISTRIBUTION OF AMOUNTS.—If any amount available under this section for the minimum purchase of charter air transportation services from a carrier or air carrier contractor team arrangement for a fiscal year under a contract under subsection (c) is not utilized to purchase charter air transportation services from the carrier or arrangement in such fiscal year, such amount shall be provided to the carrier or arrangement before the first day of the following fiscal year.

(h) COMMITMENT OF FUNDS.—(1) The Secretary of each military department shall transfer to the transportation working capital fund a percentage of the total amount anticipated to be required in such fiscal year for the payment of minimum purchase amounts under all contracts awarded under subsection (c) for such fiscal year equivalent to the percentage of the anticipated use of charter air transportation services by such military department during such fiscal year from all carriers under contracts awarded under subsection (c) for such fiscal year.

(2) Any amounts required to be transferred under paragraph (1) shall be transferred by the last day of the fiscal year concerned to meet the requirements of subsection (g) unless minimum purchase amounts have already been distributed by the Secretary of Defense under subsection (g) as of that date.

(i) AVAILABILITY OF AIRLIFT SERVICES.—(1) From the total amount of charter air transportation services available for a fiscal year under all contracts awarded under subsection (c) for such fiscal year, a military department shall be entitled to obtain a percentage of such services equal to the percentage of the contribution of the military department to the transportation working capital fund for such fiscal year under subsection (h).

(2) A military department may transfer any entitlement to charter air transportation services under paragraph (1) to any other military department or to any other agency, element, or component of the Department of Defense.

(j) DEFINITION.—In this section, the term “charter air transportation” has the meaning given such term in section 40102(14) of title 49, except that it only means such transportation for which the Secretary of Defense has entered into a contract for the purpose of passenger travel.

(k) SUNSET.—The authorities in this section shall expire on December 31, 2015.

(Added Pub. L. 110–417, [div. A], title X, Sec. 1033(a), Oct. 14, 2008, 122 Stat. 4591; amended Pub. L. 111–383, div. A, title X, Sec. 1075(b)(50), Jan. 7, 2011, 124 Stat. 4371.)

CHAPTER 933—PROCUREMENT

Sec.
[9531. Repealed.]
9532. Factories, arsenals, and depots: manufacture at.
[9534, 9535. Repealed.]
9536. Equipment: bakeries, schools, kitchens, and mess halls.
[9537, 9538. Repealed.]
9540. Architectural and engineering services.
[9541. Repealed.]

[§ 9531. Repealed. Pub. L. 103–160, div. A, title VIII, Sec. 823(2), Nov. 30, 1993, 107 Stat. 1707]

§ 9532. Factories, arsenals, and depots: manufacture at

The Secretary of the Air Force may have supplies needed for the Department of the Air Force made in factories, arsenals, or depots owned by the United States, so far as those factories, arsenals, or depots can make those supplies on an economical basis.

(Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

[§§ 9534, 9535. Repealed. Pub. L. 103–160, div. A, title VIII, Sec. 823(4), (5), Nov. 30, 1993, 107 Stat. 1707]

§ 9536. Equipment: bakeries, schools, kitchens, and mess halls

Money necessary for the following items for the use of enlisted members of the Air Force may be spent from appropriations for regular supplies:

- (1) Equipment for air base bakeries.
- (2) Furniture, textbooks, paper, and equipment for air base schools.
- (3) Tableware and mess furniture for kitchens and mess halls.

(Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

[§§ 9537, 9538. Repealed. Pub. L. 103–160, div. A, title VIII, Sec. 823(6), (7), Nov. 30, 1993, 107 Stat. 1707]

§ 9540. Architectural and engineering services

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the Air Force are inadequate, the Secretary of the Air Force may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5 do not apply to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577; Pub. L. 89-718, Sec. 28, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 95-454, title VII, Sec. 703(c)(3), title VIII, Sec. 801(a)(3)(I), Oct. 13, 1978, 92 Stat. 1217, 1222; Pub. L. 96-513, title V, Sec. 514(15), Dec. 12, 1980, 94 Stat. 2936.)

[§ 9541. Repealed. Pub. L. 103-160, div. A, title VIII, Sec. 822(d)(2), Nov. 30, 1993, 107 Stat. 1707]

CHAPTER 935—ISSUE OF SERVICEABLE MATERIAL TO ARMED FORCES

- Sec.
9561. Rations.
9562. Clothing.
9563. Clothing: replacement when destroyed to prevent contagion.
9564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Air Force.
9565. Colors, standards, and guidons of demobilized organizations: disposition.

§ 9561. Rations

(a) The President may prescribe the components, and the quantities thereof, of the Air Force ration. He may direct the issue of equivalent articles in place of the prescribed components whenever, in his opinion, economy and the health and comfort of the members of the Air Force so require.

(b) An enlisted member of the Air Force on active duty is entitled to one ration daily. The emergency ration, when issued, is in addition to the regular ration.

(c) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick in hospitals shall be provided under regulations approved by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

§ 9562. Clothing

The President may prescribe the quantity and kind of clothing to be issued annually to members of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

§ 9563. Clothing: replacement when destroyed to prevent contagion

The Secretary of the Air Force may order a gratuitous issue of clothing to any enlisted member of the Air Force who has had a contagious disease, and to any hospital attendant who attended him while he had that disease, to replace clothing destroyed by order of a medical officer to prevent contagion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

§ 9564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Air Force

While any detachment of the Navy or Marine Corps is on shore duty in cooperation with troops of the Air Force, the Secretary of the Air Force shall, upon the requisition of the officer of the Navy or Marine Corps in command of the detachment, issue rations and camp equipment, and furnish transportation, to that detachment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

§ 9565. Colors, standards, and guidons of demobilized organizations: disposition

(a) The Secretary of the Air Force may dispose of colors, standards, and guidons of demobilized organizations of the Air Force, as follows:

(1) Those brought into Federal service by the Air National Guard of a State may be returned to that State upon the request of its governor.

(2) Those that cannot be returned under clause (1) may, upon the request of its governor, be sent to the State that, as determined by the Secretary, furnished the majority of members of the organization when it was formed.

Those that cannot be returned or sent under clause (1) or (2) of this subsection shall be delivered to the Secretary, for such national use as he may direct.

(b) Title to colors, standards, and guidons of demobilized organizations of the Air Force remains in the United States.

(c) No color, standard, or guidon may be disposed of under this section unless provision satisfactory to the Secretary has been made for its preservation and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

CHAPTER 937—UTILITIES AND SERVICES

- Sec.
9591. Utilities: proceeds from overseas operations.
9592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.
9593. Quarters: heat and light.
9594. Air Force Military History Institute: fee for providing historical information to the public.

§ 9591. Utilities: proceeds from overseas operations

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Air Force in the field overseas are available for that utility until the close of the fiscal year following that in which they are received.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

§ 9592. Radiograms and telegrams: forwarding charges due connecting commercial facilities

In the operation of telegraph lines, cables, or radio stations, members of the Air Force may, in the discretion of the Secretary of the Air Force, collect forwarding charges due connecting commercial telegraph or radio companies for sending radiograms or telegrams over their lines. Under such regulations as the Secretary may prescribe, they may present a voucher to a disbursing official for payment of the forwarding charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578; Pub. L. 97-258, Sec. 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052; Pub. L. 104-316, title I, Sec. 105(e), Oct. 19, 1996, 110 Stat. 3830.)

§ 9593. Quarters: heat and light

The heat and light necessary for the authorized quarters of members of the Air Force shall be furnished at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

§ 9594. Air Force Military History Institute: fee for providing historical information to the public

(a) AUTHORITY.—Except as provided in subsection (b), the Secretary of the Air Force may charge a person a fee for providing the person with information from the United States Air Force Military History Institute that is requested by that person.

(b) EXCEPTIONS.—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) **LIMITATION ON AMOUNT.**—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) **RETENTION OF FEES.**—Amounts received under subsection (a) for providing information in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from the United States Air Force Military History Institute during that fiscal year.

(e) **DEFINITIONS.**—In this section:

(1) The term “United States Air Force Military History Institute” means the archive for historical records and materials of the Air Force that the Secretary of the Air Force designates as the primary archive for such records and materials.

(2) The terms “officer of the United States” and “employee of the United States” have the meanings given the terms “officer” and “employee”, respectively, in sections 2104 and 2105, respectively, of title 5.

(Added Pub. L. 106-398, Sec. 1 [[div. A], title X, Sec. 1085(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-289.)

CHAPTER 939—SALE OF SERVICEABLE MATERIAL

Sec.	
9621.	Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.
9622.	Rations: commissioned officers in field.
[9623.	Repealed.]
9624.	Medical supplies: civilian employees of the Air Force; American National Red Cross; Armed Forces Retirement Home.
9625.	Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans.
9626.	Aircraft supplies and services: foreign military or other state aircraft.
9627.	Supplies: educational institutions.
9628.	Airplane parts and accessories: civilian flying schools.
9629.	Proceeds: disposition.

§ 9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a) The Secretary of the Air Force shall procure and sell, for cash or credit—

(1) articles designated by him, to members of the Air Force; and

(2) items of individual clothing and equipment, to officers of the Air Force, under such restrictions as the Secretary may prescribe.

An account of sales on credit shall be kept and the amount due reported to the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Air Force.

(c) The Secretary may sell serviceable quartermaster property, other than subsistence supplies, to an officer of another armed force for his use in the service, in the same manner as these articles are sold to an officer of the Air Force.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to a member of the Air Force.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Air Force honorably or under honorable conditions, at the prices at which like articles are sold to members of

the Air Force. This subsection does not modify section 772 or 773 of this title.

(f) Whenever, under regulations to be prescribed by the Secretary, subsistence supplies are furnished to any organization of the Air Force or sold to employees of any executive department other than the Department of Defense, payment shall be made in cash or by commercial credit.

(g) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

- (1) at military installations outside the United States; and
- (2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of military activities.

However, sales to those officers and employees inside the United States may be made only to those residing within military installations.

(h) Appropriations for subsistence of the Air Force may be applied to the purchase of subsistence supplies for sale to members of the Air Force on active duty for the use of themselves and their families.

(Aug. 10, 1956, ch. 1041, 70A Stat. 579; Pub. L. 87-651, title I, Sec. 118, Sept. 7, 1962, 76 Stat. 513; Pub. L. 96-513, title V, Sec. 514(16), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 97-22, Sec. 11(a)(11), July 10, 1981, 95 Stat. 138; Pub. L. 100-180, div. A, title III, Sec. 313(c), Dec. 4, 1987, 101 Stat. 1074; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104-106, div. A, title III, Sec. 375(b)(2), Feb. 10, 1996, 110 Stat. 283.)

§ 9622. Rations: commissioned officers in field

Commissioned officers of the Air Force serving in the field may buy rations for their own use, on credit. Amounts due for these purchases shall be reported monthly to the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

[§ 9623. Repealed. Pub. L. 105-261, div. A, title III, Sec. 366(a), Oct. 17, 1998, 112 Stat. 1987]

§ 9624. Medical supplies: civilian employees of the Air Force; American National Red Cross; Armed Forces Retirement Home

(a) Under regulations to be prescribed by the Secretary of the Air Force, a civilian employee of the Department of the Air Force who is stationed at an air base may buy necessary medical supplies from the Air Force when they are prescribed by a medical officer on active duty.

(b) The Secretary may sell medical supplies to the American National Red Cross for cash.

(c) The Secretary may sell medical and hospital supplies to the Armed Forces Retirement Home.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 514(17)(A), (B), 94 Stat. 2936; Nov. 5, 1990, Pub. L. 101-510, div. A, title XV, Sec. 1533(a)(8)(A), (B), 104 Stat. 1735.)

§ 9625. Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans

(a) The Secretary of the Air Force may sell articles of ordnance property to officers of other armed forces for their use in the service, in the same manner as these articles are sold to officers of the Air Force.

(b) Under such regulations as the Secretary may prescribe, ordnance stores may be sold to civilian employees of the Air Force and to the American National Red Cross.

(c) Articles of ordnance property may be sold to educational institutions and to State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to those institutions and homes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

§ 9626. Aircraft supplies and services: foreign military or other state aircraft

(a) PROVISION OF SUPPLIES AND SERVICES ON REIMBURSABLE BASIS.—(1) The Secretary of the Air Force may, under such regulations as the Secretary may prescribe and when in the best interests of the United States, provide any of the supplies or services described in paragraph (2) to military and other state aircraft of a foreign country, on a reimbursable basis without an advance of funds, if similar supplies and services are furnished on a like basis to military aircraft and other state aircraft of the United States by the foreign country concerned.

(2) The supplies and services described in this paragraph are supplies and services as follows:

(A) Routine airport services, including landing and takeoff assistance, servicing aircraft with fuel, use of runways, parking and servicing, and loading and unloading of baggage and cargo.

(B) Miscellaneous supplies, including Air Force-owned fuel, provisions, spare parts, and general stores, but not including ammunition.

(b) PROVISION OF ROUTINE AIRPORT SERVICES ON NON-REIMBURSABLE BASIS.—(1) Routine airport services may be provided under this section at no cost to a foreign country—

(A) if such services are provided by Air Force personnel and equipment without direct cost to the Air Force; or

(B) if such services are provided under an agreement with the foreign country that provides for the reciprocal furnishing by the foreign country of routine airport services, as defined in that agreement, to military and other state aircraft of the United States without reimbursement.

(2) If routine airport services are provided under this section by a working-capital fund activity of the Air Force under section 2208 of this title and such activity is not reimbursed directly for the costs incurred by the activity in providing such services by reason of paragraph (1)(B), the working-capital fund activity shall be reimbursed for such costs out of funds currently available to the Air Force for operation and maintenance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581; Pub. L. 110-181, div. A, title X, Sec. 1031(a)(1), Jan. 28, 2008, 122 Stat. 305.)

§ 9627. Supplies: educational institutions

Under such regulations as the Secretary of the Air Force may prescribe, supplies and military publications procured for the Air Force may be sold to any educational institution to which an officer of the Air Force is detailed as professor of air science and tactics, for the use of its military students. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

§ 9628. Airplane parts and accessories: civilian flying schools

The Secretary of the Air Force may sell, to civilian flying schools at which personnel of the Department of the Air Force or the Department of the Army are receiving flight training under contracts requiring these schools to maintain and repair airplanes of the Air Force furnished to them for flight training, the spare parts and accessories needed for those repairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

§ 9629. Proceeds: disposition

The proceeds of sales of the following shall be paid into the Treasury to the credit of the appropriation out of which they were purchased, and are available for the purposes of that appropriation:

- (1) Exterior articles of uniform sold under section 9621 of this title.
- (2) Supplies, war material, and military publications sold to educational institutions under section 9627 of this title.
- (3) Fuel, oil, other supplies, and services sold under section 9626 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581; Pub. L. 110-181, div. A, title X, Sec. 1031(b), Jan. 28, 2008, 122 Stat. 306.)

CHAPTER 941—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.	
9651.	Arms, tentage, and equipment: educational institutions not maintaining units of A.F.R.O.T.C.
9652.	Rifles and ammunition for target practice: educational institutions having corps of cadets.
9653.	Ordnance and ordnance stores: District of Columbia high schools.
9654.	Supplies: military instruction camps.
9655.	Arms and ammunition: agencies and departments of United States.
9656.	Aircraft and equipment: civilian aviation schools.

§ 9651. Arms, tentage, and equipment: educational institutions not maintaining units of A.F.R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Air Force may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Air Force Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit students over 14 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581; Pub. L. 99-145, title XIII, Sec. 1301(d)(3), Nov. 8, 1985, 99 Stat. 736.)

§ 9652. Rifles and ammunition for target practice: educational institutions having corps of cadets

(a) The Secretary of the Air Force may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time, and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of cadets of sufficient number for target practice. He may also issue 40 rounds of ball cartridges for each cadet for each range at which target practice is held, but not more than 120 rounds each year for each cadet participating in target practice.

(b) The institutions to which property is lent under subsection (a) shall use it for target practice, take proper care of it, and return it when required.

(c) The Secretary shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

§ 9653. Ordnance and ordnance stores: District of Columbia high schools

The Secretary of the Air Force, under regulations to be prescribed by him, may issue to the high schools of the District of Columbia ordnance and ordnance stores required for military instruction and practice. The Secretary shall require a bond in double the

value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

§ 9654. Supplies: military instruction camps

Under such conditions as he may prescribe, the Secretary of the Air Force may issue, to any educational institution at which an Air Force officer is detailed as professor of air science and tactics, such supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall require a bond in the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

§ 9655. Arms and ammunition: agencies and departments of United States

(a) Whenever required for the protection of public money and property, the Secretary of the Air Force may lend arms and their accouterments, and issue ammunition, to a department or independent agency of the United States, upon request of its head. Property lent or issued under this subsection may be delivered to an officer of the department or agency designated by the head thereof, and that officer shall account for the property to the Secretary of the Air Force. Property lent or issued under this subsection and not properly expended shall be returned when it is no longer needed.

(b) The department or agency to which property is lent or issued under subsection (a) shall transfer funds to the credit of the Department of the Air Force to cover the costs of—

- (1) ammunition issued;
- (2) replacing arms and accouterments that have been lost or destroyed or cannot be repaired;
- (3) repairing arms and accouterments returned to the Department of the Air Force; and
- (4) making and receiving shipments by the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

§ 9656. Aircraft and equipment: civilian aviation schools

The Secretary of the Air Force, under regulations to be prescribed by him, may lend aircraft, aircraft parts, and aeronautical equipment and accessories that are required for instruction, training, and maintenance, to accredited civilian aviation schools at which personnel of the Department of the Air Force or the Department of the Army are pursuing a course of instruction and training under detail by competent orders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Pub. L. 97-295, Sec. 1(53), Oct. 12, 1982, 96 Stat. 1301.)

CHAPTER 943—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

- Sec.
9681. Surplus war material: sale to States and foreign governments.
9682. Obsolete or excess material: sale to National Council of Boy Scouts of America.
9684. Surplus obsolete ordnance: sale to patriotic organizations.
9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes.
9686. Obsolete ordnance: gift to State homes for soldiers and sailors.

§ 9681. Surplus war material: sale to States and foreign governments

Subject to regulations under section 121 of title 40, the Secretary of the Air Force may sell surplus war material and supplies, except food, of the Department of the Air Force, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Pub. L. 96-513, title V, Sec. 514(18), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 107-217, Sec. 3(b)(36), Aug. 21, 2002, 116 Stat. 1298.)

§ 9682. Obsolete or excess material: sale to National Council of Boy Scouts of America

Subject to regulations under section 121 of title 40, the Secretary of the Air Force, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Air Force, including packing, handling, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Pub. L. 96-513, title V, Sec. 514(18), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 107-217, Sec. 3(b)(37), Aug. 21, 2002, 116 Stat. 1298.)

§ 9684. Surplus obsolete ordnance: sale to patriotic organizations

Subject to regulations under section 121 of title 40, the Secretary of the Air Force may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Pub. L. 96-513, title V, Sec. 514(18), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 107-217, Sec. 3(b)(38), Aug. 21, 2002, 116 Stat. 1298.)

§ 9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes

(a) Upon the recommendation of the Governor of the State concerned or Guam or the Virgin Islands, the Secretary of the Air Force, under regulations to be prescribed by him and without cost to the United States for transportation, may lend obsolete ordnance and ordnance stores to State, Guam, and the Virgin Islands educational institutions and to State soldiers' and sailors' orphans' homes, for drill and instruction. However, no loan may be made under this subsection to an institution to which ordnance or ordnance stores may be issued under any law that was in effect on June 30, 1906, and is still in effect.

(b) The Secretary shall require a bond from each institution or home to which property is lent under subsection (a), in double the value of the property lent, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 584; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(10), Jan. 6, 2006, 119 Stat. 3441.)

§ 9686. Obsolete ordnance: gift to State homes for soldiers and sailors

Subject to regulations under section 121 of title 40, the Secretary of the Air Force may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 584; Pub. L. 96-513, title V, Sec. 514(18), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 107-217, Sec. 3(b)(39), Aug. 21, 2002, 116 Stat. 1298.)

CHAPTER 945—DISPOSITION OF EFFECTS OF DECEASED PERSONS

Sec.

[9711. Repealed.]

9712. Disposition of effects of deceased persons by summary court-martial.

[9713. Repealed.]

[§ 9711. Repealed. Pub. L. 106-65, div. A, title VII, Sec. 721(b), Oct. 5, 1999, 113 Stat. 694]

§ 9712. Disposition of effects of deceased persons by summary court-martial

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Air Force; or

(2) a resident of the Armed Forces Retirement Home who dies in an Air Force hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then at the air base or in quarters.

(b) If there is no legal representative or surviving spouse present, the commanding officer shall direct a summary court-martial to collect the effects of the deceased that are then at the air base or in quarters.

(c) The summary court-martial may collect debts due the decedent's estate by local debtors, pay undisputed local creditors of the deceased to the extent permitted by money of the deceased in the court's possession, and shall take receipts for those payments, to be filed with the court's final report to the Department of the Air Force.

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) The surviving spouse or legal representative.

(2) A child of the deceased.

(3) A parent of the deceased.

(4) A brother or sister of the deceased.

(5) The next-of-kin of the deceased.

(6) A beneficiary named in the will of the deceased.

(e) If the summary court-martial cannot dispose of the effects under subsection (d) because there are no persons in those categories or because the court finds that the addresses of the persons are not known or readily ascertainable, the court may convert the effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly

as keepsakes, into cash, by public or private sale, but not until 30 days after the date of death of the deceased.

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects and articles not permitted to be sold, to the executive part of the Department of the Air Force. The Secretary of the Air Force shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Air Force under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 585; Nov. 2, 1966, Pub. L. 89-718, Sec. 48, 80 Stat. 1121; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 514(19), 94 Stat. 2936; Nov. 8, 1985, Pub. L. 99-145, title XIII, Sec. 1301(d)(4)(A), 99 Stat. 736; Nov. 5, 1990, Pub. L. 101-510, div. A, title XV, Sec. 1533(a)(9), 104 Stat. 1735; Pub. L. 104-316, title II, Sec. 202(g), Oct. 19, 1996, 110 Stat. 3842.)

[§ 9713. Repealed. Pub. L. 101-510, div. A, title XV, Sec. 1533(a)(10)(A), Nov. 5, 1990, 104 Stat. 1735]

CHAPTER 947—TRANSPORTATION

Sec.

[9741 to 9748. Repealed.]

- [§ 9741. Repealed. Pub. L. 108-375, div. A, title X, Sec. 1072(c), Oct. 28, 2004, 118 Stat. 2058]
- [§ 9742. Repealed. Pub. L. 104-201, div. A, title IX, Sec. 906(c), Sept. 23, 1996, 110 Stat. 2620]
- [§ 9743. Repealed. Pub. L. 108-375, div. A, title X, Sec. 1072(c), Oct. 28, 2004, 118 Stat. 2058]
- [§ 9746. Repealed. Pub. L. 108-375, div. A, title X, Sec. 1072(c), Oct. 28, 2004, 118 Stat. 2058]
- [§ 9748. Repealed. Pub. L. 87-651, title I, Sec. 129(1), Sept. 7, 1962, 76 Stat. 514]

CHAPTER 949—REAL PROPERTY

- Sec.
9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
[9772. Repealed.]
9773. Acquisition and construction: air bases and depots.
[9774, 9775. Repealed.]
9776. Emergency construction: fortifications.
9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
9779. Use of public property.
9780. Acquisition of buildings in District of Columbia.
9781. Disposition of real property at missile sites.
9782. Maintenance and repair of real property.
9783. Johnston Atoll: reimbursement for support provided to civil air carriers.

§ 9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field

The Secretary of the Air Force may accept for the United States a gift of—

- (1) land that he considers suitable and desirable for a permanent mobilization, training, or supply base; and
- (2) land that he considers suitable and desirable for an aviation field, if the gift is from a citizen of the United States and its terms authorize the use of the property by the United States for any purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 588.)

[§ 9772. Repealed. Pub. L. 94-579, title VII, Sec. 704(a), Oct 21, 1976, 90 Stat. 2792]

§ 9773. Acquisition and construction: air bases and depots

(a) The Secretary of the Air Force shall determine the sites of such additional permanent air bases and depots in all strategic areas of the United States and the Commonwealths, possessions, and holdings as he considers necessary. He shall determine when the enlargement of existing air bases and depots is necessary for the effective peacetime training of the Air Force.

(b) In determining the sites of new air bases and depots, the Secretary shall consider the following regions for the purposes indicated—

- (1) the Atlantic northeast, for training in cold weather and in fog;
- (2) the Atlantic southeast and Caribbean areas, for training in long-range operations, especially those incident to reinforcing the defenses of the Panama Canal;
- (3) the southeastern United States, to provide a depot necessary to maintain the Air Force;

(4) the Pacific northwest, to establish and maintain air communication with Alaska;

(5) Alaska, for training under conditions of extreme cold;

(6) the Rocky Mountain area, to provide a depot necessary to maintain the Air Force, and for training in operations from fields in high altitudes; and

(7) other regions, for the establishment of intermediate air bases to provide for transcontinental movements of the Air Force for maneuvers.

(c) In selecting sites for air bases and depots covered by this section and in determining the alteration or enlargement of existing air bases or depots, the Secretary shall consider the need—

(1) to form the nucleus for concentration of Air Force units in time of war;

(2) to permit, in time of peace, training and effective planning in each strategic area for the use and expansion of commercial, municipal, and private flying installations in time of war;

(3) to locate, in each strategic area in which it is considered necessary, adequate storage facilities for munitions and other articles necessary to facilitate the movement, concentration, maintenance, and operation of the Air Force; and

(4) to afford the maximum warning against surprise attack by enemy aircraft upon aviation of the United States and its necessary installations consistent with maintaining, in connection with existing or contemplated landing fields, the full power of the Air Force for operations necessary in the defense of the United States, and in the defense and reinforcement of the Commonwealths, possessions, and holdings.

(d) In carrying out this section, the Secretary, on behalf of the United States, may acquire title, in fee simple and free of encumbrance, to any land that he considers necessary—

(1) by accepting title without cost to the United States;

(2) by exchanging military reservations or parts thereof for that land, upon the written approval of the President; or

(3) by purchase or condemnation, if acquisition by gift or exchange is impracticable.

(e) The Secretary may, by purchase, gift, lease, or otherwise, acquire at desired locations bombing and machine gun ranges necessary for practice by, and the training of, tactical units.

(f) At each air base or depot established under this section, the Secretary shall remove or remodel existing structures as necessary; do necessary grading; and provide buildings, utilities, communication systems, landing fields and mats, roads, walks, aprons, docks, runways, facilities for the storage and distribution of ammunition, fuel, oil, necessary protection against bombs, and all appurtenances to the foregoing.

(g) The Secretary may direct the transportation of personnel, and the purchase, renovation, and transportation of material, that he considers necessary to carry out this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 588; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

[§ 9774. Repealed. Pub. L. 97-214, Sec. 7(1), July 12, 1982, 96 Stat. 173]

[§ 9775. Repealed. Pub. L. 92-145, title V, Sec. 509(b), Oct. 27, 1971, 85 Stat. 408]

§ 9776. Emergency construction: fortifications

If in an emergency the President considers it urgent, a temporary air base or fortification may be built on private land if the owner consents in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Pub. L. 91-393, Sec. 5, Sept. 1, 1970, 84 Stat. 835.)

§ 9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock

Whenever the Secretary of the Air Force considers that it can be done without injury to the reservation or inconvenience to the military forces stationed there, he may permit—

- (1) the landing of ferries at a military reservation;
- (2) the erection of bridges on a military reservation; and
- (3) the driving of livestock across a military reservation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591.)

§ 9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association

Under such conditions as he may prescribe, the Secretary of the Air Force may issue a revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain, on military reservations within the United States and the Commonwealths and possessions, buildings needed by that organization for the promotion of the social, physical, intellectual, and moral welfare of the members of the Air Force on those reservations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(6), Jan. 6, 2006, 119 Stat. 3441.)

§ 9779. Use of public property

(a) When the economy of the Air Force so requires, the Secretary of the Air Force shall establish military headquarters in places where suitable buildings are owned by the United States.

(b) No money appropriated for the support of the Air Force may be spent for base gardens or Air Force exchanges. However, this does not prevent Air Force exchanges from using public buildings or public transportation that, in the opinion of the Secretary, are not needed for other purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Pub. L. 99-661, div. B, title VII, Sec. 2721, Nov. 14, 1986, 100 Stat. 4042.)

§ 9780. Acquisition of buildings in District of Columbia

(a) In time of war or when war is imminent, the Secretary of the Air Force may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Air Force, requisition the use and take possession

of any building or space in any building, and its appurtenances, in the District of Columbia, other than—

- (1) a dwelling house occupied as such;
- (2) a building occupied by any other agency of the United States; or
- (3) space in such a dwelling house or building.

The Secretary shall determine, and pay out of funds appropriated for the payment of rent by the Department of the Air Force, just compensation for that use. If the amount of the compensation is not satisfactory to the person entitled to it, the Secretary shall pay 75 percent of it to that person, and the claimant is entitled to recover by action against the United States an additional amount that, when added to the amount paid by the Secretary, is determined by the court to be just compensation for that use.

(Added Pub. L. 85-861, Sec. 1(203)(A), Sept. 2, 1958, 72 Stat. 1542.)

§ 9781. Disposition of real property at missile sites

(a)(1) The Administrator of General Services shall dispose of the interest of the United States in any tract of real property described in paragraph (2) or in any easement held in connection with any such tract of real property only as provided in this section.

(2) The real property referred to in paragraph (1) is any tract of land (including improvements thereon) owned by the Air Force that—

(A) is not required for the needs of the Air Force and the discharge of the responsibilities of the Air Force, as determined by the Secretary of the Air Force;

(B) does not exceed 25 acres;

(C) was used by the Air Force as a site for one or more missile launch facilities, missile launch control buildings, or other facilities to support missile launch operations; and

(D) is surrounded by lands that are adjacent to such tract and that—

(i) are owned in fee simple by one owner, either individually or by more than one person jointly, in common, or by the entirety; or

(ii) are owned separately by two or more owners.

(b)(1)(A) Whenever the interest of the United States in a tract of real property or easement referred to in subsection (a) is available for disposition under this section, the Administrator shall transmit a notice of the availability of the real property or easement to each person described in subsection (a)(2)(D)(i) who owns lands adjacent to that real property or easement.

(B) The Administrator shall convey, for fair market value, the interest of the United States in a tract of land referred to in subsection (a), or in any easement in connection with such a tract of land, to any person or persons described in subsection (a)(2)(D)(i) who, with respect to such land, are ready, willing, and able to purchase such interest for the fair market value of such interest.

(2)(A) In the case of a tract of real property referred to in subsection (a) that is surrounded by adjacent lands that are owned separately by two or more owners, the Administrator shall dispose of that tract of real property in accordance with this paragraph. In

disposing of the real property, the Administrator shall satisfy the requirements specified in paragraph (1) regarding notice to owners, sale at fair market value, and the determination of the qualifications of the purchaser.

(B) The Administrator shall dispose of such a tract of real property through a sealed bid competitive sale. The Administrator shall afford an opportunity to compete to acquire the interest of the United States in the real property to all of the persons described in subsection (a)(2)(D)(ii) who own lands adjacent to that real property. The Administrator shall restrict to these persons the opportunity to compete in the sealed bid competitive sale.

(C) Subject to subparagraph (D), the Administrator shall convey the interest of the United States in the tract of real property to the highest bidder.

(D) If all of the bids received by the Administrator in the sealed bid competitive sale of the tract of real property are less than the fair market value of the real property, the Administrator shall dispose of the real property in accordance with the provisions of chapter 5 of title 40.

(c) The Administrator shall determine the fair market value of the interest of the United States to be conveyed under this section.

(d) The requirement to determine whether any tract of land described in subsection (a)(2) is excess property or surplus property under chapter 5 of title 40 before disposing of such tract shall not be applicable to the disposition of such tract under this section.

(e) The disposition of a tract of land under this section to any person shall be subject to (1) any easement retained by the Secretary of the Air Force with respect to such tract, and (2) such additional terms and conditions as the Administrator considers necessary or appropriate to protect the interests of the United States.

(f) The exact acreage and legal description of any tract of land to be conveyed under this section shall be determined in any manner that is satisfactory to the Administrator. The cost of any survey conducted for the purpose of this subsection in the case of any tract of land shall be borne by the person or persons to whom the conveyance of such tract of land is made.

(g) If any real property interest of the United States described in subsection (a) is not purchased under the procedures provided in subsections (a) through (f), such tract may be disposed of only in accordance with subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(Added Pub. L. 100-180, div. B, subdiv. 3, title II, Sec. 2325(a), Dec. 4, 1987, 101 Stat. 1220; amended Pub. L. 103-160, div. B, title XXVIII, Sec. 2851, Nov. 30, 1993, 107 Stat. 1906; Pub. L. 107-217, Sec. 3(b)(40), Aug. 21, 2002, 116 Stat. 1298; Pub. L. 108-178, Sec. 4(b)(7), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 111-350, Sec. 5(b)(55), Jan. 4, 2011, 124 Stat. 3847.)

§ 9782. Maintenance and repair of real property

(a) ALLOCATION OF FUNDS.—The Secretary of the Air Force shall allocate funds authorized to be appropriated by a provision described in subsection (c) and a provision described in subsection (d) for maintenance and repair of real property at military installations of the Department of the Air Force without regard to whether the installation is supported with funds authorized by a provision described in subsection (c) or (d).

(b) MIXING OF FUNDS PROHIBITED ON INDIVIDUAL PROJECTS.—The Secretary of the Air Force may not combine funds authorized to be appropriated by a provision described in subsection (c) and funds authorized to be appropriated by a provision described in subsection (d) for an individual project for maintenance and repair of real property at a military installation of the Department of the Air Force.

(c) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FUNDS.—The provision described in this subsection is a provision of a national defense authorization Act that authorizes funds to be appropriated for a fiscal year to the Air Force for research, development, test, and evaluation.

(d) OPERATION AND MAINTENANCE FUNDS.—The provision described in this subsection is a provision of a national defense authorization Act that authorizes funds to be appropriated for a fiscal year to the Air Force for operation and maintenance.

(Added Pub. L. 105–85, div. A, title II, Sec. 242(a), Nov. 18, 1997, 111 Stat. 1666.)

§ 9783. Johnston Atoll: reimbursement for support provided to civil air carriers

(a) AUTHORITY OF THE SECRETARY.—The Secretary of the Air Force may, under regulations prescribed by the Secretary, require payment by a civil air carrier for support provided by the United States to the carrier at Johnston Atoll that is either—

- (1) requested by the civil air carrier; or
- (2) determined under the regulations as being necessary to accommodate the civil air carrier's use of Johnston Atoll.

(b) AMOUNT OF CHARGES.—Any amount charged an air carrier under subsection (a) for support shall be equal to the total amount of the actual costs to the United States of providing the support. The amount charged may not include any amount for an item of support that does not satisfy a condition described in paragraph (1) or (2) of subsection (a).

(c) RELATIONSHIP TO LANDING FEES.—No landing fee shall be charged an air carrier for a landing of an aircraft of the air carrier at Johnston Atoll if the air carrier is charged under subsection (a) for support provided to the air carrier.

(d) DISPOSITION OF PAYMENTS.—(1) Amounts collected from an air carrier under this section shall be credited to appropriations available for the fiscal year in which collected, as follows:

(A) For support provided by the Air Force, to appropriations available for the Air Force for operation and maintenance.

(B) For support provided by the Army, to appropriations available for the Army for chemical demilitarization.

(2) Amounts credited to an appropriation under paragraph (1) shall be merged with funds in that appropriation and shall be available, without further appropriation, for the purposes and period for which the appropriation is available.

(e) DEFINITIONS.—In this section:

(1) The term “civil air carrier” means an air carrier (as defined in section 40102(a)(2) of title 49) that is issued a certificate of public convenience and necessity under section 41102 of such title.

(2) The term “support” includes fuel, fire rescue, use of facilities, improvements necessary to accommodate use by civil air carriers, police, safety, housing, food, air traffic control, suspension of military operations on the island including operations at the Johnston Atoll Chemical Agent Demilitarization System), repairs, and any other construction, services, or supplies.

(Added Pub. L. 106-398, Sec. 1[[div. A], title III, Sec. 383(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-86; amended Pub. L. 107-107, title X, Sec. 1048(a)(30), Dec. 28, 2001, 115 Stat. 1225.)

CHAPTER 951—MILITARY CLAIMS

Sec.	
9801.	Definition.
9802.	Admiralty claims against the United States.
9803.	Admiralty claims by United States.
9804.	Salvage claims by United States.
[9805.	Repealed.]
9806.	Settlement or compromise: final and conclusive.

§ 9801. Definition

In this chapter, the term “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Pub. L. 100–180, div. A, title XII, Sec. 1231(19)(B), Dec. 4, 1987, 101 Stat. 1161.)

§ 9802. Admiralty claims against the United States

(a) The Secretary of the Air Force may settle or compromise an admiralty claim against the United States for—

(1) damage caused by a vessel of, or in the service of, the Department of the Air Force or by other property under the jurisdiction of the Department of the Air Force;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Air Force or to other property under the jurisdiction of the Department of the Air Force; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Air Force or by property under the jurisdiction of the Department of the Air Force.

(b) If a claim under subsection (a) is settled or compromised for \$500,000 or less, the Secretary of the Air Force may pay it. If it is settled or compromised for more than \$500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than \$100,000, the Secretary of the Air Force may delegate his authority under subsection (a) to any person in the Department of the Air Force designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; Pub. L. 89–67, July 7, 1965, 79 Stat. 212; Pub. L. 92–417, Sec. 1(6), Aug. 29, 1972, 86 Stat. 655; Pub. L. 101–189, div. A, title XVI, Sec. 1633, Nov. 29, 1989, 103 Stat. 1608.)

§ 9803. Admiralty claims by United States

(a) Under the direction of the Secretary of Defense, the Secretary of the Air Force may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Air Force or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object;

and

(2) the amount to be received by the United States is not more than \$500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Air Force may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than \$100,000, the Secretary of the Air Force may delegate his authority under subsections (a) and (b) to any person in the Department of the Air Force designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; Pub. L. 89-67, July 7, 1965, 79 Stat. 212; Pub. L. 101-189, div. A, title XVI, Sec. 1633, Nov. 29, 1989, 103 Stat. 1608.)

§ 9804. Salvage claims by United States

(a) The Secretary of the Air Force may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Air Force. Amounts received under this section shall be covered into the Treasury.

(b) In any case where the amount to be received by the United States is not more than \$10,000, the Secretary of the Air Force may delegate his authority under subsection (a) to any person designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; Aug. 29, 1972, Pub. L. 92-417, Sec. 1(8), 86 Stat. 655.)

[§ 9805. Repealed. Pub. L. 86-533, Sec. 1(7)(A), June 29, 1960, 74 Stat. 246]

§ 9806. Settlement or compromise: final and conclusive

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 9802 or 9803 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

CHAPTER 953—ACCOUNTABILITY AND RESPONSIBILITY

- Sec.
9831. Custody of departmental records and property.
[9832, 9833, 9835, 9836. Repealed.]
9837. Settlement of accounts: remission or cancellation of indebtedness of members.
9838. Settlement of accounts: affidavit of squadron commander.
9839. Settlement of accounts: oaths.
9840. Final settlement of officer's accounts.
9841. Payment of small amounts to public creditors.
9842. Settlement of accounts of line officers.

§ 9831. Custody of departmental records and property

The Secretary of the Air Force has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

[§ 9832. Repealed. Pub. L. 110-181, div. A, title III, Sec. 375(c)(1)(C), Jan. 28, 2008, 122 Stat. 84]

[§ 9833. Repealed. Pub. L. 87-480, Sec. 1(4), June 8, 1962, 76 Stat. 94]

[§ 9835. Repealed. Pub. L. 107-314, div. A, title X, Sec. 1006(c)(1), Dec. 2, 2002, 116 Stat. 2633]

[§ 9836. Repealed. Pub. L. 110-181, div. A, title III, Sec. 375(c)(1)(D), Jan. 28, 2008, 122 Stat. 84]

§ 9837. Settlement of accounts: remission or cancellation of indebtedness of members

(a) IN GENERAL.—The Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving on active duty as a member of the Air Force, but only if the Secretary considers such action to be in the best interest of the United States.

(b) RETROACTIVE APPLICABILITY TO CERTAIN DEBTS.—The authority in subsection (a) may be exercised with respect to any debt covered by that subsection that is incurred on or after October 7, 2001.

(c) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 594; Pub. L. 85-861, Sec. 33(a)(45), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 87-649, Sec. 14c(58), Sept. 7, 1962, 76 Stat. 502; Pub. L. 96-513, title V, Sec. 514(22)(A), (B), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 109-163, div. A, title VI, Sec. 683(c)(1), Jan. 6, 2006, 119 Stat. 3323; Pub. L. 109-364, div. A, title VI, Sec. 673(c)(1), (2), (e)(3), Oct. 17, 2006, 120 Stat. 2271, 2272; Pub. L. 110-181, div. A, title X, Sec. 1063(c)(7)(C), Jan. 28, 2008, 122 Stat. 323.)

§ 9838. Settlement of accounts: affidavit of squadron commander

In the settlement of the accounts of the commanding officer of a squadron for clothing and other military supplies, his affidavit may be received to show—

- (1) that vouchers or squadron books were lost;
- (2) anything tending to prove that any apparent deficiency of those articles was caused by unavoidable accident, or by loss in actual service without his fault; or
- (3) that all or part of the clothing and supplies was properly used.

The affidavit may be used as evidence of the facts set forth, with or without other evidence, as determined by the Secretary of the Air Force to be just and proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

§ 9839. Settlement of accounts: oaths

The Secretary of the Air Force may detail any employee of the Department of the Air Force to administer oaths required by law in the settlement of an officer's accounts for clothing and other military supplies. An oath administered under this section shall be without expense to the person to whom it is administered.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

§ 9840. Final settlement of officer's accounts

Before final payment upon discharge may be made to an officer of the Air Force who has been accountable or responsible for public property, he must obtain a certificate of nonindebtedness to the United States from each officer to whom he was accountable or responsible for property. He must also make an affidavit, certified by his commanding officer to be correct, that he is not accountable or responsible for property to any other officer. An officer who has not been responsible for public property must make an affidavit of that fact, certified by his commanding officer. Compliance with this section warrants the final payment of the officer concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

§ 9841. Payment of small amounts to public creditors

When authorized by the Secretary of the Air Force, a disbursing official of Air Force subsistence funds may keep a limited amount of those funds in the personal possession and at the risk of the disbursing official to pay small amounts to public creditors.

(Added Pub. L. 97-258, Sec. 2(b)(14)(B), Sept. 13, 1982, 96 Stat. 1058.)

§ 9842. Settlement of accounts of line officers

The Comptroller General shall settle the account of a line officer of the Air Force for pay due the officer even if the officer cannot account for property entrusted to the officer or cannot make a monthly report or return, when the Comptroller General is satisfied that the inability to account for property or make a report or return was the result of the officer having been a prisoner, or of an accident or casualty of war.

(Added Pub. L. 97-258, Sec. 2(b)(14)(B), Sept. 13, 1982, 96 Stat. 1058.)

Subtitle E—Reserve Components

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CHAPTER 1001—DEFINITIONS

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§ 10001. Definition of State

In this subtitle, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2969.)

CHAPTER 1003—RESERVE COMPONENTS GENERALLY

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§ 10101. Reserve components named

The reserve components of the armed forces are:

- (1) The Army National Guard of the United States.
- (2) The Army Reserve.
- (3) The Navy Reserve.
- (4) The Marine Corps Reserve.
- (5) The Air National Guard of the United States.
- (6) The Air Force Reserve.
- (7) The Coast Guard Reserve.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970; amended Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(Z), Jan. 6, 2006, 119 Stat. 3233.)

§ 10102. Purpose of reserve components

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever more units and persons are needed than are in the regular components.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970; amended Pub. L. 108-375, div. A, title V, Sec. 511, Oct. 28, 2004, 118 Stat. 1877.)

§ 10103. Basic policy for order into Federal service

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty and retained as long as so needed.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(2)(A), Feb. 10, 1996, 110 Stat. 495.)

§ 10104. Army Reserve: composition

The Army Reserve includes all Reserves of the Army who are not members of the Army National Guard of the United States.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

§ 10105. Army National Guard of the United States: composition

The Army National Guard of the United States is the reserve component of the Army that consists of—

(1) federally recognized units and organizations of the Army National Guard; and

(2) members of the Army National Guard who are also Reserves of the Army.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

§ 10106. Army National Guard: when a component of the Army

The Army National Guard while in the service of the United States is a component of the Army.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

§ 10107. Army National Guard of the United States: status when not in Federal service

When not on active duty, members of the Army National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Army National Guard.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

§ 10108. Navy Reserve: administration

(a) The Navy Reserve is the reserve component of the Navy. It shall be organized, administered, trained, and supplied under the direction of the Chief of Naval Operations.

(b) The bureaus and offices of the executive part of the Department of the Navy have the same relation and responsibility to the Navy Reserve as they do to the Regular Navy.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971; amended Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(AA), (3)(F), Jan. 6, 2006, 119 Stat. 3233, 3234.)

§ 10109. Marine Corps Reserve: administration

(a) The Marine Corps Reserve is the reserve component of the Marine Corps. It shall be organized, administered, trained, and supplied under the direction of the Commandant of the Marine Corps.

(b) The departments and offices of Headquarters, Marine Corps have the same relation and responsibilities to the Marine Corps Reserve as they do to the Regular Marine Corps.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

§ 10110. Air Force Reserve: composition

The Air Force Reserve is a reserve component of the Air Force to provide a reserve for active duty. It consists of the members of the officers' section of the Air Force Reserve and of the enlisted sec-

tion of the Air Force Reserve. It includes all Reserves of the Air Force who are not members of the Air National Guard of the United States.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

§ 10111. Air National Guard of the United States: composition

The Air National Guard of the United States is the reserve component of the Air Force that consists of—

- (1) federally recognized units and organizations of the Air National Guard; and
- (2) members of the Air National Guard who are also Reserves of the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

§ 10112. Air National Guard: when a component of the Air Force

The Air National Guard while in the service of the United States is a component of the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

§ 10113. Air National Guard of the United States: status when not in Federal service

When not on active duty, members of the Air National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Air National Guard.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

§ 10114. Coast Guard Reserve

As provided in section 701 of title 14, the Coast Guard Reserve is a component of the Coast Guard and is organized, administered, trained, and supplied under the direction of the Commandant of the Coast Guard. Laws applicable to the Coast Guard Reserve are set forth in chapter 21 of title 14 (14 U.S.C. 701 et seq.).

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS

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§ 10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories

(a) There are in each armed force a Ready Reserve, a Standby Reserve, and a Retired Reserve. Each Reserve shall be placed in one of those categories.

(b) Reserves who are on the inactive status list of a reserve component, or who are assigned to the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status.

(c) As prescribed by the Secretary concerned, each reserve component except the Army National Guard of the United States and the Air National Guard of the United States shall be divided into training categories according to the degrees of training, including the number and duration of drills or equivalent duties to be completed in stated periods. The designation of training categories shall be the same for all armed forces and the same within the Ready Reserve and the Standby Reserve.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972.)

§ 10142. Ready Reserve

(a) The Ready Reserve consists of units or Reserves, or both, liable for active duty as provided in sections 12301 and 12302 of this title.

(b) The authorized strength of the Ready Reserve is 2,900,000.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972.)

§ 10143. Ready Reserve: Selected Reserve

(a) Within the Ready Reserve of each of the reserve components there is a Selected Reserve. The Selected Reserve consists of units, and, as designated by the Secretary concerned, of Reserves,

trained as prescribed in section 10147(a)(1) of this title or section 502(a) of title 32, as appropriate.

(b) The organization and unit structure of the Selected Reserve shall be approved—

(1) in the case of all reserve components other than the Coast Guard Reserve, by the Secretary of Defense based upon recommendations from the military departments as approved by the Chairman of the Joint Chiefs of Staff in accordance with contingency and war plans; and

(2) in the case of the Coast Guard Reserve, by the Secretary of Homeland Security upon the recommendation of the Commandant of the Coast Guard.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972; amended Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 10144. Ready Reserve: Individual Ready Reserve

(a) Within the Ready Reserve of each of the reserve components there is an Individual Ready Reserve. The Individual Ready Reserve consists of those members of the Ready Reserve who are not in the Selected Reserve or the inactive National Guard.

(b)(1) Within the Individual Ready Reserve of each reserve component there is a category of members, as designated by the Secretary concerned, who are subject to being ordered to active duty involuntarily in accordance with section 12304 of this title. A member may not be placed in that mobilization category unless—

(A) the member volunteers for that category; and

(B) the member is selected for that category by the Secretary concerned, based upon the needs of the service and the grade and military skills of that member.

(2) A member of the Individual Ready Reserve may not be carried in such mobilization category of members after the end of the 24-month period beginning on the date of the separation of the member from active service.

(3) The Secretary shall designate the grades and military skills or specialities of members to be eligible for placement in such mobilization category.

(4) A member in such mobilization category shall be eligible for benefits (other than pay and training) as are normally available to members of the Selected Reserve, as determined by the Secretary of Defense.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 105-85, div. A, title V, Sec. 511(a), Nov. 18, 1997, 111 Stat. 1728.)

§ 10145. Ready Reserve: placement in

(a) Each person required under law to serve in a reserve component shall, upon becoming a member, be placed in the Ready Reserve of his armed force for his prescribed term of service, unless he is transferred to the Standby Reserve under section 10146(a) of this title.

(b) The units and members of the Army National Guard of the United States and of the Air National Guard of the United States are in the Ready Reserve of the Army and the Ready Reserve of the Air Force, respectively.

(c) All Reserves assigned to units organized to serve as units and designated as units in the Ready Reserve are in the Ready Reserve.

(d) Under such regulations as the Secretary concerned may prescribe, any qualified member of a reserve component or any qualified retired enlisted member of a regular component may, upon his request, be placed in the Ready Reserve. However, a member of the Retired Reserve entitled to retired pay or a retired enlisted member of a regular component may not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the Ready Reserve are indispensable. The authority of the Secretary concerned under the preceding sentence may not be delegated—

(1) to a civilian officer or employee of the military department concerned below the level of Assistant Secretary; or

(2) to a member of the armed forces below the level of the lieutenant general or vice admiral in an armed force with responsibility for military personnel policy in that armed force.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 108-136, div. A, title V, Sec. 513, Nov. 24, 2003, 117 Stat. 1460.)

§ 10146. Ready Reserve: transfer from

(a) Subject to subsection (c) and under regulations prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a member in the Ready Reserve may be transferred to the Standby Reserve.

(b) A Reserve who is qualified and so requests may be transferred to the Retired Reserve under regulations prescribed by the Secretary concerned and, in the case of the Secretary of a military department, approved by the Secretary of Defense.

(c) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other appropriate authority of the State.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 10147. Ready Reserve: training requirements

(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is enlisted, inducted, or appointed in an armed force, and who becomes a member of the Ready Reserve under any provision of law except section 513 or 10145(b) of this title, shall be required, while in the Ready Reserve, to—

(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year; or

(2) serve on active duty for training not more than 30 days during each year.

(b) A member who has served on active duty for one year or longer may not be required to perform a period of active duty for training if the first day of that period falls during the last 120 days of the member's required membership in the Ready Reserve.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 10148. Ready Reserve: failure to satisfactorily perform prescribed training

(a) A member of the Ready Reserve covered by section 10147 of this title who fails in any year to perform satisfactorily the training duty prescribed in that section, as determined by the Secretary concerned under regulations prescribed by the Secretary of Defense, may be ordered without his consent to perform additional active duty for training for not more than 45 days. If the failure occurs during the last year of his required membership in the Ready Reserve, his membership is extended until he performs that additional active duty for training, but not for more than six months.

(b) A member of the Army National Guard of the United States or the Air National Guard of the United States who fails in any year to perform satisfactorily the training duty prescribed by or under law for members of the Army National Guard or the Air National Guard, as the case may be, as determined by the Secretary concerned, may, upon the request of the Governor of the State (or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard) be ordered, without his consent, to perform additional active duty for training for not more than 45 days. A member ordered to active duty under this subsection shall be ordered to duty as a Reserve of the Army or as a Reserve of the Air Force, as the case may be.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2974.)

§ 10149. Ready Reserve: continuous screening

(a) Under regulations to be prescribed by the President, the Secretary concerned shall provide a system of continuous screening of units and members of the Ready Reserve to ensure the following:

(1) That there will be no significant attrition of those members or units during a mobilization.

(2) That there is a proper balance of military skills.

(3) That except for those with military skills for which there is an overriding requirement, members having critical civilian skills are not retained in numbers beyond the need for those skills.

(4) That with due regard to national security and military requirements, recognition will be given to participation in combat.

(5) That members whose mobilization in an emergency would result in an extreme personal or community hardship are not retained in the Ready Reserve.

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy,

a member of the Ready Reserve who is designated as a member not to be retained in the Ready Reserve as a result of screening under subsection (a) shall, as appropriate, be—

- (1) transferred to the Standby Reserve;
- (2) discharged; or
- (3) if the member is eligible and applies therefor, transferred to the Retired Reserve.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2974; amended Pub. L. 107–296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 10150. Ready Reserve: transfer back from Standby Reserve

Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Standby Reserve who has not completed his required period of service in the Ready Reserve may be transferred to the Ready Reserve when the reason for his transfer to the Standby Reserve no longer exists.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975; amended Pub. L. 107–296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 10151. Standby Reserve: composition

The Standby Reserve consists of those units or members, or both, of the reserve components, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty only as provided in sections 12301 and 12306 of this title.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

§ 10152. Standby Reserve: inactive status list

An inactive status list shall be maintained in the Standby Reserve. Whenever an authority designated by the Secretary concerned considers that it is in the best interest of the armed force concerned, a member in the Standby Reserve who is not required to remain a Reserve, and who cannot participate in prescribed training, may, if qualified, be transferred to the inactive status list under regulations to be prescribed by the Secretary concerned. These regulations shall fix the conditions under which such a member is entitled to be returned to an active status.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

§ 10153. Standby Reserve: status of members

While in an inactive status, a Reserve is not eligible for pay or promotion and (as provided in section 12734(a) of this title) does not accrue credit for years of service under chapter 1223 of this title.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

§ 10154. Retired Reserve

The Retired Reserve consists of the following Reserves:

- (1) Reserves who are or have been retired under section 3911, 6323, or 8911 of this title or under section 291 of title 14.

(2) Reserves who have been transferred to the Retired Reserve, retain their status as Reserves, and are otherwise qualified.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975; amended Pub. L. 107-107, div. A, title V, Sec. 517(a), Dec. 28, 2001, 115 Stat. 1094.)

CHAPTER 1006—RESERVE COMPONENT COMMANDS

Sec.	
10171.	United States Army Reserve Command.
10172.	Navy Reserve Force.
10173.	Marine Forces Reserve.
10174.	Air Force Reserve Command.

§ 10171. United States Army Reserve Command

(a) COMMAND.—The United States Army Reserve Command is a separate command of the Army commanded by the Chief of Army Reserve.

(b) CHAIN OF COMMAND.—Except as otherwise prescribed by the Secretary of Defense, the Secretary of the Army shall prescribe the chain of command for the United States Army Reserve Command.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Army—

(1) shall assign to the United States Army Reserve Command all forces of the Army Reserve in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Army specified in section 3013 of this title, shall assign all such forces of the Army Reserve to the commander of the United States Atlantic Command.

(Added Pub. L. 104–201, div. A, title XII, Sec. 1211(a)(1), Sept. 23, 1996, 110 Stat. 2689.)

§ 10172. Navy Reserve Force

(a) ESTABLISHMENT OF COMMAND.—The Secretary of the Navy, with the advice and assistance of the Chief of Naval Operations, shall establish a Navy Reserve Force. The Navy Reserve Force shall be operated as a separate command of the Navy.

(b) COMMANDER.—The Chief of Navy Reserve shall be the commander of the Navy Reserve Force. The commander of the Navy Reserve Force reports directly to the Chief of Naval Operations.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Navy—

(1) shall assign to the Navy Reserve Force specified portions of the Navy Reserve other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Navy specified in section 5013 of this title, shall assign to the combatant commands all such forces assigned to the Navy Reserve Force under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, Sec. 1211(a)(1), Sept. 23, 1996, 110 Stat. 2689; amended Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(BB), (3)(G), Jan. 6, 2006, 119 Stat. 3233, 3234.)

§ 10173. Marine Forces Reserve

(a) ESTABLISHMENT.—The Secretary of the Navy, with the advice and assistance of the Commandant of the Marine Corps, shall establish in the Marine Corps a command known as the Marine Forces Reserve.

(b) COMMANDER.—The Marine Forces Reserve is commanded by the Commander, Marine Forces Reserve. The Commander, Marine Forces Reserve, reports directly to the Commandant of the Marine Corps.

(c) ASSIGNMENT OF FORCES.—The Commandant of the Marine Corps—

(1) shall assign to the Marine Forces Reserve the forces of the Marine Corps Reserve stationed in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Navy specified in section 5013 of this title, shall assign to the combatant commands (through the Marine Corps component commander for each such command) all such forces assigned to the Marine Forces Reserve under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, Sec. 1211(a)(1), Sept. 23, 1996, 110 Stat. 2690.)

§ 10174. Air Force Reserve Command

(a) ESTABLISHMENT OF COMMAND.—The Secretary of the Air Force, with the advice and assistance of the Chief of Staff of the Air Force, shall establish an Air Force Reserve Command. The Air Force Reserve Command shall be operated as a separate command of the Air Force.

(b) COMMANDER.—The Chief of Air Force Reserve is the Commander of the Air Force Reserve Command. The commander of the Air Force Reserve Command reports directly to the Chief of Staff of the Air Force.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Air Force—

(1) shall assign to the Air Force Reserve Command all forces of the Air Force Reserve stationed in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Air Force specified in section 8013 of this title, shall assign to the combatant commands all such forces assigned to the Air Force Reserve Command under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, Sec. 1211(a)(1), Sept. 23, 1996, 110 Stat. 2690.)

CHAPTER 1007—ADMINISTRATION OF RESERVE COMPONENTS

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10201.	Assistant Secretary of Defense for Reserve Affairs.
10202.	Regulations.
10203.	Reserve affairs: designation of general or flag officer of each armed force.
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10216.	Military technicians (dual status).
10217.	Non-dual status technicians.
10218.	Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws.

§ 10201. Assistant Secretary of Defense for Reserve Affairs

As provided in section 138(b)(2) of this title, the official in the Department of Defense with responsibility for overall supervision of reserve component affairs of the Department of Defense is the Assistant Secretary of Defense for Reserve Affairs.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2976; amended Pub. L. 104–106, div. A, title IX, Sec. 903(f)(4), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, Sec. 901, Sept. 23, 1996, 110 Stat. 2617.)

§ 10202. Regulations

(a) Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as the Secretary considers necessary to carry out provisions of law relating to the reserve components under the Secretary's jurisdiction.

(b) The Secretary of Homeland Security, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as the Secretary considers necessary to carry out all provisions of law relating to the reserve components insofar as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy.

(c) So far as practicable, regulations for all reserve components shall be uniform.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2976; amended Pub. L. 107–296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 10203. Reserve affairs: designation of general or flag officer of each armed force

(a) The Secretary of the Army may designate a general officer of the Army to be directly responsible for reserve affairs to the Chief of Staff of the Army.

(b) The Secretary of the Navy may designate a flag officer of the Navy to be directly responsible for reserve affairs to the Chief of Naval Operations and a general officer of the Marine Corps to be directly responsible for reserve affairs to the Commandant of the Marine Corps.

(c) The Secretary of the Air Force may designate a general officer of the Air Force to be directly responsible for reserve affairs to the Chief of Staff of the Air Force.

(d) The Secretary of Homeland Security may designate a flag officer of the Coast Guard to be directly responsible for reserve affairs to the Commandant of the Coast Guard.

(e) This section does not affect the functions of the Chief of the National Guard Bureau, the Chief of Army Reserve, or the Chief of Air Force Reserve.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2976; amended Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 10204. Personnel records

(a) The Secretary concerned shall maintain adequate and current personnel records of each member of the reserve components under the Secretary's jurisdiction showing the following with respect to the member:

- (1) Physical condition.
- (2) Dependency status.
- (3) Military qualifications.
- (4) Civilian occupational skills.
- (5) Availability for service.
- (6) Such other information as the Secretary concerned may prescribe.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary of each military department shall maintain a record of the number of members of each class of each reserve component who, during each fiscal year, have participated satisfactorily in active duty for training and inactive duty training with pay.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977.)

§ 10205. Members of Ready Reserve: requirement of notification of change of status

(a) Each member of the Ready Reserve shall notify the Secretary concerned of any change in the member's address, marital status, number of dependents, or civilian employment and of any change in the member's physical condition that would prevent the member from meeting the physical or mental standards prescribed for the member's armed force.

(b) This section shall be administered under regulations prescribed by the Secretary of Defense and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977; amended Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 10206. Members: physical examinations

(a) Each member of the Selected Reserve who is not on active duty shall—

(1) have a comprehensive medical readiness health and dental assessment on an annual basis, including routine annual preventive health care screening and periodic comprehensive physical examinations in accordance with regulations prescribed by the Secretary of Defense that reflect morbidity and mortality risks associated with the military service, age, and gender of the member; and

(2) execute and submit to the Secretary concerned on an annual basis documentation of the medical and dental readiness of the member to perform military duties.

(b) A member of the Individual Ready Reserve or inactive National Guard shall be examined for physical fitness as necessary to determine the member's physical fitness for—

(1) military duty or promotion;

(2) attendance at a school of the armed forces; or

(3) other action related to career progression.

(c) Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually to the Secretary concerned a certificate of physical condition.

(d) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977; amended Pub. L. 107-107, div. A, title V, Sec. 516, Dec. 28, 2001, 115 Stat. 1094; Pub. L. 109-163, div. A, title VII, Sec. 732(a), (b), Jan. 6, 2006, 119 Stat. 3351, 3352.)

§ 10207. Mobilization forces: maintenance

(a) Whenever units or members of the reserve components are ordered to active duty (other than for training) during a period of partial mobilization, the Secretary concerned shall continue to maintain mobilization forces by planning and budgeting for the continued organization and training of the reserve components not mobilized, and make the fullest practicable use of the Federal facilities vacated by mobilized units, consistent with approved joint mobilization plans.

(b) In this section, the term “partial mobilization” means the mobilization resulting from action by Congress or the President, under any law, to bring units of any reserve component, and members not assigned to units organized to serve as units, to active duty for a limited expansion of the active armed forces.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977.)

§ 10208. Annual mobilization exercise

(a) The Secretary of Defense shall conduct at least one major mobilization exercise each year. The exercise should be as comprehensive and as realistic as possible and should include the participation of associated active component and reserve component units.

(b) The Secretary shall maintain a plan to test periodically each active component and reserve component unit based in the United States and all interactions of such units, as well as the sustainment of the forces mobilized as part of the exercise, with the objective of permitting an evaluation of the adequacy of resource allocation and planning.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

§ 10209. Regular and reserve components: discrimination prohibited

Laws applying to both Regulars and Reserves shall be administered without discrimination—

- (1) among Regulars;
- (2) among Reserves; and
- (3) between Regulars and Reserves.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

§ 10210. Dissemination of information

The Secretary of Defense shall require the complete and current dissemination, to all Reserves and to the public, of information of interest to the reserve components.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

§ 10211. Policies and regulations: participation of Reserve officers in preparation and administration

Within such numbers and in such grades and assignments as the Secretary concerned may prescribe, each armed force shall have officers of its reserve components on active duty (other than for training) at the seat of government, and at headquarters responsible for reserve affairs, to participate in preparing and administering the policies and regulations affecting those reserve components. While so serving, such an officer is an additional number of any staff with which he is serving.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

§ 10212. Gratuitous services of officers: authority to accept

(a) Notwithstanding section 1342 of title 31, the Secretary of Defense may accept the gratuitous services of an officer of a reserve component (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States) in consultation upon matters relating to the armed forces.

(b) Notwithstanding section 1342 of title 31, the Secretary of a military department may accept the gratuitous services of an officer of a reserve component under the Secretary's jurisdiction (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States)—

- (1) in the furtherance of the enrollment, organization, and training of that officer's reserve component or the Reserve Officers' Training Corps; or
- (2) in consultation upon matters relating to the armed forces.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978; amended Pub. L. 103–355, title III, Sec. 3021(a), Oct. 13, 1994, 108 Stat. 3333.)

§ 10213. Reserve components: dual membership prohibited

Except as otherwise provided in this title, no person may be a member of more than one reserve component at the same time.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

§ 10214. Adjutants general and assistant adjutants general: reference to other officers of National Guard

In any case in which, under the laws of a State, an officer of the National Guard of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the references in sections 12004(b)(1), 12215, 12642(c), 14507(b), 14508(h), and 14512 of this title to the adjutant general or the assistant adjutant general shall be applied to that officer instead of to the adjutant general or assistant adjutant general.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979; amended Pub. L. 111–383, div. A, title X, Sec. 1075(b)(51), Jan. 7, 2011, 124 Stat. 4371.)

§ 10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status

(a)(1) Officers of the Army National Guard of the United States who are not on active duty—

(A) may order members of the Army National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Air Force, may order members of the Air National Guard of the United States to active duty for training under that section.

(2) Officers of the Air National Guard of the United States who are not on active duty—

(A) may order members of the Air National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Army, may order members of the Army National Guard of the United States to active duty for training under that section.

(b) Officers of the Army National Guard of the United States or the Air National Guard of the United States who are not on active duty—

(1) may enlist, reenlist, or extend the enlistments of persons as Reserves of the Army or Reserves of the Air Force for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be; and

(2) with respect to their Federal status, may promote or discharge persons enlisted or reenlisted as Reserves of the Army or Reserves of the Air Force for that service.

(c) This section shall be carried out under regulations prescribed by the Secretary of the Army, with respect to matters concerning the Army, and by the Secretary of the Air Force, with respect to matters concerning the Air Force.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

§ 10216. Military technicians (dual status)

(a) IN GENERAL.—(1) For purposes of this section and any other provision of law, a military technician (dual status) is a Federal civilian employee who—

(A) is employed under section 3101 of title 5 or section 709(b) of title 32;

(B) is required as a condition of that employment to maintain membership in the Selected Reserve; and

(C) is assigned to a civilian position as a technician in the organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

(2) Military technicians (dual status) shall be authorized and accounted for as a separate category of civilian employees.

(3) A military technician (dual status) who is employed under section 3101 of title 5 may perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the primary duties described in paragraph (1):

(A) Supporting operations or missions assigned in whole or in part to the technician's unit.

(B) Supporting operations or missions performed or to be performed by—

(i) a unit composed of elements from more than one component of the technician's armed force; or

(ii) a joint forces unit that includes—

(I) one or more units of the technician's component; or

(II) a member of the technician's component whose reserve component assignment is in a position in an element of the joint forces unit.

(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(i) active-duty members of the armed forces;

(ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);

(iii) Department of Defense contractor personnel; or

(iv) Department of Defense civilian employees.

(b) PRIORITY FOR MANAGEMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) As a basis for making the annual request to Congress pursuant to section 115(d) of this title for authorization of end strengths for military technicians (dual status) of the Army and Air Force reserve components, the Secretary of Defense shall give priority to supporting authorizations for military technicians (dual status) in the following high-priority units and organizations:

(A) Units of the Selected Reserve that are scheduled to deploy no later than 90 days after mobilization.

(B) Units of the Selected Reserve that are or will deploy to relieve active duty peacetime operations tempo.

(C) Those organizations with the primary mission of providing direct support surface and aviation maintenance for the

reserve components of the Army and Air Force, to the extent that the military technicians (dual status) in such units would mobilize and deploy in a skill that is compatible with their civilian position skill.

(2) For each fiscal year, the Secretary of Defense shall, for the high-priority units and organizations referred to in paragraph (1), seek to achieve a programmed manning level for military technicians (dual status) that is not less than 90 percent of the programmed manpower structure for those units and organizations for military technicians (dual status) for that fiscal year.

(3) Military technician (dual status) authorizations and personnel shall be exempt from any requirement (imposed by law or otherwise) for reductions in Department of Defense civilian personnel and shall only be reduced as part of military force structure reductions.

(c) INFORMATION REQUIRED TO BE SUBMITTED WITH ANNUAL END STRENGTH AUTHORIZATION REQUEST.—(1) The Secretary of Defense shall include as part of the budget justification documents submitted to Congress with the budget of the Department of Defense for any fiscal year the following information with respect to the end strengths for military technicians (dual status) requested in that budget pursuant to section 115(d) of this title, shown separately for each of the Army and Air Force reserve components:

(A) The number of military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(B) The number of technicians other than military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(C) The number of military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(D) The number of technicians other than military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(2)(A) If the budget submitted to Congress for any fiscal year requests authorization for that fiscal year under section 115(d) of this title of a military technician (dual status) end strength for a reserve component of the Army or Air Force in a number that constitutes a reduction from the end strength minimum established by law for that reserve component for the fiscal year during which the budget is submitted, the Secretary of Defense shall submit to the congressional defense committees with that budget a justification providing the basis for that requested reduction in technician end strength.

(B) Any justification submitted under subparagraph (A) shall clearly delineate the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those reductions).

(d) UNIT MEMBERSHIP REQUIREMENT.—(1) Unless specifically exempted by law, each individual who is hired as a military technician (dual status) after December 1, 1995, shall be required as a condition of that employment to maintain membership in—

(A) the unit of the Selected Reserve by which the individual is employed as a military technician; or

(B) a unit of the Selected Reserve that the individual is employed as a military technician to support.

(2) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Army Reserve in an area other than Army Reserve troop program units.

(3) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Air Force Reserve in an area other than the Air Force Reserve unit program, except that not more than 50 of such technicians may be assigned outside of the unit program at the same time.

(e) DUAL STATUS REQUIREMENT.—(1) Funds appropriated for the Department of Defense may not (except as provided in paragraph (2)) be used for compensation as a military technician of any individual hired as a military technician (dual status) after February 10, 1996, who is no longer a member of the Selected Reserve.

(2) Except as otherwise provided by law, the Secretary concerned may pay compensation described in paragraph (1) to an individual described in that paragraph who is no longer a member of the Selected Reserve for a period up to 12 months following the individual's loss of membership in the Selected Reserve if the Secretary determines that such loss of membership was not due to the failure of that individual to meet military standards.

(f) DEFERRAL OF MANDATORY SEPARATION.—The Secretary of the Army and the Secretary of the Air Force shall implement personnel policies so as to allow a military technician (dual status) who continues to meet the requirements of this section for dual status to continue to serve beyond a mandatory removal date for officers, and any applicable maximum years of service limitation, until the military technician (dual status) reaches age 60 and attains eligibility for an unreduced annuity (as defined in section 10218(c) of this title).

(g) RETENTION OF MILITARY TECHNICIANS WHO LOSE DUAL STATUS DUE TO COMBAT-RELATED DISABILITY.—(1) Notwithstanding subsection (d) of this section or subsections (a)(3) and (b) of section 10218 of this title, if a military technician (dual status) loses such dual status as the result of a combat-related disability (as defined in section 1413a of this title), the person may be retained as a non-dual status technician so long as—

(A) the combat-related disability does not prevent the person from performing the non-dual status functions or position; and

(B) the person, while a non-dual status technician, is not disqualified from performing the non-dual status functions or position because of performance, medical, or other reasons.

(2) A person so retained shall be removed not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age.

(3) Persons retained under the authority of this subsection do not count against the limitations of section 10217(c) of this title.

(Added Pub. L. 104–106, div. A, title V, Sec. 513(c)(1), Feb. 10, 1996, 110 Stat. 306; amended Pub. L. 104–201, div. A, title IV, Sec. 413(b), (c), title XII, Sec. 1214, Sept. 23, 1996, 110 Stat. 2507, 2508, 2695; Pub. L. 105–85, div. A, title V, Sec. 522(a), (b), (f)–(h)(1), Nov. 18, 1997, 111 Stat. 1734–1736; Pub. L. 106–65, div. A, title V, Sec. 521, Oct. 5, 1999, 113 Stat. 595; Pub. L.

108–136, div. A, title IV, Sec. 403(c), Nov. 24, 2003, 117 Stat. 1452; Pub. L. 109–163, div. A, title V, Sec. 513(a), Jan. 6, 2006, 119 Stat. 3232; Pub. L. 109–364, div. A, title V, Sec. 525(b), Oct. 17, 2006, 120 Stat. 2194; Pub. L. 110–181, div. A, title V, Sec. 511, Jan. 28, 2008, 122 Stat. 98; Pub. L. 110–417, [div. A], title V, Sec. 511, Oct. 14, 2008, 122 Stat. 4439; Pub. L. 111–383, div. A, title V, Sec. 512, title X, Sec. 1075(b)(52), Jan. 7, 2011, 124 Stat. 4210, 4372.)

§ 10217. Non-dual status technicians

(a) DEFINITION.—For the purposes of this section and any other provision of law, a non-dual status technician is a civilian employee of the Department of Defense serving in a military technician position who—

(1) was hired as a technician before November 18, 1997, under any of the authorities specified in subsection (b) and as of that date is not a member of the Selected Reserve or after such date has ceased to be a member of the Selected Reserve;

(2) is employed under section 709 of title 32 in a position designated under subsection (c) of that section and when hired was not required to maintain membership in the Selected Reserve; or

(3) is hired as a temporary employee pursuant to the exception for temporary employment provided by subsection (d) and subject to the terms and conditions of such subsection.

(b) EMPLOYMENT AUTHORITIES.—The authorities referred to in subsection (a) are the following:

(1) Section 10216 of this title.

(2) Section 709 of title 32.

(3) The requirements referred to in section 8401 of title 5.

(4) Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104–61; 109 Stat. 654), and any comparable provision of law enacted on an annual basis in the Department of Defense Appropriations Acts for fiscal years 1984 through 1995.

(5) Any memorandum of agreement between the Department of Defense and the Office of Personnel Management providing for the hiring of military technicians.

(c) PERMANENT LIMITATIONS ON NUMBER.—(1) The total number of non-dual status technicians employed by the Army Reserve may not exceed 595 and by the Air Force Reserve may not exceed 90. If at any time the number of non-dual status technicians employed by the Army Reserve and Air Force Reserve exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(2) The total number of non-dual status technicians employed by the National Guard may not exceed 1,950. If at any time the number of non-dual status technicians employed by the National Guard exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(3) An individual employed as a non-dual status technician as described in subsection (a)(3) shall not be considered¹ a non-dual status technician for purposes of paragraphs (1) and (2).

(d) EXCEPTION FOR TEMPORARY EMPLOYMENT.—(1) Notwithstanding section 10218 of this title, the Secretary of the Army or the Secretary of the Air Force may employ, for a period not to exceed two years, a person to fill a vacancy created by the mobilization of a military technician (dual status) occupying a position under section 10216 of this title.

(2) The duration of the temporary employment of a person in a military technician position under this subsection may not exceed the shorter of the following:

(A) The period of mobilization of the military technician (dual status) whose vacancy is being filled by the temporary employee.

(B) Two years.

(3) No person may be hired under the authority of this subsection after the end of the 2-year period beginning on the date of the enactment of this subsection.

(Added Pub. L. 105–85, div. A, title V, Sec. 523(a), Nov. 18, 1997, 111 Stat. 1736; Pub. L. 106–65, div. A, title V, Sec. 523, Oct. 5, 1999, 113 Stat. 598; Pub. L. 106–398, Sec. 1 [[div. A], title IV, 414(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94; Pub. L. 107–314, div. A, title IV, Sec. 414(d), Dec. 2, 2002, 116 Stat. 2527; Pub. L. 108–136, div. A, title IV, Sec. 415, Nov. 24, 2003, 117 Stat. 1453; Pub. L. 111–383, div. A, title V, Sec. 513, title X, Sec. 1075(b)(53), Jan. 7, 2011, 124 Stat. 4210, 4372.)

§ 10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws

(a) SEPARATION AND RETIREMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) An individual employed by the Army Reserve or the Air Force Reserve as a military technician (dual status) who after October 5, 1999, loses dual status is subject to paragraph (2) or (3), as the case may be.

(2) If a technician described in paragraph (1) is eligible at the time dual status is lost for an unreduced annuity and is age 60 or older at that time, the technician shall be separated not later than 30 days after the date on which dual status is lost.

(3)(A) If a technician described in paragraph (1) is not eligible at the time dual status is lost for an unreduced annuity or is under age 60 at that time, the technician shall be offered the opportunity to—

(i) reapply for, and if qualified be appointed to, a position as a military technician (dual status); or

(ii) apply for a civil service position that is not a technician position.

(B) If such a technician continues employment with the Army Reserve or the Air Force Reserve as a non-dual status technician, the technician—

(i) shall not be permitted, after October 5, 2000, to apply for any voluntary personnel action; and

(ii) shall be separated or retired—

¹ In section 10217(c)(3), “consider” probably should be “considered”.

- (I) in the case of a technician first hired as a military technician (dual status) on or before February 10, 1996, not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age; and
- (II) in the case of a technician first hired as a military technician (dual status) after February 10, 1996, not later than one year after the date on which dual status is lost.
- (4) For purposes of this subsection, a military technician is considered to lose dual status upon—
- (A) being separated from the Selected Reserve; or
- (B) ceasing to hold the military grade specified by the Secretary concerned for the position held by the technician.
- (b) NON-DUAL STATUS TECHNICIANS.—(1) An individual who on October 5, 1999, is employed by the Army Reserve or the Air Force Reserve as a non-dual status technician and who on that date is eligible for an unreduced annuity and is age 60 or older shall be separated not later than April 5, 2000.
- (2)(A) An individual who on October 5, 1999, is employed by the Army Reserve or the Air Force Reserve as a non-dual status technician and who on that date is not eligible for an unreduced annuity or is under age 60 shall be offered the opportunity to—
- (i) reapply for, and if qualified be appointed to, a position as a military technician (dual status); or
- (ii) apply for a civil service position that is not a technician position.
- (B) If such a technician continues employment with the Army Reserve or the Air Force Reserve as a non-dual status technician, the technician—
- (i) shall not be permitted, after October 5, 2000, to apply for any voluntary personnel action; and
- (ii) shall be separated or retired—
- (I) in the case of a technician first hired as a technician on or before February 10, 1996, and who on October 5, 1999, is a non-dual status technician, not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age; and
- (II) in the case of a technician first hired as a technician after February 10, 1996, and who on the date of the enactment of this section is a non-dual status technician, not later than one year after the date on which dual status is lost.
- (3) An individual employed by the Army Reserve or the Air Force Reserve as a non-dual status technician who is ineligible for appointment to a military technician (dual status) position, or who decides not to apply for appointment to such a position, or who, during the period beginning on October 5, 1999, and ending on April 5, 2000, is not appointed to such a position, shall for reduction-in-force purposes be in a separate competitive category from employees who are military technicians (dual status).
- (c) UNREDUCED ANNUITY DEFINED.—For purposes of this section, a technician shall be considered to be eligible for an unreduced annuity if the technician is eligible for an annuity under section 8336, 8412, or 8414 of title 5 that is not subject to a reduction by reason of the age or years of service of the technician.

(d) VOLUNTARY PERSONNEL ACTION DEFINED.—In this section, the term “voluntary personnel action”, with respect to a non-dual status technician, means any of the following:

(1) The hiring, entry, appointment, reassignment, promotion, or transfer of the technician into a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status).

(2) Promotion to a higher grade if the technician is in a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status).

(Added Pub. L. 106–65, div. A, title V, Sec. 522(a)(1), Oct. 5, 1999, 113 Stat. 595; amended Pub. L. 106–398, Sec. 1[[div. A], title V, Sec. 525(a), title X, Sec. 1087(a)(20)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108, 1654A–291.)

CHAPTER 1009—RESERVE FORCES POLICY BOARDS AND COMMITTEES

Sec.	
10301.	Reserve Forces Policy Board.
10302.	Army Reserve Forces Policy Committee.
10303.	Navy Reserve Policy Board.
10304.	Marine Corps Reserve Policy Board.
10305.	Air Force Reserve Forces Policy Committee.

§ 10301. Reserve Forces Policy Board

(a) There is in the Office of the Secretary of Defense a Reserve Forces Policy Board. The Board consists of the following:

(1) A civilian chairman appointed by the Secretary of Defense.

(2) The Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs.

(3) An officer of the Regular Army designated by the Secretary of the Army.

(4) An officer of the Regular Navy and an officer of the Regular Marine Corps, each designated by the Secretary of the Navy.

(5) An officer of the Regular Air Force designated by the Secretary of the Air Force.

(6) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Army, two of whom must be members of the Army National Guard of the United States, and two of whom must be members of the Army Reserve.

(7) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy, two of whom must be members of the Navy Reserve, and two of whom must be members of the Marine Corps Reserve.

(8) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force, two of whom must be members of the Air National Guard of the United States, and two of whom must be members of the Air Force Reserve.

(9) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general officer or flag officer designated by the Chairman of the Board with the approval of the Secretary of Defense, and who serves without vote as military adviser to the Chairman and as executive officer of the Board.

(10) An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps serving in a position on the Joint Staff who is designated by the Chairman of the Joint Chiefs of Staff.

(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary of Homeland Security may designate two officers of the Coast Guard, Regular or Reserve, to serve as voting members of the Board.

(c) The Board, acting through the Assistant Secretary of Defense for Reserve Affairs, is the principal policy adviser to the Secretary of Defense on matters relating to the reserve components.

(d) This section does not affect the committees on reserve policies prescribed within the military departments by sections 10302 through 10305 of this title.

(e) A member of a committee or board prescribed under a section listed in subsection (d) may, if otherwise eligible, be a member of the Reserve Forces Policy Board.

(f) The Board shall act on those matters referred to it by the Chairman and, in addition, on any matter raised by a member of the Board.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(b)(1), Oct. 5, 1994, 108 Stat. 2980; amended Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(CC), Jan. 6, 2006, 119 Stat. 3233; Pub. L. 111-383, div. A, title V, Sec. 514(a)(1), Jan. 7, 2011, 124 Stat. 4211.)

§ 10302. Army Reserve Forces Policy Committee

(a) There is in the Office of the Secretary of the Army an Army Reserve Forces Policy Committee. The Committee shall review and comment upon major policy matters directly affecting the reserve components and the mobilization preparedness of the Army. The Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Secretary of the Army and the Chief of Staff.

(b) The Committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Army on duty with the Army General Staff;

(2) five members of the Army National Guard of the United States not on active duty; and

(3) five members of the Army Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matter affecting both the Army National Guard of the United States and Army Reserve are being considered. However, when any matter solely affecting one of the reserve components of the Army is being considered, it shall be acted upon only by the Subcommittee on Army National Guard Policy or the Subcommittee on Army Reserve Policy, as appropriate.

(e) The Subcommittee on Army National Guard Policy consists of the members of the Committee other than the Army Reserve members.

(f) The Subcommittee on Army Reserve Policy consists of the members of the Committee other than the Army National Guard members.

(g) Membership on the Committee is determined by the Secretary of the Army and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Army, the Secretary of the Army, when appointing new members,

shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Army National Guard of the United States and the Army Reserve on duty with the Army Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Army Staff while on that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 161, Sec. 3033; Pub. L. 85–861, Sec. 33(a)(17), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 90–168, Sec. 2(18), Dec. 1, 1967, 81 Stat. 524; renumbered Sec. 3021 and amended Pub. L. 99–433, title V, Sec. 501(a)(8), Oct. 1, 1986, 100 Stat. 1039; renumbered Sec. 10302, Pub. L. 103–337, div. A, title XVI, Sec. 1661(b)(2)(A), Oct. 5, 1994, 108 Stat. 2981.)

§ 10303. Navy Reserve Policy Board

A Navy Reserve Policy Board shall be convened at least once annually at the seat of government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Navy Reserve.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(b)(1), Oct. 5, 1994, 108 Stat. 2981; amended Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(DD), (3)(H), Jan. 6, 2006, 119 Stat. 3233, 3234.)

§ 10304. Marine Corps Reserve Policy Board

A Marine Corps Reserve Policy Board shall be convened at least once annually at the seat of government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Marine Corps Reserve.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1661(b)(1), Oct. 5, 1994, 108 Stat. 2981.)

§ 10305. Air Force Reserve Forces Policy Committee

(a) There is in the Office of the Secretary of the Air Force an Air Reserve Forces Policy Committee on Air National Guard and Air Force Reserve Policy. The Committee shall review and comment upon major policy matters directly affecting the reserve components and the mobilization preparedness of the Air Force. The Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Secretary of the Air Force and the Chief of Staff.

(b) The committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Air Force on duty with the Air Staff;

(2) five members of the Air National Guard of the United States not on active duty; and

(3) five members of the Air Force Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matters affecting both the Air National Guard of the United States and Air Force Reserve are being considered. However, when any matter solely affecting one of the Air Force Reserve components is being considered, it shall be acted upon only by the

Subcommittee on Air National Guard Policy or the Subcommittee on Air Force Reserve Policy, as appropriate.

(e) The Subcommittee on Air National Guard Policy consists of the members of the Committee other than the Air Force Reserve members.

(f) The Subcommittee on Air Force Reserve Policy consists of the members of the Committee other than the Air National Guard members.

(g) Membership on the Air Staff Committee is determined by the Secretary of the Air Force and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Air Force, the Secretary of the Air Force, when appointing new members, shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Air National Guard of the United States and the Air Force Reserve on duty with the Air Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Air Staff while on that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 491, Sec. 8033; Pub. L. 85-861, Sec. 33(a)(17), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 90-168, Sec. 2(21), Dec. 1, 1967, 81 Stat. 525; renumbered Sec. 8021 and amended Pub. L. 99-433, title V, Sec. 521(a)(6), Oct. 1, 1986, 100 Stat. 1059; renumbered Sec. 10305, Pub. L. 103-337, div. A, title XVI, Sec. 1661(b)(2)(B), Oct. 5, 1994, 108 Stat. 2981.)

CHAPTER 1011—NATIONAL GUARD BUREAU

Sec.	
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§ 10501. National Guard Bureau

(a) NATIONAL GUARD BUREAU.—There is in the Department of Defense the National Guard Bureau, which is a joint activity of the Department of Defense.

(b) PURPOSES.—The National Guard Bureau is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

(Added Pub. L. 103–337, div. A, title IX, Sec. 904(a), Oct. 5, 1994, 108 Stat. 2824; amended Pub. L. 110–181, div. A, title XVIII, Sec. 1812(a), Jan. 28, 2008, 122 Stat. 497.)

§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession

(a) APPOINTMENT.—There is a Chief of the National Guard Bureau, who is responsible for the organization and operations of the National Guard Bureau. The Chief of the National Guard Bureau is appointed by the President, by and with the advice and consent of the Senate. Such appointment shall be made from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(1) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(2) are recommended for such appointment by the Secretary of the Army or the Secretary of the Air Force;

(3) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard;

(4) are in a grade above the grade of brigadier general;

(5) are determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience;

(6) are determined by the Secretary of Defense to have successfully completed such other assignments and experiences so as to possess a detailed understanding of the status and capabilities of National Guard forces and the missions of the National Guard Bureau as set forth in section 10503 of this title;

(7) have a level of operational experience in a position of significant responsibility, professional military education, and demonstrated expertise in national defense and homeland defense matters that are commensurate with the advisory role of the Chief of the National Guard Bureau; and

(8) possess such other qualifications as the Secretary of Defense shall prescribe for purposes of this section.

(b) TERM OF OFFICE.—(1) An officer appointed as Chief of the National Guard Bureau serves at the pleasure of the President for a term of four years. An officer may be reappointed as Chief of the National Guard Bureau.

(2) Except as provided in section 14508(d) of this title, while holding the office of Chief of the National Guard Bureau, the Chief of the National Guard Bureau may not be removed from the reserve active-status list, or from an active status, under any provision of law that otherwise would require such removal due to completion of a specified number of years of service or a specified number of years of service in grade.

(c) ADVISOR ON NATIONAL GUARD MATTERS.—The Chief of the National Guard Bureau is—

(1) a principal advisor to the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, on matters involving non-federalized National Guard forces and on other matters as determined by the Secretary of Defense; and

(2) the principal adviser to the Secretary of the Army and the Chief of Staff of the Army, and to the Secretary of the Air Force and the Chief of Staff of the Air Force, on matters relating to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

(d) GRADE.—The Chief of the National Guard Bureau shall be appointed to serve in the grade of general.

(e) SUCCESSION.—(1) Unless otherwise directed by the President or the Secretary of Defense, the senior of the two officers specified in paragraph (2) shall serve as the acting Chief of the National Guard Bureau during any period that—

(A) there is a vacancy in the position of Chief of the National Guard Bureau; or

(B) the Chief is unable to perform the duties of that office.

(2) The officers specified in this paragraph are the following:

(A) The senior officer of the Army National Guard of the United States on duty with the National Guard Bureau.

(B) The senior officer of the Air National Guard of the United States on duty with the National Guard Bureau.

(Added Pub. L. 103-337, div. A, title IX, Sec. 904(a), Oct. 5, 1994, 108 Stat. 2824; amended Pub. L. 108-375, div. A, title V, Sec. 507(a), (b)(1), Oct. 28, 2004, 118 Stat. 1876; Pub. L. 110-181, div. A, title XVIII, Secs. 1811, 1825(c)(2), Jan. 28, 2008, 122 Stat. 496, 502.)

§ 10503. Functions of National Guard Bureau: charter

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, the Secretary of the Army, and the Secretary of the Air Force, shall develop and prescribe a charter for the National Guard Bureau. The charter shall reflect the full scope of the duties and activities of the Bureau, including the following matters:

(1) Allocating unit structure, strength authorizations, and other resources to the Army National Guard of the United States and the Air National Guard of the United States.

(2) The role of the National Guard Bureau in support of the Secretary of the Army and the Secretary of the Air Force.

(3) Prescribing the training discipline and training requirements for the Army National Guard and the Air National Guard and the allocation of Federal funds for the training of the Army National Guard and the Air National Guard.

(4) Ensuring that units and members of the Army National Guard and the Air National Guard are trained by the States in accordance with approved programs and policies of, and guidance from, the Chief, the Secretary of the Army, and the Secretary of the Air Force.

(5) Monitoring and assisting the States in the organization, maintenance, and operation of National Guard units so as to provide well-trained and well-equipped units capable of augmenting the active forces in time of war or national emergency.

(6) Planning and administering the budget for the Army National Guard of the United States and the Air National Guard of the United States.

(7) Supervising the acquisition and supply of, and accountability of the States for, Federal property issued to the National Guard through the property and fiscal officers designated, detailed, or appointed under section 708 of title 32.

(8) Granting and withdrawing, in accordance with applicable laws and regulations, Federal recognition of (A) National Guard units, and (B) officers of the National Guard.

(9) Establishing policies and programs for the employment and use of National Guard technicians under section 709 of title 32.

(10) Supervising and administering the Active Guard and Reserve program as it pertains to the National Guard.

(11) Issuing directives, regulations, and publications consistent with approved policies of the Army and Air Force, as appropriate.

(12) Facilitating and supporting the training of members and units of the National Guard to meet State requirements.

(13)(A) Assisting the Secretary of Defense in facilitating and coordinating with the entities listed in subparagraph (B) the use of National Guard personnel and resources for operations conducted under title 32, or in support of State missions.

(B) The entities listed in this subparagraph for purposes of subparagraph (A) are the following:

(i) Other Federal agencies.

- (ii) The Adjutants General of the States.
- (iii) The United States Joint Forces Command.
- (iv) The combatant command the geographic area of responsibility of which includes the United States.
- (14) Such other functions as the Secretary of Defense may prescribe.

(Added Pub. L. 103-337, div. A, title IX, Sec. 904(a), Oct. 5, 1994, 108 Stat. 2825; amended Pub. L. 110-181, div. A, title XVIII, Sec. 1813(a)-(c)(1), Jan. 28, 2008, 122 Stat. 497, 498.)

§ 10504. Chief of National Guard Bureau: annual report

(a) ANNUAL REPORT.—The Chief of the National Guard Bureau shall submit to the Secretary of Defense, through the Secretaries of the Army and the Air Force, an annual report on the state of the National Guard and the ability of the National Guard to meet its missions. The report shall be prepared in conjunction with the Secretary of the Army and the Secretary of the Air Force and may be submitted in classified and unclassified versions.

(b) SUBMISSION OF REPORT TO CONGRESS.—The Secretary of Defense shall transmit the annual report of the Chief of the National Guard Bureau to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113(c) of this title is submitted to Congress.

(Added Pub. L. 103-337, div. A, title IX, Sec. 904(a), Oct. 5, 1994, 108 Stat. 2825.)

§ 10505. Director of the Joint Staff of the National Guard Bureau

(a) APPOINTMENT.—(1) There is a Director of the Joint Staff of the National Guard Bureau, selected by the Secretary of Defense from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(A) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(B) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard; and

(C) are in a grade above the grade of colonel.

(2) The Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau may not both be members of the Army or of the Air Force.

(3)(A) Except as provided in subparagraph (B), an officer appointed as Director of the Joint Staff of the National Guard Bureau serves for a term of four years, but may be removed from office at any time for cause.

(B) The term of the Director of the Joint Staff of the National Guard Bureau shall end upon the appointment of a Chief of the National Guard Bureau who is a member of the same armed force as the Director.

(4) The Secretary of Defense may waive the restrictions in paragraph (2) and the provisions of paragraph (3)(B) for a limited period of time to provide for the orderly transition of officers ap-

pointed to serve in the positions of Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau.

(b) DUTIES.—The Director of the Joint Staff of the National Guard Bureau performs such duties as may be prescribed by the Chief of the National Guard Bureau.

(c) GRADE.—The Director of the Joint Staff of the National Guard Bureau shall be appointed to serve in the grade of major general.

(Added Pub. L. 103–337, div. A, title IX, Sec. 904(a), Oct. 5, 1994, 108 Stat. 2826; Pub. L. 108–375, div. A, title V, Secs. 507(c), 508(a)–(b)(3), (c)(1), Oct. 28, 2004, 118 Stat. 1876, 1877.)

§ 10506. Other senior National Guard Bureau officers

(a) ADDITIONAL GENERAL OFFICERS.—(1) In addition to the Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau, there shall be assigned to the National Guard Bureau—

(A) two general officers selected by the Secretary of the Army from officers of the Army National Guard of the United States who have been nominated by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard, the senior of whom shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall serve as Director, Army National Guard, with the other serving as Deputy Director, Army National Guard; and

(B) two general officers selected by the Secretary of the Air Force from officers of the Air National Guard of the United States who have been nominated by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard, the senior of whom shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall serve as Director, Air National Guard, with the other serving as Deputy Director, Air National Guard.

(2) The officers so selected shall assist the Chief of the National Guard Bureau in carrying out the functions of the National Guard Bureau as they relate to their respective branches.

(3)(A) The President, by and with the advice and consent of the Senate, shall appoint the Director, Army National Guard, from general officers of the Army National Guard of the United States and shall appoint the Director, Air National Guard, from general officers of the Air National Guard of the United States.

(B) The Secretary of Defense may not recommend an officer to the President for appointment as Director, Army National Guard, or as Director, Air National Guard, unless the officer—

(i) is recommended by the Secretary of the military department concerned; and

(ii) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(C) An officer on active duty for service as the Director, Army National Guard, or the Director, Air National Guard, shall be

counted for purposes of the grade limitations under sections 525 and 526 of this title.

(D) Until December 31, 2006, the Secretary of Defense may waive clause (ii) of subparagraph (B) with respect to the appointment of an officer as Director, Army National Guard, or as Director, Air National Guard, if the Secretary of the military department concerned requests the waiver and, in the judgment of the Secretary of Defense—

- (i) the officer is qualified for service in the position; and
- (ii) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(E) The Director, Army National Guard, and the Director, Air National Guard, are appointed for a period of four years, but may be removed for cause at any time. An officer serving as either Director may be reappointed for one additional four-year period.

(b) OTHER OFFICERS.—There are in the National Guard Bureau a legal counsel, a comptroller, and an inspector general, each of whom shall be appointed by the Chief of the National Guard Bureau. They shall perform such duties as the Chief may prescribe.

(Added Pub. L. 103-337, div. A, title IX, Sec. 904(a), Oct. 5, 1994, 108 Stat. 2827; amended Pub. L. 106-65, div. A, title V, Sec. 554(f), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 507(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A-105; Pub. L. 107-314, div. A, title V, Sec. 501(a), Dec. 2, 2002, 116 Stat. 2529; Pub. L. 108-375, div. A, title V, Secs. 508(b)(4), 536(a), Oct. 28, 2004, 118 Stat. 1877, 1901.)

§ 10507. National Guard Bureau: assignment of officers of regular or reserve components

Except as provided in section 12402(b) of this title, the President may assign to duty in the National Guard Bureau as many regular or reserve officers of the Army or Air Force as he considers necessary.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1661(c)(1)(A), Oct. 5, 1994, 108 Stat. 2982; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(6), Feb. 10, 1996, 110 Stat. 496.)

§ 10508. National Guard Bureau: general provisions

The manpower requirements of the National Guard Bureau as a joint activity of the Department of Defense shall be determined in accordance with regulations prescribed by the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff.

(Added Pub. L. 110-181, div. A, title XVIII, Sec. 1812(b)(1), Jan. 28, 2008, 122 Stat. 497.)

CHAPTER 1013—BUDGET INFORMATION AND ANNUAL REPORTS TO CONGRESS

- Sec.
10541. National Guard and reserve component equipment: annual report to Congress.
10542. Army National Guard combat readiness: annual report.
10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program.

§ 10541. National Guard and reserve component equipment: annual report to Congress

(a) The Secretary of Defense shall submit to the Congress each year, not later than February 15, a written report concerning the equipment of the National Guard and the reserve components of the armed forces for each of the three succeeding fiscal years.

(b) Each report under this section shall include the following:

(1) Recommendations as to the type and quantity of each major item of equipment which should be in the inventory of the Selected Reserve of the Ready Reserve of each reserve component of the armed forces.

(2) A statement of the quantity and average age of each type of major item of equipment which is expected to be physically available in the inventory of the Selected Reserve of the Ready Reserve of each reserve component as of the beginning of each fiscal year covered by the report.

(3) A statement of the quantity and cost of each type of major item of equipment which is expected to be procured for the Selective Reserve of the Ready Reserve of each reserve component from commercial sources or to be transferred to each such Selected Reserve from the active-duty components of the armed forces.

(4) A statement of the quantity of each type of major item of equipment which is expected to be retired, decommissioned, transferred, or otherwise removed from the physical inventory of the Selected Reserve of the Ready Reserve of each reserve component and the plans for replacement of that equipment.

(5) A listing of each major item of equipment required by the Selected Reserve of the Ready Reserve of each reserve component indicating—

(A) the full war-time requirement of that component for that item, shown in accordance with deployment schedules and requirements over successive 30-day periods following mobilization;

(B) the number of each such item in the inventory of the component;

(C) a separate listing of each such item in the inventory that is a deployable item and is not the most desired item;

(D) the number of each such item projected to be in the inventory at the end of the third succeeding fiscal year; and

(E) the number of nondeployable items in the inventory as a substitute for a required major item of equipment.

(6) A narrative explanation of the plan of the Secretary concerned to provide equipment needed to fill the war-time requirement for each major item of equipment to all units of the Selected Reserve, including an explanation of the plan to equip units of the Selected Reserve that are short of major items of equipment at the outset of war.

(7) For each item of major equipment reported under paragraph (3) in a report for one of the three previous years under this section as an item expected to be procured for the Selected Reserve or to be transferred to the Selected Reserve, the quantity of such equipment actually procured for or transferred to the Selected Reserve.

(8) A statement of the current status of the compatibility of equipment between the Army reserve components and active forces of the Army, the effect of that level of incompatibility on combat effectiveness, and a plan to achieve full equipment compatibility.

(9) An assessment of the extent to which the National Guard possesses the equipment required to perform the responsibilities of the National Guard pursuant to sections 331, 332, 333, 12304(b), and 12406 of this title in response to an emergency or major disaster (as such terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)). Such assessment shall—

(A) identify any shortfall in equipment provided to the National Guard by the Department of Defense throughout the United States and the territories and possessions of the United States that is likely to affect the ability of the National Guard to perform such responsibilities;

(B) evaluate the effect of any such shortfall on the capacity of the National Guard to perform such responsibilities in response to an emergency or major disaster that occurs in the United States or a territory or possession of the United States; and

(C) identify the requirements and investment strategies for equipment provided to the National Guard by the Department of Defense that are necessary to plan for a reduction or elimination of any such shortfall.

(c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the annual Five Year Defense Program Procurement Annex prepared by the Department of Defense.

(d) Each report under this section concerning equipment of the National Guard shall also include the following:

(1) A statement of the accuracy of the projections required by subsection (b)(5)(D) contained in earlier reports under this

section, and an explanation, if the projection was not met, of why the projection was not met.

(2) A certification from the Chief of the National Guard Bureau setting forth an inventory for the preceding fiscal year of each item of equipment—

(A) for which funds were appropriated;

(B) which was due to be procured for the National Guard during that fiscal year; and

(C) which has not been received by a National Guard unit as of the close of that fiscal year.

(Added Pub. L. 101-510, div. A, title XIV, Sec. 1483(a), Nov. 5, 1990, 104 Stat. 1714, Sec. 115b; amended Pub. L. 102-484, div. A, title XI, Sec. 1134, Oct. 23, 1992, 106 Stat. 2541; renumbered Sec. 10541 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1661(d)(2), Oct. 5, 1994, 108 Stat. 2982; Pub. L. 110-181, div. A, title III, Sec. 351(a), title XVIII, Sec. 1826, Jan. 28, 2008, 122 Stat. 70, 503.)

§ 10542. Army National Guard combat readiness: annual report

(a) **IN GENERAL.**—The Secretary of the Army shall include in the annual report of the Secretary to Congress known as the Army Posture Statement a detailed presentation concerning the Army National Guard, including particularly information relating to the implementation of the Army National Guard Combat Readiness Reform Act of 1992 (title XI of Public Law 102-484; 106 Stat. 2536) (hereinafter in this section referred to as “ANGCRRA”).

(b) **MATTERS TO BE INCLUDED IN REPORT.**—Each presentation under subsection (a) shall include, with respect to the period covered by the report, the following information concerning the Army National Guard:

(1) The number and percentage of officers with at least two years of active-duty before becoming a member of the Army National Guard.

(2) The number and percentage of enlisted personnel with at least two years of active-duty before becoming a member of the Army National Guard.

(3) The number of officers who are graduates of one of the service academies and were released from active duty before the completion of their active-duty service obligation and, of those officers—

(A) the number who are serving the remaining period of their active-duty service obligation as a member of the Selected Reserve pursuant to section 1112(a)(1) of ANGCRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRA, together with the reason for each waiver.

(4) The number of officers who were commissioned as distinguished Reserve Officers’ Training Corps graduates and were released from active duty before the completion of their active-duty service obligation and, of those officers—

(A) the number who are serving the remaining period of their active-duty service obligation as a member of the Selected Reserve pursuant to section 1112(a)(1) of ANGCRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRRA, together with the reason for each waiver.

(5) The number of officers who are graduates of the Reserve Officers' Training Corps program and who are performing their minimum period of obligated service in accordance with section 1112(b) of ANGCRRRA by a combination of (A) two years of active duty, and (B) such additional period of service as is necessary to complete the remainder of such obligation served in the National Guard and, of those officers, the number for whom permission to perform their minimum period of obligated service in accordance with that section was granted during the preceding fiscal year.

(6) The number of officers for whom recommendations were made during the preceding fiscal year for a unit vacancy promotion to a grade above first lieutenant and, of those recommendations, the number and percentage that were concurred in by an active-duty officer under section 1113(a) of ANGCRRRA, shown separately for each of the three categories of officers set forth in section 1113(b) of ANGCRRRA.

(7) The number of waivers during the preceding fiscal year under section 1114(a) of ANGCRRRA of any standard prescribed by the Secretary establishing a military education requirement for noncommissioned officers and the reason for each such waiver.

(8) The number and distribution by grade, shown for each State, of personnel in the initial entry training and nondeployability personnel accounting category established under section 1115 of ANGCRRRA for members of the Army National Guard who have not completed the minimum training required for deployment or who are otherwise not available for deployment.

(9) The number of members of the Army National Guard, shown for each State, that were discharged during the previous fiscal year pursuant to section 1115(c)(1) of ANGCRRRA for not completing the minimum training required for deployment within 24 months after entering the National Guard.

(10) The number of waivers, shown for each State, that were granted by the Secretary during the previous fiscal year under section 1115(c)(2) of ANGCRRRA of the requirement in section 1115(c)(1) of ANGCRRRA described in paragraph (9), together with the reason for each waiver.

(11) The number of members, shown for each State, who were screened during the preceding fiscal year to determine whether they meet minimum physical profile standards required for deployment and, of those members—

(A) the number and percentage who did not meet minimum physical profile standards required for deployment; and

(B) the number and percentage who were transferred pursuant to section 1116 of ANGCRRRA to the personnel accounting category described in paragraph (8).

(12) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each

State, who underwent a medical screening during the previous fiscal year as provided in section 1117 of ANGCRRRA.

(13) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, who underwent a dental screening during the previous fiscal year as provided in section 1117 of ANGCRRRA.

(14) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, over the age of 40 who underwent a full physical examination during the previous fiscal year for purposes of section 1117 of ANGCRRRA.

(15) The number of units of the Army National Guard that are scheduled for early deployment in the event of a mobilization and, of those units, the number that are dentally ready for deployment in accordance with section 1118 of ANGCRRRA.

(16) The estimated post-mobilization training time for each Army National Guard combat unit, and a description, displayed in broad categories and by State, of what training would need to be accomplished for Army National Guard combat units in a post-mobilization period for purposes of section 1119 of ANGCRRRA.

(17) A description of the measures taken during the preceding fiscal year to comply with the requirement in section 1120 of ANGCRRRA to expand the use of simulations, simulators, and advanced training devices and technologies for members and units of the Army National Guard.

(18) Summary tables of unit readiness, shown for each State, and drawn from the unit readiness rating system as required by section 1121 of ANGCRRRA, including the personnel readiness rating information and the equipment readiness assessment information required by that section, together with—

(A) explanations of the information shown in the table;

and

(B) based on the information shown in the tables, the Secretary's overall assessment of the deployability of units of the Army National Guard, including a discussion of personnel deficiencies and equipment shortfalls in accordance with such section 1121.

(19) Summary tables, shown for each State, of the results of inspections of units of the Army National Guard by inspectors general or other commissioned officers of the Regular Army under the provisions of section 105 of title 32, together with explanations of the information shown in the tables, and including display of—

(A) the number of such inspections;

(B) identification of the entity conducting each inspection;

(C) the number of units inspected; and

(D) the overall results of such inspections, including the inspector's determination for each inspected unit of whether the unit met deployability standards and, for those units not meeting deployability standards, the reasons for such failure and the status of corrective actions.

(20) A listing, for each Army National Guard combat unit, of the active-duty combat unit associated with that Army National Guard unit in accordance with section 1131(a) of ANGCRRRA, shown by State and to be accompanied, for each such National Guard unit, by—

(A) the assessment of the commander of that associated active-duty unit of the manpower, equipment, and training resource requirements of that National Guard unit in accordance with section 1131(b)(3) of ANGCRRRA; and

(B) the results of the validation by the commander of that associated active-duty unit of the compatibility of that National Guard unit with active duty forces in accordance with section 1131(b)(4) of ANGCRRRA.

(21) A specification of the active-duty personnel assigned to units of the Selected Reserve pursuant to section 414(c) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 12001 note), shown (A) by State, (B) by rank of officers, warrant officers, and enlisted members assigned, and (C) by unit or other organizational entity of assignment.

(Added Pub. L. 103–160, div. A, title V, Sec. 521(a), Nov. 30, 1993, 107 Stat. 1652, Sec. 3082; renumbered Sec. 10542 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1661(d)(3), Oct. 5, 1994, 108 Stat. 2982; Pub. L. 104–106, div. A, title XV, Sec. 1501(b)(8), Feb. 10, 1996, 110 Stat. 496; Pub. L. 104–201, div. A, title X, Sec. 1074(a)(21), Sept. 23, 1996, 110 Stat. 2660.)

§ 10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program

(a) IN GENERAL.—The Secretary of Defense shall specify in each future-years defense program submitted to Congress under section 221 of this title the estimated expenditures and the proposed appropriations, for each fiscal year of the period covered by that program, for the procurement of equipment and for military construction for each of the reserve components of the armed forces.

(b) ASSOCIATED ANNEXES.—The associated annexes of the future-years defense program shall specify, at the same level of detail as is set forth in the annexes for the active components, the amount requested for—

(1) procurement of each item of equipment to be procured for each reserve component; and

(2) each military construction project to be carried out for each reserve component, together with the location of the project.

(c) REPORT.—(1) If the aggregate of the amounts specified in paragraphs (1) and (2) of subsection (b) for a fiscal year is less than the amount equal to 90 percent of the average authorized amount applicable for that fiscal year under paragraph (2), the Secretary of Defense shall submit to Congress a report specifying for each reserve component the additional items of equipment that would be procured, and the additional military construction projects that would be carried out, if that aggregate amount were an amount equal to such average authorized amount. The report shall be at the same level of detail as is required by subsection (b).

(2) In this subsection, the term “average authorized amount”, with respect to a fiscal year, means the average of—

(A) the aggregate of the amounts authorized to be appropriated for the preceding fiscal year for the procurement of items of equipment, and for military construction, for the reserve components; and

(B) the aggregate of the amounts authorized to be appropriated for the fiscal year preceding the fiscal year referred to in subparagraph (A) for the procurement of items of equipment, and for military construction, for the reserve components.

(3) A report required under paragraph (1) for a fiscal year shall be submitted not later than 15 days after the date on which the President submits to Congress the budget for such fiscal year under section 1105(a) of title 31.

(Added Pub. L. 104–201, div. A, title XII, Sec. 1257(a)(1), Sept. 23, 1996, 110 Stat. 2699; amended Pub. L. 105–85, div. A, title X, Sec. 1009(a), Nov. 18, 1997, 111 Stat. 1872; Pub. L. 106–398, Sec. 1 (div. A), title IX, Sec. 931), Oct. 30, 2000, 114 Stat. 1654, 1654A–237.)

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CHAPTER 1201—AUTHORIZED STRENGTHS AND DISTRIBUTION IN GRADE

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§ 12001. Authorized strengths: reserve components

(a) Whenever the authorized strength of a reserve component (other than the Coast Guard Reserve) is not prescribed by law, it shall be prescribed by the President.

(b) Subject to the authorized strength of the reserve component concerned, the authorized strength of each reserve component (other than the Coast Guard Reserve) in members in each grade is that which the Secretary concerned determines to be necessary to provide for mobilization requirements. The Secretary shall review these determinations at least once each year and revise them if he considers it necessary. However, a member of the reserve component concerned may not, as a result of such a determination, be reduced in the member's reserve grade without the member's consent.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2983.)

§ 12002. Authorized strengths: Army and Air Force reserve components, exclusive of members on active duty

(a) The authorized strengths of the National Guard and the reserve components of the Army and the Air Force, exclusive of members who are included in the strengths authorized for members of the Army and Air Force, respectively, on active duty, are as follows:

Army National Guard and the Army National Guard of the United States	600,000
Army Reserve	980,000
Air National Guard and the Air National Guard of the United States	150,000
Air Force Reserve	500,000.

(b) The strength authorized by this section for the Army National Guard and the Army National Guard of the United States, and the strength authorized by this section for the Air National Guard and the Air National Guard of the United States, shall be allocated among the States.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2983.)

§ 12003. Authorized strengths: commissioned officers in an active status

(a) The authorized strengths of the Army, Navy, Air Force, and Marine Corps in reserve commissioned officers, other than commissioned warrant officers and officers on an active-duty list, in an active status are as follows:

Army	275,000
Air Force	200,000
Navy	150,000
Marine Corps	24,500.

(b) The authorized strengths prescribed by subsection (a) may not be exceeded unless—

- (1) the Secretary concerned determines that a greater number is necessary for planned mobilization requirements; or
- (2) the excess results directly from the operation of a non-discretionary provision of law.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2984.)

§ 12004. Strength in grade: reserve general and flag officers in an active status

(a) The authorized strengths of the Army, Air Force, and Marine Corps in reserve general officers in an active status, and the authorized strength of the Navy in reserve officers in the grades of rear admiral (lower half) and rear admiral in an active status, are as follows:

Army	207
Air Force	157
Navy	48
Marine Corps	10.

(b) The following Army and Air Force reserve officers shall not be counted for purposes of this section:

- (1) Those serving as adjutants general or assistant adjutants general of a State.
- (2) Those serving in the National Guard Bureau.
- (3) Those counted under section 526 of this title.
- (4) Those serving in a joint duty assignment for purposes of chapter 38 of this title, except that the number of officers who may be excluded under this paragraph may not exceed the number equal to 20 percent of the number of officers authorized for the armed force concerned by subsection (a).

(c)(1) The following Navy reserve officers shall not be counted for purposes of this section:

(A) Those counted under section 526 of this title.

(B) Those serving in a joint duty assignment for purposes of chapter 38 of this title, except that the number of officers who may be excluded under this paragraph may not exceed the number equal to 20 percent of the number of officers authorized for the Navy in subsection (a).

(2) Not more than 50 percent of the officers in an active status authorized under this section for the Navy may serve in the grade of rear admiral.

(d) The following Marine Corps reserve officers shall not be counted for purposes of this section:

(1) Those counted under section 526 of this title.

(2) Those serving in a joint duty assignment for purposes of chapter 38 of this title, except that the number of officers who may be excluded under this paragraph may not exceed the number equal to 20 percent of the number of officers authorized for the Marine Corps in subsection (a).

(e)(1) A reserve general officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of general officers authorized under subsection (a).

(2) An officer of the Navy Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(f) The limitations in subsection (a) do not apply to an officer released from a joint duty assignment or other non-joint active duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty or other active duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers in an active status from each reserve component may be covered by an extension under this sentence at the same time.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2984; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(9), Feb. 10, 1996, 110 Stat. 496; Pub. L. 105-261, div. A, title IV, Sec. 415, Oct. 17, 1998, 112 Stat. 1998; Pub. L. 109-163, div. A, title V, Secs. 512, 515(b)(1)(EE), Jan. 6, 2006, 119 Stat. 3232, 3233; Pub. L. 110-417, [div. A], title V, Sec. 526, Oct. 14, 2008, 122 Stat. 4448; Pub. L. 111-84, div. A, title V, Sec. 502(h), Oct. 28, 2009, 123 Stat. 2276; Pub. L. 111-383, div. A, title V, Sec. 511, Jan. 7, 2011, 124 Stat. 4210.)

§ 12005. Strength in grade: commissioned officers in grades below brigadier general or rear admiral (lower half) in an active status

(a)(1) Subject to paragraph (2), the authorized strength of the Army and the Air Force in reserve commissioned officers in an active status in each grade named in paragraph (2) is as prescribed by the Secretary of the Army or the Secretary of the Air Force, respectively. A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(2) A strength prescribed by the Secretary concerned under paragraph (1) for a grade may not be higher than the percentage of the strength authorized for the Army or the Air Force, as the case may be, under section 12003 of this title that is specified for that grade as follows:

Grade	Army percentage	Air Force percentage
Colonel	2	1.8
Lieutenant colonel	6	4.6
Major	13	14.0
Captain	35	32.0
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	44	47.6

(3) Medical officers and dental officers shall not be counted for the purposes of this subsection.

(b)(1) The authorized strengths of the Navy Reserve in line officers in an active status in the grades of captain, commander, lieutenant commander, and lieutenant, and in the grades of lieutenant (junior grade) and ensign combined, are the following percentages of the total authorized number of those officers:

Captain	1.5 percent
Commander	7 percent
Lieutenant commander	22 percent
Lieutenant	37 percent
Lieutenant (junior grade) and ensign (when combined with the number authorized for flag officer grades under section 12004 of this title)	32.5 percent.

(2) When the actual number of line officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(c)(1) The authorized strengths of the Marine Corps Reserve in officers in an active status in the grades of colonel, lieutenant colonel, major, and captain, and in the grades of first lieutenant and second lieutenant combined, are the following percentages of the total authorized number of those officers:

Colonel	2 percent
Lieutenant colonel	8 percent
Major	16 percent
Captain	39 percent
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	35 percent.

(2) When the actual number of officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(d)(1) An officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of commissioned officers authorized for the officer's grade under this section.

(2) An officer of the Navy Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2985; amended Pub. L. 106-398, Sec. 1 [[div. A], title IV, Sec. 423], Oct. 30, 2000, 114 Stat. 1654, 1654A-96; Pub. L. 108-375, div. A, title V, Sec. 504, Oct. 28, 2004, 118 Stat. 1875; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(FF), Jan. 6, 2006, 119 Stat. 3233.)

§ 12006. Strength limitations: authority to waive in time of war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President, the President may suspend the operation of any provision of section 12003, 12004, or 12005 of this title. So long as any such war or national emergency continues, any such suspension may be extended by the President.

(b) Any suspension under subsection (a) shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621, 1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of termination of the emergency.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2986.)

§ 12007. Reserve officers of the Army: distribution

The Secretary of the Army shall distribute the number of reserve commissioned officers, other than commissioned warrant officers, authorized in each commissioned grade between those assigned to reserve units organized to serve as units and those not assigned to such units. The Secretary shall distribute the number who are assigned to reserve units organized to serve as units among the units of each reserve component by prescribing appropriate tables of organization and tables of distribution. The Secretary shall distribute the number who are not assigned to such units between—

- (1) each special branch; and
- (2) all other branches taken together.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2986.)

§ 12008. Army Reserve and Air Force Reserve: warrant officers

The Secretary of the Army may prescribe the authorized strength of the Army Reserve in warrant officers. The Secretary of the Air Force may prescribe the authorized strength of the Air Force Reserve in warrant officers.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

§ 12009. Army and Air Force reserve components: temporary increases

(a) The authorized strength in any reserve grade, as prescribed under this chapter, for any reserve component under the jurisdiction of the Secretary of the Army or the Secretary of the Air Force is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under section 1211(a), 3036, 14304(b), 14314, or 14317 of this title.

(b) An authorized strength so increased is increased for no other purpose. While an officer holds that grade, the officer whose

appointment caused the increase is counted for the purpose of determining when other appointments, not under those sections, may be made in that grade.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

§ 12010. Computations for Navy Reserve and Marine Corps Reserve: rule when fraction occurs in final result

When there is a fraction in the final result of any computation under this chapter for the Navy Reserve or the Marine Corps Reserve, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987; amended Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(GG), (3)(I), Jan. 6, 2006, 119 Stat. 3233, 3234.)

§ 12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) LIMITATIONS.—(1) Of the total number of members of a reserve component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of officers of that reserve component who may be serving in the grade of:		
	Major	Lieutenant Colonel	Colonel
Army Reserve:			
10,000	1,390	740	230
11,000	1,529	803	242
12,000	1,668	864	252
13,000	1,804	924	262
14,000	1,940	984	272
15,000	2,075	1,044	282
16,000	2,210	1,104	291
17,000	2,345	1,164	300
18,000	2,479	1,223	309
19,000	2,613	1,282	318
20,000	2,747	1,341	327
21,000	2,877	1,400	336
Army National Guard:			
20,000	1,500	850	325
22,000	1,650	930	350
24,000	1,790	1,010	378
26,000	1,930	1,085	395
28,000	2,070	1,168	420
30,000	2,200	1,245	445
32,000	2,330	1,315	460
34,000	2,450	1,385	470
36,000	2,570	1,455	480
38,000	2,670	1,527	490
40,000	2,770	1,590	500
42,000	2,837	1,655	505
Marine Corps Reserve:			
1,000	99	63	20
1,200	103	67	21

Total number of members of a reserve component serving on full-time reserve component duty:	Number of officers of that reserve component who may be serving in the grade of:		
	Major	Lieutenant Colonel	Colonel
1,300	107	70	22
1,400	111	73	23
1,500	114	76	24
1,600	117	79	25
1,700	120	82	26
1,800	123	85	27
1,900	126	88	28
2,000	129	91	29
2,100	132	94	30
2,200	134	97	31
2,300	136	100	32
2,400	138	103	33
2,500	140	106	34
2,600	142	109	35
Air Force Reserve:			
500	83	85	50
1,000	155	165	95
1,500	220	240	135
2,000	285	310	170
2,500	350	369	203
3,000	413	420	220
3,500	473	464	230
4,000	530	500	240
4,500	585	529	247
5,000	638	550	254
5,500	688	565	261
6,000	735	575	268
7,000	770	595	280
8,000	805	615	290
10,000	835	635	300
Air National Guard:			
5,000	333	335	251
6,000	403	394	260
7,000	472	453	269
8,000	539	512	278
9,000	606	571	287
10,000	673	665	313
11,000	740	759	339
12,000	807	827	353
13,000	873	886	363
14,000	939	945	374
15,000	1,005	1,001	384
16,000	1,067	1,057	394
17,000	1,126	1,113	404
18,000	1,185	1,169	414
19,000	1,235	1,224	424
20,000	1,283	1,280	428.

(2) Of the total number of members of the Navy Reserve who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of lieutenant commander, commander, and captain may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of Naval Reserve serving on full-time reserve component duty:	Number of officers who may be serving in the grade of:		
	Lieutenant commander	Commander	Captain
10,000	807	447	141
11,000	867	467	153
12,000	924	485	163
13,000	980	503	173
14,000	1,035	521	183
15,000	1,088	538	193
16,000	1,142	555	203
17,000	1,195	565	213
18,000	1,246	575	223
19,000	1,291	585	233
20,000	1,334	595	242
21,000	1,364	603	250
22,000	1,384	610	258
23,000	1,400	615	265
24,000	1,410	620	270.

(b) DETERMINATIONS BY INTERPOLATION.—If the total number of members of a reserve component serving on full-time reserve component duty is between any two consecutive numbers in the first column of the appropriate table in paragraph (1) or (2) of subsection (a), the corresponding authorized strengths for each of the grades shown in that table for that component are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of members of a reserve component serving on full-time reserve component duty is more or less than the highest or lowest number, respectively, set forth in the first column of the appropriate table in paragraph (1) or (2) of subsection (a), the Secretary concerned shall fix the corresponding strengths for the grades shown in that table at the same proportion as is reflected in the nearest limit shown in the table.

(c) REALLOCATIONS TO LOWER GRADES.—Whenever the number of officers serving in any grade for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) SECRETARIAL WAIVER.—(1) Upon determining that it is in the national interest to do so, the Secretary of Defense may increase for a particular fiscal year the number of reserve officers that may be on full-time reserve component duty for a reserve component in a grade referred to in a table in subsection (a) by a number that does not exceed the number equal to 5 percent of the maximum number specified for the grade in that table.

(2) Whenever the Secretary exercises the authority provided in paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice in writing of the adjustment made.

(e) FULL-TIME RESERVE COMPONENT DUTY DEFINED.—In this section, the term “full-time reserve component duty” means the following duty:

(1) Active duty described in sections 10211, 10302, 10303, 10304, 10305, 12310, or 12402 of this title.

(2) Full-time National Guard duty (other than for training) under section 502(f) of title 32, except for duty under section 115(b)(1)(B) and (C) of this title and section 115(i)(9) of this title.

(3) Active duty described in section 708 of title 32.

(Added Pub. L. 96-513, title I, Sec. 103, Dec. 12, 1980, 94 Stat. 2844, Sec. 524; amended Pub. L. 97-86, title V, Sec. 503(b), Dec. 1, 1981, 95 Stat. 1108; Pub. L. 97-252, title V, Sec. 503(b), Sept. 8, 1982, 96 Stat. 727; Pub. L. 98-94, title V, Sec. 503(b), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98-525, title IV, Sec. 413(b), 414(a)(4)(A), (B)(i), Oct. 19, 1984, 98 Stat. 2518, 2519; Pub. L. 99-145, title IV, Sec. 413(b), Nov. 8, 1985, 99 Stat. 619; Pub. L. 100-180, div. A, title IV, Sec. 413(b), Dec. 4, 1987, 101 Stat. 1083; Pub. L. 101-189, div. A, title IV, Sec. 413(b), Nov. 29, 1989, 103 Stat. 1433; Pub. L. 102-190, div. A, title IV, Sec. 413(b), Dec. 5, 1991, 105 Stat. 1352; Pub. L. 103-160, div. A, title IV, Sec. 413(b), Nov. 30, 1993, 107 Stat. 1642; renumbered Sec. 12011 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(a)(2), Oct. 5, 1994, 108 Stat. 2988; Pub. L. 104-106, div. A, title IV, Sec. 414(a), Feb. 10, 1996, 110 Stat. 288; Pub. L. 105-261, div. A, title IV, Sec. 414(a), Oct. 17, 1998, 112 Stat. 1998; Pub. L. 106-65, div. A, title IV, Sec. 414(a), Oct. 5, 1999, 113 Stat. 586; Pub. L. 106-398, Sec. 1[[div. A], title IV, Secs. 415(a), 421(b), 424(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-94 to 1654A-96; Pub. L. 107-107, div. A, title IV, Sec. 415(a), Dec. 28, 2001, 115 Stat. 1070; Pub. L. 108-375, div. A, title IV, Sec. 416(h), Oct. 28, 2004, 118 Stat. 1869; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(HH), Jan. 6, 2006, 119 Stat. 3233; Pub. L. 110-417, [div. A], title V, Sec. 512(a), (b), Oct. 14, 2008, 122 Stat. 4439.)

§ 12012. Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) LIMITATIONS.—Of the total number of members of a reserve component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members in each of pay grades of E-8 and E-9 who may be serving on active duty under section 10211 or 12310, or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of members of that reserve component who may be serving in the grade of:	
	E-8	E-9
Army Reserve:		
10,000	1,052	154
11,000	1,126	168
12,000	1,195	180
13,000	1,261	191
14,000	1,327	202
15,000	1,391	213
16,000	1,455	224
17,000	1,519	235
18,000	1,583	246
19,000	1,647	257
20,000	1,711	268
21,000	1,775	278
Army National Guard:		
20,000	1,650	550
22,000	1,775	615

Total number of members of a reserve component serving on full-time reserve component duty:	Number of members of that reserve component who may be serving in the grade of:	
	E-8	E-9
24,000	1,950	645
26,000	2,100	675
28,000	2,250	715
30,000	2,400	735
32,000	2,500	760
34,000	2,600	780
36,000	2,700	800
38,000	2,800	820
40,000	2,900	830
42,000	3,000	840
Navy Reserve:		
10,000	340	143
11,000	364	156
12,000	386	169
13,000	407	182
14,000	423	195
15,000	435	208
16,000	447	221
17,000	459	234
18,000	471	247
19,000	483	260
20,000	495	273
21,000	507	286
22,000	519	299
23,000	531	312
24,000	540	325
Marine Corps Reserve:		
1,100	50	11
1,200	55	12
1,300	60	13
1,400	65	14
1,500	70	15
1,600	75	16
1,700	80	17
1,800	85	18
1,900	89	19
2,000	93	20
2,100	96	21
2,200	99	22
2,300	101	23
2,400	103	24
2,500	105	25
2,600	107	26
Air Force Reserve:		
500	75	40
1,000	145	75
1,500	208	105
2,000	270	130
2,500	325	150
3,000	375	170
3,500	420	190
4,000	460	210
4,500	495	230
5,000	530	250
5,500	565	270

Total number of members of a reserve component serving on full-time reserve component duty:	Number of members of that reserve component who may be serving in the grade of:	
	E-8	E-9
6,000	600	290
7,000	670	330
8,000	740	370
10,000	800	400
Air National Guard:		
5,000	1,020	405
6,000	1,070	435
7,000	1,120	465
8,000	1,170	490
9,000	1,220	510
10,000	1,270	530
11,000	1,320	550
12,000	1,370	570
13,000	1,420	589
14,000	1,470	608
15,000	1,520	626
16,000	1,570	644
17,000	1,620	661
18,000	1,670	678
19,000	1,720	695
20,000	1,770	712.

(b) DETERMINATIONS BY INTERPOLATION.—If the total number of members of a reserve component serving on full-time reserve component duty is between any two consecutive numbers in the first column of the table in subsection (a), the corresponding authorized strengths for each of the grades shown in that table for that component are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of members of a reserve component serving on full-time reserve component duty is more or less than the highest or lowest number, respectively, set forth in the first column of the table in subsection (a), the Secretary concerned shall fix the corresponding strengths for the grades shown in the table at the same proportion as is reflected in the nearest limit shown in the table.

(c) REALLOCATIONS TO LOWER GRADE.—Whenever the number of members serving in pay grade E-9 for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for pay grade E-8.

(d) SECRETARIAL WAIVER.—(1) Upon determining that it is in the national interest to do so, the Secretary of Defense may increase for a particular fiscal year the number of reserve enlisted members that may be on active duty or full-time National Guard duty as described in subsection (a) for a reserve component in a pay grade referred to in a table in subsection (a) by a number that does not exceed the number equal to 5 percent of the maximum number specified for that grade and reserve component in the table.

(2) Whenever the Secretary exercises the authority provided in paragraph (1), the Secretary shall submit to the Committee on

Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice in writing of the adjustment made.

(e) **FULL-TIME RESERVE COMPONENT DUTY DEFINED.**—In this section, the term “full-time reserve component duty” has the meaning given the term in section 12011(e) of this title.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987; amended Pub. L. 104–106, div. A, title IV, Sec. 414(b), title XV, Sec. 1501(b)(10), Feb. 10, 1996, 110 Stat. 288, 496; Pub. L. 105–261, div. A, title IV, Sec. 414(b), Oct. 17, 1998, 112 Stat. 1998; 106–65, div. A, title IV, Sec. 414(b), Oct. 5, 1999, 113 Stat. 586; Pub. L. 106–398, Sec. 1[[div. A], title IV, Secs. 415(b), 421(c), 424(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94, to 1654A–96; Pub. L. 107–107, div. A, title IV, Sec. 415(b), Dec. 28, 2001, 115 Stat. 1073; Pub. L. 108–375, div. A, title X, Sec. 1084(d)(34), Oct. 28, 2004, 118 Stat. 2063; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(II), Jan. 6, 2006, 119 Stat. 3233; Pub. L. 110–417, [div. A], title V, Sec. 512(c), Oct. 14, 2008, 122 Stat. 4440.)

CHAPTER 1203—ENLISTED MEMBERS

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§ 12101. Definition

In this chapter, the term “enlistment” means original enlistment or reenlistment.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(b)(1), Oct. 5, 1994, 108 Stat. 2988.)

§ 12102. Reserve components: qualifications

(a) To become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by section 502 of this title, or be transferred to that component according to law. In addition, to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, he must meet the requirements of section 12107 of this title.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be enlisted as a Reserve of any armed force under the jurisdiction of that Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 17, Sec. 510; Pub. L. 88–236, Dec. 23, 1963, 77 Stat. 474; Pub. L. 90–130, Sec. 1(2), Nov. 8, 1967, 81 Stat. 374; Pub. L. 90–623, Sec. 2(3), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–513, title V, Sec. 511(13), Dec. 12, 1980, 94 Stat. 2921; renumbered Sec. 12102 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1631(a), 1662(b)(2), 1675(a), Oct. 5, 1994, 108 Stat. 2964, 2989, 3017; Pub. L. 104–106, div. A, title XV, Sec. 1501(a)(5)(A), Feb. 10, 1996, 110 Stat. 495.)

§ 12103. Reserve components: terms

(a) Except as otherwise prescribed by law, enlistments as Reserves are for terms prescribed by the Secretary concerned. However, an enlistment that is in effect at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency, and that would otherwise expire, continues in effect until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a person who is qualified for enlistment for active duty in an armed force, and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), may be enlisted as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall serve—

(1) on active duty for a period of not less than two years; and

(2) the rest of his period of enlistment as a member of the Ready Reserve.

(c) In time of war or of national emergency declared by Congress the term of service of an enlisted member transferred to a reserve component according to law, that would otherwise expire, continues until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(d) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a non-prior-service person who is qualified for induction for active duty in an armed force and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in section 6(c)(2)(A)(ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall perform an initial period of active duty for training of not less than twelve weeks to commence insofar as practicable within one year after the date of that enlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 18, Sec. 511; Pub. L. 85-861, Sec. 1(8), Sept. 2, 1958, 72 Stat. 1439; Pub. L. 88-110, Sec. 3, Sept. 3, 1963, 77 Stat. 135; Pub. L. 90-168, Sec. 2(11), Dec. 1, 1967, 81 Stat. 523; Pub. L. 94-106, title VIII, Sec. 802(a), Oct. 7, 1975, 89 Stat. 537; Pub. L. 95-485, title IV, Sec. 405(c)(1), Oct. 20, 1978, 92 Stat. 1615; Pub. L. 96-107, title VIII, Sec. 805(a), Nov. 9, 1979, 93 Stat. 812; Pub. L. 96-513, title V, Sec. 511(14), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 97-252, title XI, Sec. 1115(a), Sept. 8, 1982, 96 Stat. 750; Pub. L. 97-295, Sec. 1(6), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98-94, title X, Sec. 1022(a)(1), Sept. 24, 1983, 97 Stat. 670; renumbered Sec. 12103, Pub. L. 103-337, div. A, title XVI, Sec. 1662(b)(2), Oct. 5, 1994, 108 Stat. 2989; Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title V, Sec. 533(a), Dec. 2, 2002, 116 Stat. 2547; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(JJ), Jan. 6, 2006, 119 Stat. 3233.)

§ 12104. Reserve components: transfers

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), is entitled, if he is qualified and accepted, to be enlisted in any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be enlisted as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so enlisted or in any other armed force in which he is later enlisted or appointed.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 18, Sec. 512; Pub. L. 96-513, title V, Sec. 511(15), Dec. 12, 1980, 94 Stat. 2921; renumbered Sec. 12104, Pub. L. 103-337, div. A, title XVI, Sec. 1662(b)(2), Oct. 5, 1994, 108 Stat. 2989.)

§ 12105. Army Reserve and Air Force Reserve: transfer from Guard components

(a) Under such regulations as the Secretary concerned may prescribe—

(1) an enlisted member of the Army National Guard of the United States may be transferred in grade to the Army Reserve; and

(2) an enlisted member of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Upon such a transfer, the member transferred is eligible for promotion to the highest regular or reserve grade ever held by him in the Army, if transferred under subsection (a)(1), or the Air Force, if transferred under subsection (a)(2), if his service has been honorable.

(c) A transfer under this section may only be made with the consent of the governor or other appropriate authority of the State concerned.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(b)(1), Oct. 5, 1994, 108 Stat. 2988.)

§ 12106. Army and Air Force Reserve: transfer to upon withdrawal as member of National Guard

(a) An enlisted member of the Army National Guard of the United States who ceases to be a member of the Army National Guard becomes a member of the Army Reserve unless he is also discharged from his enlistment as a Reserve.

(b) An enlisted member of the Air National Guard of the United States who ceases to be a member of the Air National

Guard becomes a member of the Air Force Reserve unless he is also discharged from his enlistment as a Reserve.

(c) An enlisted member who becomes a member of the Army Reserve or the Air Force Reserve under this section ceases to be a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(b)(1), Oct. 5, 1994, 108 Stat. 2989.)

§ 12107. Army National Guard of United States; Air National Guard of the United States: enlistment in

(a) Except as provided in subsection (c), to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, a person must—

(1) be enlisted in the Army National Guard or the Air National Guard, as the case may be;

(2) subscribe to the oath set forth in section 304 of title 32; and

(3) be a member of a federally recognized unit or organization of the Army National Guard or the Air National Guard, as the case may be, in the grade in which he is to be enlisted as a Reserve.

(b)(1) Under regulations to be prescribed by the Secretary of the Army, a person who enlists in the Army National Guard, or whose term of enlistment in the Army National Guard is extended, shall be concurrently enlisted, or his term of enlistment shall be concurrently extended, as the case may be, as a Reserve of the Army for service in the Army National Guard of the United States.

(2) Under regulations to be prescribed by the Secretary of the Air Force, a person who enlists in the Air National Guard, or whose term of enlistment in the Air National Guard is extended, shall be concurrently enlisted, or his term of enlistment shall be concurrently extended, as the case may be, as a Reserve of the Air Force for service in the Air National Guard of the United States.

(c)(1) A member of the Army Reserve who enlists in the Army National Guard in his reserve grade, and is a member of a federally recognized unit or organization of the Army National Guard, becomes a member of the Army National Guard of the United States and ceases to be a member of the Army Reserve.

(2) A member of the Air Force Reserve who enlists in the Air National Guard in his reserve grade, and is a member of a federally recognized unit or organization of the Air National Guard, becomes a member of the Air National Guard of the United States and ceases to be a member of the Air Force Reserve.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(b)(1), Oct. 5, 1994, 108 Stat. 2989.)

§ 12108. Enlisted members: discharge or retirement for years of service or for age

Each reserve enlisted member of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretary concerned shall—

(1) be transferred to the Retired Reserve if the member is qualified for such transfer and does not request (in accordance

with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged if the member is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 107-107, title V, Sec. 517(f)(1), Dec. 28, 2001, 115 Stat. 1095.)

CHAPTER 1205—APPOINTMENT OF RESERVE OFFICERS

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§ 12201. Reserve officers: qualifications for appointment

(a)(1) To become an officer of a reserve component a person must be appointed as a Reserve of an armed force in a grade corresponding to a grade authorized for the regular component of the armed force concerned and, except as provided in paragraph (2), subscribe to the oath prescribed by section 3331 of title 5. In addition, to become an officer of the Army National Guard of the United States or the Air National Guard of the United States, he must first be appointed to, and be federally recognized in, the same grade in the Army National Guard or the Air National Guard, as the case may be.

(2) If an officer is transferred from the active-duty list of an armed force to a reserve active-status list of an armed force in accordance with regulations prescribed by the Secretary of Defense, the officer is not required to subscribe to the oath referred to in paragraph (1) in order to qualify for an appointment under that paragraph.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the appointment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be appointed as a Reserve unless he is at least 18 years of age and—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be as-

signed, may be appointed as a Reserve of any armed force under the jurisdiction of that Secretary.

(d) In prescribing age qualifications under subsection (b) for the appointment of persons as Reserves of the armed forces under his jurisdiction, the Secretary concerned may not prescribe a maximum age qualification of less than 47 years of age for the initial appointment of a person as a Reserve to serve in a health profession specialty which has been designated by the Secretary concerned as a specialty critically needed in wartime.

(Aug. 10, 1956, ch. 1041, 70A Stat. 24, Sec. 591; Pub. L. 85-861, Sec. 1(10)(A), Sept. 2, 1958, 72 Stat. 1440; Pub. L. 88-236, Dec. 23, 1963, 77 Stat. 474; Pub. L. 89-718, Sec. 4, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90-130, Sec. 1(3), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96-513, title V Sec. 511(16), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 100-180, div. A, title VII, Sec. 718(a), Dec. 4, 1987, 101 Stat. 1115; renumbered Sec. 12201 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1631(b), 1662(c)(2), Oct. 5, 1994, 108 Stat. 2964, 2990; Pub. L. 104-106, div. A, title XV, Sec. 1501(a)(5)(B), (b)(11)(A), Feb. 10, 1996, 110 Stat. 495, 496; Pub. L. 108-375, div. A, title V, Sec. 501(c)(3), Oct. 28, 2004, 118 Stat. 1874; Pub. L. 111-383, div. A, title V, Sec. 515, Jan. 7, 2011, 124 Stat. 4213.)

§ 12202. Commissioned officer grades

Except for commissioned warrant officers, the reserve commissioned officer grades in each armed force are those authorized for regular commissioned officers of that armed force.

(Added Pub. L. 85-861, Sec. 1(10)(B), Sept. 2, 1958, 72 Stat. 1440, Sec. 592; renumbered Sec. 12202, Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

§ 12203. Commissioned officers: appointment, how made; term

(a) Appointments of reserve officers in commissioned grades of lieutenant colonel and commander or below, except commissioned warrant officer, shall be made by the President alone. Appointments of reserve officers in commissioned grades above lieutenant colonel and commander shall be made by the President, by and with the advice and consent of the Senate, except as provided in section 624, 12213, or 12214 of this title.

(b) Subject to the authority, direction, and control of the President, the Secretary concerned may appoint as a reserve commissioned officer any regular officer transferred from the active-duty list of an armed force to the reserve active-status list of a reserve component under section 647 of this title, notwithstanding the requirements of subsection (a).

(c) Appointments of Reserves in commissioned grades are for an indefinite term and are held during the pleasure of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, Sec. 593; Pub. L. 85-861, Sec. 1(10)(C), Sept. 2, 1958, 72 Stat. 1440; Pub. L. 92-129, title VI, Sec. 601, Sept. 28, 1971, 85 Stat. 361; Pub. L. 96-513, title V, Sec. 501(7), Dec. 12, 1980, 94 Stat. 2907; renumbered Sec. 12203 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1632, 1662(c)(2), 1675(b)(1), Oct. 5, 1994, 108 Stat. 2965, 2990, 3017; Pub. L. 104-106, div. A, title XV, Sec. 1501(a)(6), Feb. 10, 1996, 110 Stat. 495; Pub. L. 108-375, div. A, title V, Sec. 501(c)(4), Oct. 28, 2004, 118 Stat. 1874; Pub. L. 111-383, div. A, title X, Sec. 1075(b)(54), Jan. 7, 2011, 124 Stat. 4372.)

§ 12204. Commissioned officers: original appointment; limitation

(a) No person may be appointed as a Reserve in a commissioned grade above major or lieutenant commander, unless—

(1) he was formerly a commissioned officer of an armed force; or

(2) such an appointment is recommended by a board of officers convened by the Secretary concerned.

(b) This section does not apply to adjutants general and assistant adjutants general of the several States, Puerto Rico, and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, Sec. 594; Pub. L. 100-456, div. A, title XII, Sec. 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered Sec. 12204, Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

§ 12205. Commissioned officers: appointment; educational requirement

(a) IN GENERAL.—No person may be appointed to a grade above the grade of first lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above the grade of lieutenant (junior grade) in the Navy Reserve, or be federally recognized in a grade above the grade of first lieutenant as a member of the Army National Guard or Air National Guard, unless that person has been awarded a baccalaureate degree by a qualifying educational institution.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) The appointment to or recognition in a higher grade of a person who is appointed in or assigned for service in a health profession for which a baccalaureate degree is not a condition of original appointment or assignment.

(2) The appointment in the Navy Reserve or Marine Corps Reserve of a person appointed for service as an officer designated as a limited duty officer.

(3) The appointment in the Navy Reserve of a person appointed for service under the Naval Aviation Cadet (NAVCAD) program or the Seaman to Admiral program.

(4) The appointment to or recognition in a higher grade of any person who was appointed to, or federally recognized in, the grade of captain or, in the case of the Navy, lieutenant before October 1, 1995.

(5) Recognition in the grade of captain or major in the Alaska Army National Guard of a person who resides permanently at a location in Alaska that is more than 50 miles from each of the cities of Anchorage, Fairbanks, and Juneau, Alaska, by paved road and who is serving in a Scout unit or a Scout supporting unit.

(c) QUALIFYING EDUCATIONAL INSTITUTIONS.—(1) A qualifying educational institution for purposes of this section is an educational institution that is accredited or that meets the requirements of paragraph (2).

(2)(A) An unaccredited educational institution shall be considered to be a qualifying educational institution for purposes of the appointment or recognition of a person who is a graduate of that institution if the Secretary concerned determines that (as of the year of the graduation of that person from that institution) at least three educational institutions that are accredited and that maintain Reserve Officers' Training Corps programs each generally grant baccalaureate degree credit for completion of courses of the unaccredited institution equivalent to the baccalaureate degree

credit granted by the unaccredited institution for the completion of those courses.

(B) In order to assist the Secretary concerned in making determinations under subparagraph (A), any unaccredited institution that seeks to be considered to be a qualifying educational institution for purposes of this paragraph shall submit to the Secretary of Defense each year such information as the Secretary may require concerning the program of instruction at that institution.

(C) In the case of a person with a degree from an unaccredited institution that is a qualifying educational institution under this paragraph, the degree may not have been awarded more than eight years before the date on which the person is to be appointed to, or recognized in, the grade of captain or, in the case of the Navy Reserve, lieutenant, in order for that person to be considered for purposes of subsection (a) to have been awarded a baccalaureate degree by a qualifying educational institution.

(d) WAIVER AUTHORITY FOR ARMY OCS GRADUATES AND CERTAIN MARINE CORPS OFFICERS.—(1) The Secretary of the Army may waive the applicability of subsection (a) to any officer whose original appointment in the Army as a Reserve officer is through the Army Officer Candidate School program.

(2) The Secretary of the Navy may waive the applicability of subsection (a) to any officer whose original appointment in the Marine Corps as a Reserve officer is through the Marine Corps meritorious commissioning program.

(3) Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than two years after the waiver is granted. The Secretary concerned may provide for such a waiver to be effective before the date of the waiver, as appropriate in an individual case.

(Added Pub. L. 102–484, div. A, title V, Sec. 515(a), Oct. 23, 1992, 106 Stat. 2406, Sec. 596; renumbered Sec. 12205 and amended Pub. L. 103–337, div. A, title V, Sec. 519, 520, title XVI, Sec. 1662(c)(2), Oct. 5, 1994, 108 Stat. 2755, 2990; Pub. L. 104–201, div. A, title V, Secs. 504, 505, title X, Sec. 1074(a)(22), Sept. 23, 1996, 110 Stat. 2512, 2660; Pub. L. 107–107, div. A, title V, Sec. 512(a), Dec. 28, 2001, 115 Stat. 1092; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(KK), Jan. 6, 2006, 119 Stat. 3234.)

§ 12206. Commissioned officers: appointment of former commissioned officers

Under regulations prescribed by the Secretary of Defense, a person who is a former commissioned officer may, if otherwise qualified, be appointed as a reserve officer of the Army, Navy, Air Force, or Marine Corps. A person so appointed—

(1) may be placed on the reserve active-status list of that armed force in the grade equivalent to the permanent regular or reserve grade, and in the same competitive category, in which the person previously served satisfactorily on active duty or in an active status; and

(2) may be credited for the purpose of determining date of rank under section 741(d) of this title with service in grade equal to that held by that person when discharged or separated.

(Added Sec. 596a and renumbered Sec. 12206, Pub. L. 103–337, div. A, title XVI, Sec. 1633, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2965, 2990.)

§ 12207. Commissioned officers: service credit upon original appointment

(a)(1) For the purpose of determining the grade and the rank within grade of a person receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) in the Army, Navy, Air Force, or Marine Corps, the person shall be credited at the time of the appointment with any commissioned service (other than service as a commissioned warrant officer) performed before such appointment as a regular officer, or as a reserve officer in an active status, in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, a person who is receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps, or a designation in, or an assignment to, an officer category in which advanced education or training is required and who has advanced education or training, shall be credited with constructive service for such education, training, or experience, as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed or designated in, or assigned to, officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this subparagraph to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for such appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal health professional training required by the armed forces, and (ii) not more than one year for each additional year of such

graduate-level training or experience creditable toward certification in a speciality required by the armed force concerned.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit for experience as a physician or dentist, if appointed, assigned, or designated as a medical or dental officer.

(2)(A) If the Secretary of Defense determines that the number of officers in a health profession described in subparagraph (B) who are serving in an active status in a reserve component of the Army, Navy, or Air Force in grades below major or lieutenant commander is critically below the number needed in such health profession by such reserve component in such grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment as an officer for service in such health profession with a period of constructive credit in such amount (in addition to any amount credited such person under paragraph (1)) as will result in the grade of such person being that of captain or, in the case of the Navy Reserve, lieutenant.

(B) The types of health professions referred to in subparagraph (A) include the following:

(i) Any health profession performed by officers in the Medical Corps of the Army or the Navy or by officers of the Air Force designated as a medical officer.

(ii) Any health profession performed by officers in the Dental Corps of the Army or the Navy or by officers of the Air Force designated as a dental officer.

(iii) Any health profession performed by officers in the Medical Service Corps of the Army or the Navy or by officers of the Air Force designated as a medical service officer or biomedical sciences officer.

(iv) Any health profession performed by officers in the Army Medical Specialist Corps.

(v) Any health profession performed by officers of the Nurse Corps of the Army or the Navy or by officers of the Air Force designated as a nurse.

(vi) Any health profession performed by officers in the Veterinary Corps of the Army or by officers designated as a veterinary officer.

(3) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of officers covered by paragraph (2), the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment as a reserve officer of the Army, Air Force, or Marine Corps in the grade of major or as a reserve officer of the Navy in the grade of lieutenant commander.

(4) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer or assignment to or designation in an officer category in which advanced education or training or special experience is required.

(c) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(d) If the Secretary of Defense determines that the number of qualified judge advocates serving on the active-duty list of the Army, Navy, Air Force, or Marine Corps in grades below lieutenant commander or major is critically below the number needed by that armed force in those grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment with a view to assignment to the Judge Advocate General's Corps of the Army or appointment to the Judge Advocate General's Corps of the Navy, or who is receiving an original appointment in the Air Force or Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any amount credited such person under subsection (b)) as will result in the grade of such person being that of captain or, in the case of the Navy, lieutenant, and the date of rank of such person being junior to that of all other officers of the same grade serving on the active-duty list.

(e) Constructive service credited an officer under subsection (b) or (d) shall be used only for determining the officer's—

- (1) initial grade as a reserve officer;
- (2) rank in grade; and
- (3) service in grade for promotion eligibility.

(f) The grade and position on the reserve active-status list of a person receiving an appointment as a reserve officer who at the time of appointment is credited with service under this section shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added Sec. 596b and renumbered Sec. 12207, Pub. L. 103-337, div. A, title XVI, Sec. 1634, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2965, 2990; amended Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(LL), Jan. 6, 2006, 119 Stat. 3234; Pub. L. 110-181, div. A, title V, Sec. 512, Jan. 28, 2008, 122 Stat. 98.)

§ 12208. Officers: appointment upon transfer

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), is entitled, if he is qualified and accepted, to be appointed as an officer of any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be appointed as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the

total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so appointed or in any other armed force in which he is later appointed or enlisted.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, Sec. 595; Pub. L. 96-513, title V, Sec. 511(17), Dec. 12, 1980, 94 Stat. 2921; renumbered Sec. 12208, Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

§ 12209. Officer candidates: enlisted Reserves

(a) Within such numbers as the Secretary concerned may prescribe, enlisted Reserves may, with their consent, be selected for training as officer candidates. Enlisted Reserves so selected shall be designated as officer candidates during that training. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be so selected or designated unless—

(1) he is on active duty; or

(2) the governor or other appropriate authority of the jurisdiction concerned consents.

(b) The enlistment or term of service of a Reserve who is designated as an officer candidate under this section is extended to include any period, beyond its normal expiration date, during which he is an officer candidate.

(c) While he is on active duty, other than active duty for training without pay, or performing authorized travel to and from that duty, an officer candidate designated under this section is entitled to the pay and allowances of his enlisted grade, but not less than those prescribed for pay grade E-2.

(d) An officer candidate designated under this section may not participate in the program of a reserve officer training corps of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, Sec. 600; renumbered Sec. 12209, Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(12)(A), Feb. 10, 1996, 110 Stat. 496.)

§ 12210. Attending Physician to the Congress: reserve grade

While serving as Attending Physician to the Congress, a Reserve holds the reserve grade of major general or rear admiral, as appropriate.

(Added Pub. L. 99-661, div. A, title V, Sec. 508(d)(1)(A), Nov. 14, 1986, 100 Stat. 3867, Sec. 600a; renumbered Sec. 12210, Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(12)(B), Feb. 10, 1996, 110 Stat. 496; Pub. L. 109-364, div. A, title V, Sec. 507(a)(2)(A), (B), Oct. 17, 2006, 120 Stat. 2180.)

§ 12211. Officers: Army National Guard of the United States

(a) Upon being federally recognized, an officer of the Army National Guard shall be appointed as a Reserve for service as a member of the Army National Guard of the United States in the grade

that he holds in the Army National Guard. However, an officer of the Army Reserve who is federally recognized as an officer of the Army National Guard becomes an officer of the Army National Guard of the United States and ceases to be an officer of the Army Reserve. The acceptance of an appointment as a Reserve for service as a member of the Army National Guard of the United States by an officer of the Army National Guard does not vacate his office in the Army National Guard.

(b) When an officer of the Army National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Army National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Army National Guard of the United States is ordered to active duty, any officer of the Army National Guard who is not a Reserve of the Army may be appointed by the President as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 193, Sec. 3351; renumbered Sec. 12211, Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

§ 12212. Officers: Air National Guard of the United States

(a) Upon being federally recognized, an officer of the Air National Guard shall be appointed as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard. However, an officer of the Air Force Reserve who is federally recognized as an officer of the Air National Guard becomes an officer of the Air National Guard of the United States and ceases to be an officer of the Air Force Reserve. The acceptance of an appointment as a Reserve for service as a member of the Air National Guard of the United States by an officer of the Air National Guard does not vacate his office in the Air National Guard.

(b) When an officer of the Air National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Air National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Air National Guard of the United States is ordered to active duty, any officer of the Air National Guard who is not a Reserve of the Air Force may be appointed by the President as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 519, Sec. 8351; renumbered Sec. 12212, Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

§ 12213. Officers; Army Reserve: transfer from Army National Guard of the United States

(a) Under such regulations as the Secretary of the Army may prescribe, and with the consent of the governor or other appropriate authority of the State concerned, an officer of the Army National Guard of the United States may be transferred in grade to the Army Reserve.

(b) Unless discharged from his appointment as a Reserve, an officer of the Army National Guard of the United States whose Federal recognition as a member of the Army National Guard is withdrawn becomes a member of the Army Reserve. An officer who so becomes a member of the Army Reserve ceases to be a member of the Army National Guard of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 194, Sec. 3352; Pub. L. 85-861, Sec. 1(80)(A), Sept. 2, 1958, 72 Stat. 1468; Pub. L. 86-559, Sec. 1(7), June 30, 1960, 74 Stat. 265; Pub. L. 100-456, div. A, title XII, Sec. 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered Sec. 12213 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1636(a), 1662(c)(3), 1675(b)(2), Oct. 5, 1994, 108 Stat. 2968, 2990, 3017; Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(13)(A), (14), Feb. 10, 1996, 110 Stat. 496.)

§ 12214. Officers; Air Force Reserve: transfer from Air National Guard of the United States

(a) Under such regulations as the Secretary of the Air Force may prescribe, and with the consent of the governor or other appropriate authority of the State concerned, an officer of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Unless discharged from his appointment as a Reserve, an officer of the Air National Guard of the United States whose Federal recognition as a member of the Air National Guard is withdrawn becomes a member of the Air Force Reserve. An officer who so becomes a member of the Air Force Reserve ceases to be a member of the Air National Guard of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 520, Sec. 8352; Pub. L. 87-651, title I, Sec. 126, Sept. 7, 1962, 76 Stat. 514; Pub. L. 100-456, div. A, title XII, Sec. 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered Sec. 12214 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(3), 1675(b)(2), Oct. 5, 1994, 108 Stat. 2990, 3017; Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

§ 12215. Commissioned officers: reserve grade of adjutants general and assistant adjutants general

(a) The adjutant general or an assistant adjutant general of the Army National Guard of a State may, upon being extended Federal recognition, be appointed as a reserve officer of the Army as of the date on which he is so recognized.

(b) The adjutant general or an assistant adjutant general of the Air National Guard of a State may be appointed in the reserve commissioned grade in which Federal recognition in the Air National Guard is extended to him.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(c)(1), Oct. 5, 1994, 108 Stat. 2990.)

CHAPTER 1207—WARRANT OFFICERS

- Sec.
12241. Warrant officers: grades; appointment, how made; term.
12242. Warrant officers: promotion.
12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.
12244. Warrant officers: discharge or retirement for years of service or for age.

§ 12241. Warrant officers: grades; appointment, how made; term

(a) The permanent reserve warrant officer grades in each armed force are those prescribed for regular warrant officers by section 571(a) of this title.

(b) Appointments in permanent reserve warrant officer grades shall be made in the same manner as is prescribed for regular warrant officer grades by section 571(b) of this title.

(c) Appointments as Reserves in permanent warrant officer grades are for an indefinite term and are held during the pleasure of the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, Sec. 597; Pub. L. 99-145, title V, Sec. 531(b), Nov. 8, 1985, 99 Stat. 633; Pub. L. 102-190, div. A, title XI, Sec. 1131(2), Dec. 5, 1991, 105 Stat. 1505; renumbered Sec. 12241, Pub. L. 103-337, div. A, title XVI, Sec. 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991; Pub. L. 111-383, div. A, title V, Sec. 502(b), Jan. 7, 2011, 124 Stat. 4207.)

§ 12242. Warrant officers: promotion

The promotion of permanent reserve warrant officers not on the warrant officer active-duty list to permanent reserve warrant officer grades shall be governed by such regulations as the Secretary concerned may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, Sec. 598; Pub. L. 102-190, div. A, title XI, Sec. 1131(3), Dec. 5, 1991, 105 Stat. 1505; renumbered Sec. 12242, Pub. L. 103-337, div. A, title XVI, Sec. 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

§ 12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent reserve warrant officers of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, Sec. 599; renumbered Sec. 12243, Pub. L. 103-337, div. A, title XVI, Sec. 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

§ 12244. Warrant officers: discharge or retirement for years of service or for age

Each reserve warrant officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the max-

imum years of service or age prescribed by the Secretary concerned shall—

(1) be transferred to the Retired Reserve if the warrant officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged if the warrant officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 107-107, div. A, title V, Sec. 517(e)(1), Dec. 28, 2001, 115 Stat. 1095.)

CHAPTER 1209—ACTIVE DUTY

Sec.	
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§ 12301. Reserve components generally

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

(b) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection

without the consent of the governor of the State (or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard).

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty as provided in subsection (a), members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being so ordered to active duty.

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

(e) The period of time allowed between the date when a Reserve ordered to active duty as provided in subsection (a) is alerted for that duty and the date when the Reserve is required to enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

(f) The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

(g)(1) A member of a reserve component may be ordered to active duty without his consent if the Secretary concerned determines that the member is in a captive status. A member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his captive status is terminated.

(2) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly among the armed forces under the jurisdiction of the Secretary. A determination for the purposes of this subsection that a member is in a captive status shall be made pursuant to such regulations.

(3) In this section, the term “captive status” means the status of a member of the armed forces who is in a missing status (as defined in section 551(2) of title 37) which occurs as the result of a hostile action and is related to the member’s military status.

(h)(1) When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty—

(A) to receive authorized medical care;

(B) to be medically evaluated for disability or other purposes; or

(C) to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

(2) A member ordered to active duty under this subsection may, with the member’s consent, be retained on active duty, if the

Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27, Sec. 672; Pub. L. 85-861, Sec. 1(13), 33(a)(5), Sept. 2, 1958, 72 Stat. 1440, 1564; Pub. L. 96-357, Sec. 6, Sept. 24, 1980, 94 Stat. 1182; Pub. L. 96-584, Sec. 1, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 99-500, Sec. 101(c) [title IX, Sec. 9122], Oct. 18, 1986, 100 Stat. 1783-82, 1783-127, and Pub. L. 99-591, Sec. 101(c) [title IX, Sec. 9122], Oct. 30, 1986, 100 Stat. 3341-82, 3341-127; Pub. L. 99-661, div. A, title V, Sec. 522, 524(a), Nov. 14, 1986, 100 Stat. 3871; Pub. L. 100-456, div. A, title XII, Sec. 1234(a)(1), (2), Sept. 29, 1988, 102 Stat. 2059; renumbered Sec. 12301 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), 1675(c)(1), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 106-65, div. A, title V, Sec. 512, Oct. 5, 1999, 113 Stat. 592; Pub. L. 108-375, div. A, title V, Sec. 514(a), Oct. 28, 2004, 118 Stat. 1882.)

§ 12302. Ready Reserve

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty, without their consent, under this section at any one time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 28, Sec. 673; Pub. L. 85-861, Secs. 1(14), 33(a)(5), Sept. 2, 1958, 72 Stat. 1441, 1564; Pub. L. 93-155, title III, Sec. 303(a), Nov. 16, 1973, 87 Stat. 607; renumbered Sec. 12302, Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992; Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(61), Nov. 24, 2003, 117 Stat. 1603; Pub. L. 108-375, div. A, title V, Sec. 514(b), Oct. 28, 2004, 118 Stat. 1883.)

§ 12303. Ready Reserve; members not assigned to, or participating satisfactorily in, units

(a) Notwithstanding any other provision of law, the President may order to active duty any member of the Ready Reserve of an armed force who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) A member who is ordered to active duty under this section may be required to serve on active duty until his total service on active duty equals 24 months. If his enlistment or other period of military service would expire before he has served the required period under this section, it may be extended until he has served the required period.

(c) To achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this section, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

(Added Pub. L. 90-40, Sec. 6(1), June 30, 1967, 81 Stat. 105, Sec. 673a; renumbered Sec. 12303, Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

(a) **AUTHORITY.**—Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty for not more than 365 days.

(b) **SUPPORT FOR RESPONSES TO CERTAIN EMERGENCIES.**—The authority under subsection (a) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving—

(1) a use or threatened use of a weapon of mass destruction; or

(2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in significant loss of life or property.

(c) **LIMITATIONS.**—(1) No unit or member of a reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or section 12406 of this title or, except as provided in subsection (b), to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(2) Not more than 200,000 members of the Selected Reserve and the Individual Ready Reserve may be on active duty under this section at any one time, of whom not more than 30,000 may be members of the Individual Ready Reserve.

(3) No unit or member of a reserve component may be ordered to active duty under this section to provide assistance referred to in subsection (b) unless the President determines that the requirements for responding to an emergency referred to in that subsection have exceeded, or will exceed, the response capabilities of local, State, and Federal civilian agencies.

(d) EXCLUSION FROM STRENGTH LIMITATIONS.—Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

(e) POLICIES AND PROCEDURES.—The Secretary of Defense and the Secretary of Homeland Security shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) NOTIFICATION OF CONGRESS.—Whenever the President authorizes the Secretary of Defense or the Secretary of Homeland Security to order any unit or member of the Selected Reserve or Individual Ready Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

(g) TERMINATION OF DUTY.—Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the Individual Ready Reserve, is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by—

- (1) order of the President, or
- (2) law.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(i) CONSIDERATIONS FOR INVOLUNTARY ORDER TO ACTIVE DUTY.—(1) In determining which members of the Selected Reserve and Individual Ready Reserve will be ordered to duty without their consent under this section, appropriate consideration shall be given to—

- (A) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;
- (B) the frequency of assignments during service career;
- (C) family responsibilities; and
- (D) employment necessary to maintain the national health, safety, or interest.

(2) The Secretary of Defense shall prescribe such policies and procedures as the Secretary considers necessary to carry out this subsection.

(j) DEFINITIONS.—In this section:

- (1) The term “Individual Ready Reserve mobilization category” means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.

(2) The term “weapon of mass destruction” has the meaning given that term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

(Added Pub. L. 94–286, Sec. 1, May 14, 1976, 90 Stat. 517, Sec. 673b; amended Pub. L. 96–584, Sec. 2, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 97–295, Sec. 1(9), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 99–661, div. A, title V, Sec. 521, Nov. 14, 1986, 100 Stat. 3870; renumbered Sec. 12304 and amended, Pub. L. 103–337, div. A, title V, Sec. 511(a), title XVI, Sec. 1662(e)(2), 1675(c)(2), Oct. 5, 1994, 108 Stat. 2752, 2992, 3017; Pub. L. 105–85, title V, Sec. 511(b)–(e)(1), Nov. 18, 1997, 111 Stat. 1728; Pub. L. 105–261, div. A, title V, Sec. 511(a), Oct. 17, 1998, 112 Stat. 2005; Pub. L. 107–296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, Sec. 514(a), Dec. 2, 2002, 116 Stat. 2539; Pub. L. 108–136, div. A, title V, Sec. 515, Nov. 24, 2003, 117 Stat. 1460; Pub. L. 108–375, div. A, title V, Sec. 514(c), Oct. 28, 2004, 118 Stat. 1883; Pub. L. 109–364, div. A, title V, Sec. 522, title X, Sec. 1076(c), Oct. 17, 2006, 120 Stat. 2192, 2406; Pub. L. 110–181, div. A, title X, Secs. 1063(a)(15), 1068(c), Jan. 28, 2008, 122 Stat. 322, 326.)

§ 12305. Authority of President to suspend certain laws relating to promotion, retirement, and separation

(a) Notwithstanding any other provision of law, during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of section 12301, 12302, or 12304 of this title, the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.

(b) A suspension made under the authority of subsection (a) shall terminate (1) upon release from active duty of members of the reserve component ordered to active duty under the authority of section 12301, 12302, or 12304 of this title, as the case may be, or (2) at such time as the President determines the circumstances which required the action of ordering members of the reserve component to active duty no longer exist, whichever is earlier.

(c) Upon the termination of a suspension made under the authority of subsection (a) of a provision of law otherwise requiring the separation or retirement of officers on active duty because of age, length of service or length of service in grade, or failure of selection for promotion, the Secretary concerned shall extend by up to 90 days the otherwise required separation or retirement date of any officer covered by the suspended provision whose separation or retirement date, but for the suspension, would have been before the date of the termination of the suspension or within 90 days after the date of such termination.

(Added Pub. L. 98–94, title X, Sec. 1021(a), Sept. 24, 1983, 97 Stat. 670, Sec. 673c; amended Pub. L. 98–525, title XIV, Sec. 1405(16), Oct. 19, 1984, 98 Stat. 2622; renumbered Sec. 12305 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1662(e)(2), 1675(c)(3), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 107–107, div. A, title V, Sec. 508(a), Dec. 28, 2001, 115 Stat. 1090.)

§ 12306. Standby Reserve

(a) Units and members in the Standby Reserve may be ordered to active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b).

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty under section 12301(a) of this title, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that

there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, Sec. 674; Sept. 7, 1962, Pub. L. 87-651, title I, Sec. 130, 76 Stat. 514; renumbered Sec. 12306 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), 1675(c)(4), 108 Stat. 2992, 3017; Pub. L. 108-375, div. A, title V, Sec. 514(d), Oct. 28, 2004, 118 Stat. 1883.)

§ 12307. Retired Reserve

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 688 or 12301(a) of this title. A member of the Retired Reserve (other than a member transferred to the Retired Reserve under section 12641(b) of this title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 1223 of this title with service performed pursuant to such order. A member in a retired status is not eligible for promotion (or for consideration for promotion) as a Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, Sec. 675; Pub. L. 98-94, title X, Sec. 1017(a), Sept. 24, 1983, 97 Stat. 669; Pub. L. 101-189, div. A, title VI, Sec. 651(d), Nov. 29, 1989, 103 Stat. 1461; renumbered Sec. 12307 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), 1675(c)(5), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(17), Feb. 10, 1996, 110 Stat. 497.)

§ 12308. Retention after becoming qualified for retired pay

Any person who has qualified for retired pay under chapter 1223 of this title may, with his consent and by order of the Secretary concerned, be retained on active duty, or in service in a reserve component other than that listed in section 12732(b) of this title. A member so retained shall be credited with that service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, Sec. 676; renumbered Sec. 12308 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), 1675(c)(6), Oct. 5, 1994, 108 Stat. 2992, 3017.)

§ 12309. Reserve officers: use of in expansion of armed forces

When an expansion of the active armed forces requires that officers of the reserve components who are not members of units organized to serve as such be ordered as individuals to active duty (other than for training) without their consent, the services of qualified and available reserve officers in all grades shall be used, so far as practicable, according to the needs of the branches, grades, or specialties concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, Sec. 677; renumbered Sec. 12309, Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12310. Reserves: for organizing, administering, etc., reserve components

(a) **AUTHORITY.**—(1) The Secretary concerned may order a member of a reserve component under the Secretary's jurisdiction to active duty pursuant to section 12301(d) of this title to perform Active Guard and Reserve duty organizing, administering, recruiting, instructing, or training the reserve components.

(2) A Reserve ordered to active duty under paragraph (1) shall be ordered in the Reserve's reserve grade. While so serving, the Reserve continues to be eligible for promotion as a Reserve, if otherwise qualified.

(b) **DUTIES.**—A Reserve on active duty under subsection (a) may perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the Reserve's primary Active Guard and Reserve duties described in subsection (a)(1):

(1) Supporting operations or missions assigned in whole or in part to the reserve components.

(2) Supporting operations or missions performed or to be performed by—

(A) a unit composed of elements from more than one component of the same armed force; or

(B) a joint forces unit that includes—

(i) one or more reserve component units; or

(ii) a member of a reserve component whose reserve component assignment is in a position in an element of the joint forces unit.

(3) Advising the Secretary of Defense, the Secretaries of the military departments, the Joint Chiefs of Staff, and the commanders of the combatant commands regarding reserve component matters.

(4) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(A) active-duty members of the armed forces;

(B) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);

(C) Department of Defense contractor personnel; or

(D) Department of Defense civilian employees.

(c) **OPERATIONS RELATING TO DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION AND TERRORIST ATTACKS.**—(1) Notwithstanding subsection (b), a Reserve on active duty as described in subsection (a), or a Reserve who is a member of the National Guard serving on full-time National Guard duty under section 502(f) of title 32 in connection with functions referred to in subsection (a), may, subject to paragraph (3), perform duties in support of emergency preparedness programs to prepare for or to respond to any emergency involving any of the following:

(A) The use or threatened use of a weapon of mass destruction (as defined in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) in the United States.

(B) A terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.

(C) The intentional or unintentional release of nuclear, biological, radiological, or toxic or poisonous chemical materials in the United States that results, or could result, in catastrophic loss of life or property.

(D) A natural or manmade disaster in the United States that results in, or could result in, catastrophic loss of life or property.

(2) The costs of the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for a Reserve performing duties under the authority of paragraph (1) shall be paid from the appropriation that is available to pay such costs for other members of the reserve component of that Reserve who are performing duties as described in subsection (a).

(3) A Reserve may perform duty described in paragraph (1) only while assigned to a reserve component weapons of mass destruction civil support team.

(4) Reserves on active duty who are performing duties described in paragraph (1) shall be counted against the annual end strength authorizations required by section 115(a)(1)(B) and 115(a)(2) of this title. The justification material for the defense budget request for a fiscal year shall identify the number and component of the Reserves programmed to be performing duties described in paragraph (1) during that fiscal year.

(5) A reserve component weapons of mass destruction civil support team, and any Reserve assigned to such a team, may not be used to respond to an emergency described in paragraph (1) unless the Secretary of Defense has certified to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that that team, or that Reserve, possesses the requisite skills, training, and equipment to be proficient in all mission requirements.

(6) If the Secretary of Defense submits to Congress any request for the enactment of legislation to modify the requirements of paragraphs (1) and (3), the Secretary shall provide with the request—

(A) justification for each such requested modification; and

(B) the Secretary's plan for sustaining the qualifications of the personnel and teams described in paragraph (3).

(7) In this subsection, the term "United States" includes the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(d) TRAINING.—A Reserve on active duty as described in subsection (a) may be provided training consistent with training provided to other members on active duty, as the Secretary concerned sees fit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, Sec. 678; renumbered Sec. 12310 and amended Pub. L. 103-337, div. A, title XVI, Secs. 1662(e)(2), 1675(c)(7), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 104-201, div. A, title V, Sec. 541, Sept. 23, 1996, 110 Stat. 2521; Pub. L. 105-261, div. A, title V, Sec. 511(b)(1), Oct. 17, 1998, 112 Stat. 2006; Pub. L. 106-65, div. A, title V, Secs. 555(a), (b), 556, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 617-619, 774; Pub. L. 107-314, div. A, title V, Sec. 514(b), title IX, Sec. 933, Dec. 2, 2002, 116 Stat. 2539, 2626; Pub. L. 109-364, div. A, title V, Secs. 525(a), 527, Oct. 17, 2006, 120 Stat. 2193, 2196; Pub. L. 111-84, div. A, title X, Sec. 1073(a)(34), Oct. 28, 2009, 123 Stat. 2474.)

§ 12311. Active duty agreements

(a) To provide definite terms of active duty (other than for training) for Reserves with their consent, the Secretary concerned may make a standard written agreement with any member of a reserve component under his jurisdiction requiring the member to serve for a period of active duty (other than for training) of not more than five years. When such an agreement expires, a new one may be made. This subsection does not apply in time of war declared by Congress.

(b) An agreement may not be made under subsection (a) unless the specified period of duty is at least 12 months longer than any period of active duty that the member is otherwise required to perform.

(c) Agreements made under subsection (a) shall be uniform so far as practicable, and are subject to such standards and policies as may be prescribed by the Secretary of Defense for the armed forces under his jurisdiction or by the Secretary of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(d) If an agreement made under subsection (a) expires during a war or during a national emergency declared by Congress or the President after January 1, 1953, the Reserve concerned may be kept on active duty, without his consent, as otherwise prescribed by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, Sec. 679; Pub. L. 96-513, title V, Sec. 511(19), Dec. 12, 1980, 94 Stat. 2921; renumbered Sec. 12311, Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992; Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 12312. Active duty agreements: release from duty

(a) Each agreement made under section 12311(a) of this title shall provide that the member may not be released from active duty without his consent during the period of the agreement—

(1) because of a reduction in the actual personnel strength of the armed force concerned, unless the release is in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary concerned to determine the members to be released from active duty under regulations prescribed by the Secretary; or

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is (A) dismissed or discharged under the sentence of a court-martial, (B) released because of an unexplained absence without leave for at least three months, (C) released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or (D) released because he has been considered at least twice and has not been recommended for promotion to the next higher grade or because he is considered as having failed of selection for promotion to the next higher grade and has not been recommended for promotion to that grade, under conditions that would require the release or separation of a reserve officer who is not serving under such agreement.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 12311(a) of this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month's basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is—

- (1) released for a reason described in subsection (a)(2)(A)–(C);
- (2) released because of a physical disability resulting from his intentional misconduct or wilful neglect;
- (3) eligible for retired pay, separation pay, or severance pay under another provision of law;
- (4) placed on a temporary disability retired list; or
- (5) released to accept an appointment, or to be enlisted, in a regular component of an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, Sec. 680; Pub. L. 87–509, Sec. 2, June 28, 1962, 76 Stat. 121; Pub. L. 98–525, title V, Sec. 533(b), title XIV, Sec. 1405(17), Oct. 19, 1984, 98 Stat. 2528, 2622; renumbered Sec. 12312 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1662(e)(2), 1675(c)(8), Oct. 5, 1994, 108 Stat. 2992, 3017.)

§ 12313. Reserves: release from active duty

(a) Except as otherwise provided in this title, the Secretary concerned may at any time release a Reserve under his jurisdiction from active duty.

(b) In time of war or of national emergency declared by Congress or the President after January 1, 1953, a member of a reserve component may be released from active duty (other than for training) only if—

- (1) a board of officers convened at his request by an authority designated by the Secretary concerned recommends the release and the recommendation is approved;
 - (2) the member does not request that a board be convened;
- or
- (3) his release is otherwise authorized by law.

This subsection does not apply to an armed force during a period of demobilization or reduction in strength of that armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, Sec. 681; renumbered Sec. 12313, Pub. L. 103–337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12314. Reserves: kinds of duty

Notwithstanding any other provision of law, a member of a reserve component who is on active duty other than for training may, under regulations prescribed by the Secretary concerned, be detailed or assigned to any duty authorized by law for members of the regular component of the armed force concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, Sec. 682; renumbered Sec. 12314, Pub. L. 103–337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12315. Reserves: duty with or without pay

(a) Subject to other provisions of this title, any Reserve may be ordered to active duty or other duty—

- (1) with the pay and allowances provided by law; or
- (2) with his consent, without pay.

Duty without pay shall be considered for all purposes as if it were duty with pay.

(b) A Reserve who is kept on active duty after his term of service expires is entitled to pay and allowances while on that duty, except as they may be forfeited under the approved sentence of a court-martial or by non-judicial punishment by a commanding officer or when he is otherwise in a non-pay status.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, Sec. 683; renumbered Sec. 12315, Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12316. Payment of certain Reserves while on duty

(a) Except as provided by subsection (b), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either—

- (1) the payments to which he is entitled because of his earlier military service; or
- (2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.

(b) Unless the payments because of his earlier military service are greater than the compensation prescribed by subsection (a)(2), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who upon being ordered to active duty for a period of more than 30 days in time of war or national emergency is found physically qualified to perform that duty, ceases to be entitled to the payments because of his earlier military service until the period of active duty ends. While on that active duty, he is entitled to the compensation prescribed by subsection (a)(2). Other rights and benefits of the member or his dependents are unaffected by this subsection.

(Added Pub. L. 85-861, Sec. 1(15), Sept. 2, 1958, 72 Stat. 1441, Sec. 684; amended Pub. L. 93-586, Sec. 1, Jan. 2, 1975, 88 Stat. 1920; renumbered Sec. 12316, Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12317. Reserves: theological students; limitations

A Reserve may not be required to serve on active duty, or to participate in inactive duty training, while preparing for the ministry in a recognized theological or divinity school.

(Added Pub. L. 85-861, Sec. 1(15), Sept. 2, 1958, 72 Stat. 1441, Sec. 685; renumbered Sec. 12317, Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

§ 12318. Reserves on active duty: duties; funding

(a) During a period that members of a reserve component are serving on active duty pursuant to an order under section 12302 or 12304 of this title, members of reserve components serving on

active duty may perform duties in connection with either such section.

(b) Funds available for the pay and allowances of Reserves referred to section 12310 of this title shall be available for the pay and allowances of such Reserves who perform duties in connection with section 12302 or 12304 of this title under the authority of subsection (a).

(Added Pub. L. 99-661, div. A, title IV, Sec. 412(b)(1), Nov. 14, 1986, 100 Stat. 3861, Sec. 686; renumbered Sec. 12318 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), 1675(c)(9), Oct. 5, 1994, 108 Stat. 2992, 3017.)

§ 12319. Ready Reserve: muster duty

(a) Under regulations prescribed by the Secretary of Defense, a member of the Ready Reserve may be ordered without his consent to muster duty one time each year. A member ordered to muster duty under this section shall be required to perform a minimum of two hours of muster duty on the day of muster.

(b) The period which a member may be required to devote to muster duty under this section, including round-trip travel to and from the location of that duty, may not total more than one day each calendar year.

(c) Except as specified in subsection (d), muster duty (and travel directly to and from that duty) under this section shall be treated as the equivalent of inactive-duty training (and travel directly to and from that training) for the purposes of this title and the provisions of title 37 (other than section 206(a)) and title 38, including provisions relating to the determination of eligibility for and the receipt of benefits and entitlements provided under those titles for Reserves performing inactive-duty training and for their dependents and survivors.

(d) Muster duty under this section shall not be credited in determining entitlement to, or in computing, retired pay under chapter 1223 of this title.

(Added Pub. L. 101-189, div. A, title V, Sec. 502(a)(1), Nov. 29, 1989, 103 Stat. 1436, Sec. 687; renumbered Sec. 12319 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(e)(2), 1675(c)(10), Oct. 5, 1994, 108 Stat. 2992, 3018.)

§ 12320. Reserve officers: grade in which ordered to active duty

A reserve officer who is ordered to active duty or full-time National Guard duty shall be ordered to active duty or full-time National Guard duty in his reserve grade, except that a reserve officer who is credited with service under section 12207 of this title and is ordered to active duty and placed on the active-duty list may be ordered to active duty in a reserve grade and with a date of rank and position on the active-duty list determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added Pub. L. 96-513, title I, Sec. 106, Dec. 12, 1980, 94 Stat. 2868, Sec. 689; amended Pub. L. 97-22, Sec. 4(g), July 10, 1981, 95 Stat. 127; renumbered Sec. 12320 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1625, 1662(e)(2), 1675(c)(11), Oct. 5, 1994, 108 Stat. 2962, 2992, 3018; Pub. L. 104-106, div. A, title XV, Sec. 1501(a)(2), Feb. 10, 1996, 110 Stat. 495.)

§ 12321. Reserve Officer Training Corps units: limitation on number of Reserves assigned

The number of members of the reserve components serving on active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components who are assigned to duty with a unit of the Reserve Officer Training Corps program may not exceed 275.

(Added Pub. L. 101–510, div. A, title V, Sec. 559(a)(1), Nov. 5, 1990, 104 Stat. 1571, Sec. 687; renumbered Sec. 690 and amended Pub. L. 102–25, title VII, Sec. 704(a)(3)(A), (B), Apr. 6, 1991, 105 Stat. 118; Pub. L. 102–190, div. A, title X, Sec. 1061(a)(4)(A), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title V, Sec. 512, Oct. 23, 1992, 106 Stat. 2405; Pub. L. 103–160, div. A, title V, Sec. 512, Nov. 30, 1993, 107 Stat. 1649; renumbered Sec. 12321 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1662(e)(2), (3), Oct. 5, 1994, 108 Stat. 2992.)

§ 12322. Active duty for health care

A member of a uniformed service described in paragraph (1)(B) or (2)(B) of section 1074a(a) of this title may be ordered to active duty, and a member of a uniformed service described in paragraph (1)(A) or (2)(A) of such section may be continued on active duty, for a period of more than 30 days while the member is being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty as described in any of such paragraphs.

(Added Pub. L. 106–65, div. A, title VII, Sec. 705(a)(1), Oct. 5, 1999, 113 Stat. 683.)

CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

- Sec.
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12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau.
12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service.
12404. Army and Air National Guard of the United States: mobilization; maintenance of organization.
12405. National Guard in Federal service: status.
12406. National Guard in Federal service: call.
12407. National Guard in Federal service: period of service; apportionment.
12408. National Guard in Federal service: physical examination.

§ 12401. Army and Air National Guard of the United States: status

Members of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

§ 12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau

(a) The President may, with their consent, order commissioned officers of the Army National Guard of the United States and the Air National Guard of the United States to active duty in the National Guard Bureau.

(b)(1) The number of officers of the Army National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Army authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Army serving in that Bureau in any grade below brigadier general.

(2) The number of officers of the Air National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Air Force authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Air Force serving in that Bureau in any grade below brigadier general.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

§ 12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service

Members of the Army National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Army. Members of the Air National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Air Force.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104–106, div. A, title XV, Sec. 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

§ 12404. Army and Air National Guard of the United States: mobilization; maintenance of organization

During an initial mobilization, the organization of a unit of the Army National Guard of the United States or of the Air National Guard of the United States ordered into active Federal service shall, so far as practicable, be maintained as it existed on the date of the order to duty.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104–106, div. A, title XV, Sec. 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

§ 12405. National Guard in Federal service: status

Members of the National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army or the Air Force, as the case may be, except those applicable only to members of the Regular Army or Regular Air Force, as the case may be.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

§ 12406. National Guard in Federal service: call

Whenever—

(1) the United States, or any of the Commonwealths or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994; amended Pub. L. 109–163, div. A, title X, Sec. 1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

§ 12407. National Guard in Federal service: period of service; apportionment

(a) Whenever the President calls the National Guard of a State into Federal service, he may specify in the call the period of the service. Members and units called shall serve inside or outside the territory of the United States during the term specified, unless

sooner relieved by the President. However, no member of the National Guard may be kept in Federal service beyond the term of his commission or enlistment.

(b) When the National Guard of a State is called into Federal service with the National Guard of another State, the President may apportion the total number called from the Army National Guard or from the Air National Guard, as the case may be, on the basis of the populations of the States affected by the call.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(19), Feb. 10, 1996, 110 Stat. 497.)

§ 12408. National Guard in Federal service: physical examination

(a) Under regulations prescribed by the President, each member of the National Guard called into Federal service under section 12301(a), 12302, or 12304 of this title shall be examined as to physical fitness, without further commission or enlistment.

(b) Immediately before such a member is mustered out of Federal service, he shall be examined as to physical fitness. The record of this examination shall be retained by the United States.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994; amended Pub. L. 104-201, div. A, title V, Sec. 523, Sept. 23, 1996, 110 Stat. 2517.)

CHAPTER 1213—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

- Sec.
12501. Reserve components: detail of members of regular and reserve components to assist.
12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail.
12503. Ready Reserve: funeral honors duty.
[12505. Repealed.]

§ 12501. Reserve components: detail of members of regular and reserve components to assist

The Secretary concerned shall detail such members of the regular and reserve components under his jurisdiction as are necessary to effectively develop, train, instruct, and administer those reserve components.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

§ 12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail

(a) The President may detail a regular or reserve officer of the Army as chief of staff, and a regular or reserve officer or an officer of the Army National Guard as assistant to the chief of staff, of any division of the Army National Guard that is in Federal service as an Army National Guard organization.

(b) The President may detail a regular or reserve officer of the Air Force as chief of staff, and a regular or reserve officer or an officer of the Air National Guard as assistant to the chief of staff, of any wing of the Air National Guard that is in Federal service as an Air National Guard organization.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

§ 12503. Ready Reserve: funeral honors duty

(a) ORDER TO DUTY.—A member of the Ready Reserve may be ordered to funeral honors duty, with the consent of the member, in preparation for or to perform funeral honors functions at the funeral of a veteran as defined in section 1491 of this title. Performance of funeral honors duty by a Reserve not on active duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than sections 206 and 435 of title 37.

(b) SERVICE CREDIT.—A member ordered to funeral honors duty under this section shall be required to perform a minimum of two hours of such duty in order to receive—

- (1) service credit under section 12732(a)(2)(E) of this title;
- and
- (2) as directed by the Secretary concerned, either—
 - (A) the allowance under section 435 of title 37; or

(B) compensation under section 206 of title 37.

(c) REIMBURSABLE EXPENSES.—A member who performs funeral honors duty under this section may be reimbursed for travel and transportation expenses incurred in conjunction with such duty as authorized under chapter 7 of title 37 if such duty is performed at a location 50 miles or more from the member's residence.

(d) REGULATIONS.—The exercise of authority under subsection (a) is subject to regulations prescribed by the Secretary of Defense.

(e) MEMBERS OF THE NATIONAL GUARD.—This section does not apply to members of the Army National Guard of the United States or the Air National Guard of the United States. The performance of funeral honors duty by those members is provided for in section 115 of title 32.

(Added Pub. L. 106-65, div. A, title V, Sec. 578(g)(3), Oct. 5, 1999, 113 Stat. 628; amended Pub. L. 106-398, Sec. 1[[div. A], title V, Sec. 575(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-138; Pub. L. 107-107, div. A, title V, Sec. 562(a), Dec. 28, 2001, 115 Stat. 1119.)

[§ 12505. Repealed. Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 507(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-105]

CHAPTER 1214—READY RESERVE MOBILIZATION INCOME INSURANCE

Sec.	
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§ 12521. Definitions

In this chapter:

(1) The term “insurance program” means the Ready Reserve Mobilization Income Insurance Program established under section 12522 of this title.

(2) The term “covered service” means active duty performed by a member of a reserve component under an order to active duty for a period of more than 30 days which specifies that the member’s service—

(A) is in support of an operational mission for which members of the reserve components have been ordered to active duty without their consent; or

(B) is in support of forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

(3) The term “insured member” means a member of the Ready Reserve who is enrolled for coverage under the insurance program in accordance with section 12524 of this title.

(4) The term “Secretary” means the Secretary of Defense.

(5) The term “Department” means the Department of Defense.

(6) The term “Board of Actuaries” means the Department of Defense Board of Actuaries under section 183 of this title.

(7) The term “Fund” means the Reserve Mobilization Income Insurance Fund established by section 12528(a) of this title.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 299; amended Pub. L. 110–181, div. A, title IX, Sec. 906(c)(4), Jan. 28, 2008, 122 Stat. 277.)

§ 12522. Establishment of insurance program

(a) ESTABLISHMENT.—The Secretary shall establish for members of the Ready Reserve (including the Coast Guard Reserve) an

insurance program to be known as the “Ready Reserve Mobilization Income Insurance Program”.

(b) ADMINISTRATION.—The insurance program shall be administered by the Secretary. The Secretary may prescribe in regulations such rules, procedures, and policies as the Secretary considers necessary or appropriate to carry out the insurance program.

(c) AGREEMENT WITH SECRETARY OF HOMELAND SECURITY.—The Secretary and the Secretary of Homeland Security shall enter into an agreement with respect to the administration of the insurance program for the Coast Guard Reserve.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 299; amended Pub. L. 107–296, title XVII, Sec. 1704(b)(1), (7), Nov. 25, 2002, 116 Stat. 2314.)

§ 12523. Risk insured

(a) IN GENERAL.—The insurance program shall insure members of the Ready Reserve against the risk of being ordered into covered service.

(b) ENTITLEMENT TO BENEFITS.—(1) An insured member ordered into covered service shall be entitled to payment of a benefit for each month (and fraction thereof) of covered service that exceeds 30 days of covered service, except that no member may be paid under the insurance program for more than 12 months of covered service served during any period of 18 consecutive months.

(2) Payment shall be based solely on the insured status of a member and on the period of covered service served by the member. Proof of loss of income or of expenses incurred as a result of covered service may not be required.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 300.)

§ 12524. Enrollment and election of benefits

(a) ENROLLMENT.—(1) Except as provided in subsection (f), upon first becoming a member of the Ready Reserve, a member shall be automatically enrolled for coverage under the insurance program. An automatic enrollment of a member shall be void if within 60 days after first becoming a member of the Ready Reserve the member declines insurance under the program in accordance with the regulations prescribed by the Secretary.

(2) Promptly after the insurance program is established, the Secretary shall offer to members of the reserve components who are then members of the Ready Reserve (other than members ineligible under subsection (f)) an opportunity to enroll for coverage under the insurance program. A member who fails to enroll within 60 days after being offered the opportunity shall be considered as having declined to be insured under the program.

(3) A member of the Ready Reserve ineligible to enroll under subsection (f) shall be afforded an opportunity to enroll upon being released from active duty in accordance with regulations prescribed by the Secretary if the member has not previously had the opportunity to be enrolled under paragraph (1) or (2). A member who fails to enroll within 60 days after being afforded that opportunity shall be considered as having declined to be insured under the program.

(b) ELECTION OF BENEFIT AMOUNT.—The amount of a member’s monthly benefit under an enrollment shall be the basic ben-

efit under subsection (a) of section 12525 of this title unless the member elects a different benefit under subsection (b) of such section within 60 days after first becoming a member of the Ready Reserve or within 60 days after being offered the opportunity to enroll, as the case may be.

(c) ELECTIONS IRREVOCABLE.—(1) An election to decline insurance pursuant to paragraph (1) or (2) of subsection (a) is irrevocable.

(2) The amount of coverage may not be increased after enrollment.

(d) ELECTION TO TERMINATE.—A member may terminate an enrollment at any time.

(e) INFORMATION TO BE FURNISHED.—The Secretary shall ensure that members referred to in subsection (a) are given a written explanation of the insurance program and are advised that they have the right to decline to be insured and, if not declined, to elect coverage for a reduced benefit or an enhanced benefit under subsection (b).

(f) MEMBERS INELIGIBLE TO ENROLL.—Members of the Ready Reserve serving on active duty (or full-time National Guard duty) are not eligible to enroll for coverage under the insurance program. The Secretary may define any additional category of members of the Ready Reserve to be excluded from eligibility to purchase insurance under this chapter.

(g) MEMBERS OF INDIVIDUAL READY RESERVE.—Notwithstanding any other provision of this section, and pursuant to regulations issued by the Secretary, a member of the Individual Ready Reserve who becomes a member of the Selected Reserve shall not be denied eligibility to purchase insurance under this chapter upon becoming a member of the Selected Reserve unless the member previously declined to enroll in the program of insurance under this chapter while a member of the Selected Reserve.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 300; amended Pub. L. 104–201, div. A, title V, Sec. 542, Sept. 23, 1996, 110 Stat. 2521.)

§ 12525. Benefit amounts

(a) BASIC BENEFIT.—The basic benefit for an insured member under the insurance program is \$1,000 per month (as adjusted under subsection (d)).

(b) REDUCED AND ENHANCED BENEFITS.—Under the regulations prescribed by the Secretary, a person enrolled for coverage under the insurance program may elect—

(1) a reduced coverage benefit equal to one-half the amount of the basic benefit; or

(2) an enhanced benefit in the amount of \$1,500, \$2,000, \$2,500, \$3,000, \$3,500, \$4,000, \$4,500, or \$5,000 per month (as adjusted under subsection (d)).

(c) AMOUNT FOR PARTIAL MONTH.—The amount of insurance payable to an insured member for any period of covered service that is less than one month shall be determined by multiplying 1/30 of the monthly benefit rate for the member by the number of days of the covered service served by the member during such period.

(d) ADJUSTMENT OF AMOUNTS.—(1) The Secretary shall determine annually the effect of inflation on benefits and shall adjust the amounts set forth in subsections (a) and (b)(2) to maintain the constant dollar value of the benefit.

(2) If the amount of a benefit as adjusted under paragraph (1) is not evenly divisible by \$10, the amount shall be rounded to the nearest multiple of \$10, except that an amount evenly divisible by \$5 but not by \$10 shall be rounded to the next lower amount that is evenly divisible by \$10.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 301.)

§ 12526. Premiums

(a) ESTABLISHMENT OF RATES.—(1) The Secretary, in consultation with the Board of Actuaries, shall prescribe the premium rates for insurance under the insurance program.

(2) The Secretary shall prescribe a fixed premium rate for each \$1,000 of monthly insurance benefit. The premium amount shall be equal to the share of the cost attributable to insuring the member and shall be the same for all members of the Ready Reserve who are insured under the insurance program for the same benefit amount. The Secretary shall prescribe the rate on the basis of the best available estimate of risk and financial exposure, levels of subscription by members, and other relevant factors.

(b) LEVEL PREMIUMS.—The premium rate prescribed for the first year of insurance coverage of an insured member shall be continued without change for subsequent years of insurance coverage, except that the Secretary, after consultation with the Board of Actuaries, may adjust the premium rate in order to fund inflation-adjusted benefit increases on an actuarially sound basis.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 301.)

§ 12527. Payment of premiums

(a) METHODS OF PAYMENT.—(1) The monthly premium for coverage of a member of the Selected Reserve under the insurance program shall be deducted and withheld from the insured member's pay for each month.

(2) The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall prescribe regulations which specify the procedures for payment of premiums by members of the Individual Ready Reserve and other members who do not receive pay on a monthly basis.

(b) ADVANCE PAY FOR PREMIUM.—The Secretary concerned may advance to an insured member the amount equal to the first insurance premium payment due under this chapter. The advance may be paid out of appropriations for military pay. An advance to a member shall be collected from the member either by deducting and withholding the amount from basic pay payable for the member or by collecting it from the member directly. No disbursing or certifying officer shall be responsible for any loss resulting from an advance under this subsection.

(c) PREMIUMS TO BE DEPOSITED IN FUND.—Premium amounts deducted and withheld from the pay of insured members and premium amounts paid directly to the Secretary shall be credited monthly to the Fund.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 302; amended Pub. L. 104–201, div. A, title V, Sec. 547, Sept. 23, 1996, 110 Stat. 2524; Pub. L. 107–296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 12528. Reserve Mobilization Income Insurance Fund

(a) ESTABLISHMENT.—There is established on the books of the Treasury a fund to be known as the “Reserve Mobilization Income Insurance Fund”, which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance the liabilities of the insurance program on an actuarially sound basis.

(b) ASSETS OF FUND.—There shall be deposited into the Fund the following:

- (1) Premiums paid under section 12527 of this title.
- (2) Any amount appropriated to the Fund.
- (3) Any return on investment of the assets of the Fund.

(c) AVAILABILITY.—Amounts in the Fund shall be available for paying insurance benefits under the insurance program.

(d) INVESTMENT OF ASSETS OF FUND.—The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current liabilities. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to the Fund.

(e) ANNUAL ACCOUNTING.—At the beginning of each fiscal year, the Secretary, in consultation with the Board of Actuaries and the Secretary of the Treasury, shall determine the following:

- (1) The projected amount of the premiums to be collected, investment earnings to be received, and any transfers or appropriations to be made for the Fund for that fiscal year.
- (2) The amount for that fiscal year of any cumulative unfunded liability (including any negative amount or any gain to the Fund) resulting from payments of benefits.
- (3) The amount for that fiscal year (including any negative amount) of any cumulative actuarial gain or loss to the Fund.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 302.)

§ 12529. Board of Actuaries

(a) ACTUARIAL RESPONSIBILITY.—The Board of Actuaries shall have the actuarial responsibility for the insurance program.

(b) VALUATIONS AND PREMIUM RECOMMENDATIONS.—The Board of Actuaries shall carry out periodic actuarial valuations of the benefits under the insurance program and determine a premium rate methodology for the Secretary to use in setting premium rates for the insurance program. The Board shall conduct the first valuation and determine a premium rate methodology not later than six months after the insurance program is established.

(c) EFFECTS OF CHANGED BENEFITS.—If at the time of any actuarial valuation under subsection (b) there has been a change in benefits under the insurance program that has been made since the last such valuation and such change in benefits increases or de-

creases the present value of amounts payable from the Fund, the Board of Actuaries shall determine a premium rate methodology, and recommend to the Secretary a premium schedule, for the liquidation of any liability (or actuarial gain to the Fund) resulting from such change and any previous such changes so that the present value of the sum of the scheduled premium payments (or reduction in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such benefits.

(d) ACTUARIAL GAINS OR LOSSES.—If at the time of any such valuation the Board of Actuaries determines that there has been an actuarial gain or loss to the Fund as a result of changes in actuarial assumptions since the last valuation or as a result of any differences, between actual and expected experience since the last valuation, the Board shall recommend to the Secretary a premium rate schedule for the amortization of the cumulative gain or loss to the Fund resulting from such changes in assumptions and any previous such changes in assumptions or from the differences in actual and expected experience, respectively, through an increase or decrease in the payments that would otherwise be made to the Fund.

(e) INSUFFICIENT ASSETS.—If at any time liabilities of the Fund exceed assets of the Fund as a result of members of the Ready Reserve being ordered to active duty as described in section 12521(2) of this title, and funds are unavailable to pay benefits completely, the Secretary shall request the President to submit to Congress a request for a special appropriation to cover the unfunded liability. If appropriations are not made to cover an unfunded liability in any fiscal year, the Secretary shall reduce the amount of the benefits paid under the insurance program to a total amount that does not exceed the assets of the Fund expected to accrue by the end of such fiscal year. Benefits that cannot be paid because of such a reduction shall be deferred and may be paid only after and to the extent that additional funds become available.

(f) DEFINITION OF PRESENT VALUE.—The Board of Actuaries shall define the term “present value” for purposes of this subsection.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 303.)

§ 12530. Payment of benefits

(a) COMMENCEMENT OF PAYMENT.—An insured member who serves in excess of 30 days of covered service shall be paid the amount to which such member is entitled on a monthly basis beginning not later than one month after the 30th day of covered service.

(b) METHOD OF PAYMENT.—The Secretary shall prescribe in the regulations the manner in which payments shall be made to the member or to a person designated in accordance with subsection (c).

(c) DESIGNATED RECIPIENTS.—(1) A member may designate in writing another person (including a spouse, parent, or other person with an insurable interest, as determined in accordance with the regulations prescribed by the Secretary) to receive payments of insurance benefits under the insurance program.

(2) A member may direct that payments of insurance benefits for a person designated under paragraph (1) be deposited with a bank or other financial institution to the credit of the designated person.

(d) **RECIPIENTS IN EVENT OF DEATH OF INSURED MEMBER.**—Any insurance payable under the insurance program on account of a deceased member's period of covered service shall be paid, upon the establishment of a valid claim, to the beneficiary or beneficiaries which the deceased member designated in writing. If no such designation has been made, the amount shall be payable in accordance with the laws of the State of the member's domicile.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 304.)

§ 12531. Purchase of insurance

(a) **PURCHASE AUTHORIZED.**—The Secretary may, instead of or in addition to underwriting the insurance program through the Fund, purchase from one or more insurance companies a policy or policies of group insurance in order to provide the benefits required under this chapter. The Secretary may waive any requirement for full and open competition in order to purchase an insurance policy under this subsection.

(b) **ELIGIBLE INSURERS.**—In order to be eligible to sell insurance to the Secretary for purposes of subsection (a), an insurance company shall—

(1) be licensed to issue insurance in each of the 50 States and in the District of Columbia; and

(2) as of the most recent December 31 for which information is available to the Secretary, have in effect at least one percent of the total amount of insurance that all such insurance companies have in effect in the United States.

(c) **ADMINISTRATIVE PROVISIONS.**—(1) An insurance company that issues a policy for purposes of subsection (a) shall establish an administrative office at a place and under a name designated by the Secretary.

(2) For the purposes of carrying out this chapter, the Secretary may use the facilities and services of any insurance company issuing any policy for purposes of subsection (a), may designate one such company as the representative of the other companies for such purposes, and may contract to pay a reasonable fee to the designated company for its services.

(d) **REINSURANCE.**—The Secretary shall arrange with each insurance company issuing any policy for purposes of subsection (a) to reinsure, under conditions approved by the Secretary, portions of the total amount of the insurance under such policy or policies with such other insurance companies (which meet qualifying criteria prescribed by the Secretary) as may elect to participate in such reinsurance.

(e) **TERMINATION.**—The Secretary may at any time terminate any policy purchased under this section.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 304.)

§ 12532. Termination for nonpayment of premiums; forfeiture

(a) **TERMINATION FOR NONPAYMENT.**—The coverage of a member under the insurance program shall terminate without prior notice upon a failure of the member to make required monthly payments of premiums for two consecutive months. The Secretary may provide in the regulations for reinstatement of insurance coverage terminated under this subsection.

(b) **FORFEITURE.**—Any person convicted of mutiny, treason, spying, or desertion, or who refuses to perform service in the armed forces or refuses to wear the uniform of any of the armed forces shall forfeit all rights to insurance under this chapter.

(Added Pub. L. 104–106, div. A, title V, Sec. 512(a)(1), Feb. 10, 1996, 110 Stat. 305.)

§ 12533. Termination of program

(a) **IN GENERAL.**—The Secretary shall terminate the insurance program in accordance with this section.

(b) **TERMINATION OF NEW ENROLLMENTS.**—The Secretary may not enroll a member of the Ready Reserve for coverage under the insurance program after the November 18, 1997.

(c) **TERMINATION OF COVERAGE.**—(1) The enrollment under the insurance program of insured members other than insured members described in paragraph (2) is terminated as of November 18, 1997. The enrollment of an insured member described in paragraph (2) is terminated as of the date of the termination of the period of covered service of that member described in that paragraph.

(2) An insured member described in this paragraph is an insured member who on November 18, 1997, is serving on covered service for a period of service, or has been issued an order directing the performance of covered service, that satisfies or would satisfy the entitlement-to-benefits provisions of this chapter.

(d) **TERMINATION OF PAYMENT OF BENEFITS.**—The Secretary may not make any benefit payment under the insurance program after November 18, 1997, other than to an insured member who on that date (1) is serving on an order to covered service, (2) has been issued an order directing performance of covered service, or (3) has served on covered service before that date for which benefits under the program have not been paid to the member.

(e) **TERMINATION OF INSURANCE FUND.**—The Secretary shall close the Fund not later than 60 days after the date on which the last benefit payment from the Fund is made. Any amount remaining in the Fund when closed shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 105–85, div. A, title V, Sec. 512(a), Nov. 18, 1997, 111 Stat. 1729; amended Pub. L. 107–107, title X, Sec. 1048(c)(15), Dec. 28, 2001, 115 Stat. 1226.)

**CHAPTER 1215—MISCELLANEOUS PROHIBITIONS AND
PENALTIES**

Sec.

[12551. Repealed.]

12552. Funeral honors functions at funerals for veterans.

[§ 12551. Repealed. Pub. L. 107-314, div. A, title V, Sec. 515(a), Dec. 2, 2002, 116 Stat. 2539]

§ 12552. Funeral honors functions at funerals for veterans

Performance by a Reserve of funeral honors functions at the funeral of a veteran (as defined in section 1491(h) of this title) may not be considered to be a period of drill or training, but may be performed as funeral honors duty under section 12503 of this title.

(Added Pub. L. 105-261, div. A, title V, Sec. 567(c)(1), Oct. 17, 1998, 112 Stat. 2031; amended Pub. L. 106-65, div. A, title V, Sec. 578(g)(4), Oct. 5, 1999, 113 Stat. 628; Pub. L. 106-398, Sec. 1 [[div. A], title X, Sec. 1087(a)(21)], Oct. 30, 2000, 114 Stat. 1654, 1654A-291.)

CHAPTER 1217—MISCELLANEOUS RIGHTS AND BENEFITS

- Sec.
12601. Compensation: Reserve on active duty accepting from any person.
12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard.
12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates.
12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training.
12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay.

§ 12601. Compensation: Reserve on active duty accepting from any person

Any Reserve who, before being ordered to active duty, was receiving compensation from any person may, while he is on that duty, receive compensation from that person.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

§ 12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard

(a) For the purposes of laws providing benefits for members of the Army National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Army;

(2) full-time National Guard duty performed by a member of the Army National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Army; and

(3) inactive-duty training performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Army.

(b) For the purposes of laws providing benefits for members of the Air National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard for which

he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Air Force;

(2) full-time National Guard duty performed by a member of the Air National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Air Force; and

(3) inactive-duty training performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

§ 12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates

(a) FEDERAL SUPPLY SCHEDULE TRAVEL.—Commercial travel under Federal supply schedules is authorized for the travel of a Reserve to the location of inactive duty training to be performed by the Reserve and from that location upon completion of the training.

(b) REGULATIONS.—The Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions for travel under the authority of subsection (a) as the Secretary considers appropriate. The regulations shall include policies and procedures for preventing abuses of that travel authority.

(c) REIMBURSEMENT NOT AUTHORIZED.—A Reserve is not entitled to Government reimbursement for the cost of travel authorized under subsection (a).

(d) TREATMENT OF TRANSPORTATION AS USE BY MILITARY DEPARTMENTS.—For the purposes of section 501 of title 40, travel authorized under subsection (a) shall be treated as transportation for the use of a military department.

(Added Pub. L. 105-261, div. A, title VI, Sec. 635(a), Oct. 17, 1998, 112 Stat. 2045; amended Pub. L. 107-217, Sec. 3(b)(41), Aug. 21, 2002, 116 Stat. 1298.)

§ 12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training

(a) AUTHORITY FOR BILLETING ON SAME BASIS AS ACTIVE DUTY MEMBERS TRAVELING UNDER ORDERS.—The Secretary of Defense shall prescribe regulations authorizing a Reserve traveling to inactive-duty training at a location more than 50 miles from that Reserve's residence to be eligible for billeting in Department of Defense facilities on the same basis and to the same extent as a member of the armed forces on active duty who is traveling under orders away from the member's permanent duty station.

(b) PROOF OF REASON FOR TRAVEL.—The Secretary shall include in the regulations the means for confirming a Reserve's eligibility for billeting under subsection (a).

(Added Pub. L. 106-398, Sec. 1 [[div. A], title VI, Sec. 663(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-168.)

§ 12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay

(a) **PRESENTATION OF FLAG.**—Upon the transfer from an active status or discharge of a Reserve who has completed the years of service required for eligibility for retired pay under chapter 1223 of this title, the Secretary concerned shall present a United States flag to the member.

(b) **MULTIPLE PRESENTATIONS NOT AUTHORIZED.**—A member is not eligible for presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) **NO COST TO RECIPIENT.**—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 106-65, div. A, title VI, Sec. 652(a)(1), Oct. 5, 1999, 113 Stat. 664.)

CHAPTER 1219—STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.	
12641.	Standards and procedures: Secretary to prescribe.
12642.	Standards and qualifications: result of failure to comply with.
12643.	Boards for appointment, promotion, and certain other purposes: composition.
12644.	Members physically not qualified for active duty: discharge or transfer to retired status.
12645.	Commissioned officers: retention until completion of required service.
12646.	Commissioned officers: retention of after completing 18 or more, but less than 20, years of service.
12647.	Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

§ 12641. Standards and procedures: Secretary to prescribe

(a) The Secretary concerned shall, by regulation, prescribe—

(1) standards and qualifications for the retention and promotion of members of the reserve components under his jurisdiction; and

(2) equitable procedures for the periodic determination of the compliance of each such Reserve with those standards and qualifications.

(b) If a Reserve fails to comply with the standards and qualifications prescribed under subsection (a), he shall—

(1) if qualified, be transferred to an inactive reserve status;

(2) if qualified, be retired without pay; or

(3) have his appointment or enlistment terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79, Sec. 1001; renumbered Sec. 12641 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(h)(2), (4)(A), Oct. 5, 1994, 108 Stat. 2996.)

§ 12642. Standards and qualifications: result of failure to comply with

(a) To be retained in an active status, a reserve commissioned officer must, in any applicable yearly period, attain the number of points under section 12732(a)(2) of this title prescribed by the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, and must conform to such other standards and qualifications as the Secretary concerned may prescribe. The Secretary may not prescribe a minimum of more than 50 points under this subsection.

(b) Subject to section 12645 of this title, a reserve commissioned officer who fails to attain the number of points, or to conform to the standards and qualifications, prescribed in subsection (a) shall—

(1) be transferred to the Retired Reserve if he is qualified and applies therefor;

(2) if he is not qualified or does not apply for transfer to the Retired Reserve, be transferred to an inactive status, if he is qualified therefor; or

(3) if he is not transferred to the Retired Reserve or an inactive status, be discharged from his reserve appointment.

(c) This section does not apply to commissioned warrant officers or to adjutants general or assistant adjutants general of States, Puerto Rico, and the District of Columbia.

(Added Pub. L. 85–861, Sec. 1(22)(A), Sept. 2, 1958, 72 Stat. 1443, Sec. 1002; amended Pub. L. 100–456, div. A, title XII, Sec. 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered Sec. 12642 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1662(h)(2), 1675(d)(1), Oct. 5, 1994, 108 Stat. 2996, 3018; Pub. L. 109–163, div. A, title X, Sec. 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

§ 12643. Boards for appointment, promotion, and certain other purposes: composition

(a) Except as provided in section 612(a)(3) of this title and except for boards that may be convened to select Reserves for appointment in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include at least one member of the Reserves, with the exact number of Reserves determined by the Secretary concerned in his discretion.

(b) Each member of a board convened for the selection for promotion, or for the demotion or discharge, of Reserves must be senior in rank to the persons under consideration by that board. However, a member serving in a legal advisory capacity may be junior in rank to any person, other than a judge advocate or law specialist, being considered by that board; and a member serving in a medical advisory capacity may be junior in rank to any person, other than a medical officer, being considered by that board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 11, Sec. 266; Pub. L. 96–513, title V, Sec. 501(4), Dec. 12, 1980, 94 Stat. 2907; Pub. L. 97–22, Sec. 2(c), July 10, 1981, 95 Stat. 124; renumbered Sec. 12643, Pub. L. 103–337, div. A, title XVI, Sec. 1662(h)(2), Oct. 5, 1994, 108 Stat. 2996.)

§ 12644. Members physically not qualified for active duty: discharge or transfer to retired status

Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79, Sec. 1004; Pub. L. 86–603, Sec. 1(1), July 7, 1960, 74 Stat. 357; Pub. L. 103–160, div. A, title V, Sec. 519, Nov. 30, 1993, 107 Stat. 1651; renumbered Sec. 12644 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1661(a)(4), 1662(h)(2), (4)(B), Oct. 5, 1994, 108 Stat. 2980, 2996, 2997.)

§ 12645. Commissioned officers: retention until completion of required service

(a) Except as provided in subsection (b), a reserve commissioned officer who has not completed the period of service required of him by section 651 of this title or any other provision of law may not be discharged or transferred from an active status under chap-

ter 573, 1407, 1409, or 1411 of this title or chapter 21 of title 14. Unless, under regulations prescribed by the Secretary concerned, he is promoted to a higher reserve grade, he shall be retained in an active status in his reserve grade for the rest of his period of required service and shall be an additional number to the authorized strength of his grade.

(b) Subsection (a) does not prevent the discharge or transfer from an active status of—

- (1) a commissioned warrant officer;
- (2) an officer on the active-duty list or a reserve active-status list who is found not qualified for promotion to the grade of first lieutenant, in the case of an officer of the Army, Air Force, or Marine Corps, or lieutenant (junior grade), in the case of an officer of the Navy;
- (3) an officer on the active-duty list or reserve active-status list who has failed of selection for promotion for the second time to the grade of captain, in the case of an officer of the Army, Air Force, or Marine Corps, or to the grade of lieutenant, in the case of an officer of the Navy, or
- (4) an officer whose discharge or transfer from an active status is required by law.

(Added Pub. L. 85-861, Sec. 1(22)(B), Sept. 2, 1958, 72 Stat. 1444, Sec. 1005; amended Pub. L. 93-586, Sec. 2, Jan. 2, 1975, 88 Stat. 1920; Pub. L. 98-525, title V, Sec. 528(a), Oct. 19, 1984, 98 Stat. 2525; renumbered Sec. 12645 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1627, 1662(h)(2), 1675(d)(2), Oct. 5, 1994, 108 Stat. 2962, 2996, 3018; Pub. L. 104-106, div. A, title XV, Sec. 1501(a)(4), Feb. 10, 1996, 110 Stat. 495; Pub. L. 104-201, div. A, title V, Sec. 544(b), Sept. 23, 1996, 110 Stat. 2523.)

§ 12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service

(a) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 573, 1407, or 1409 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

- (1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or
- (2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(b) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 19, but less than 20, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 573, 1407, or 1409 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

- (1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or
- (2) the second anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(c) An officer who is retained in an active status under subsection (a) or (b) is an additional number to those otherwise authorized.

(d) Subsections (a) and (b) do not apply to—

(1) officers who are discharged or transferred from an active status for physical disability, for cause, or because they have reached the age at which transfer from an active status or discharge is required by law; or

(2) commissioned warrant officers.

(e)(1) A reserve commissioned officer on active duty (other than for training) or full-time National Guard duty (other than full-time National Guard duty for training only) who, on the date on which the officer would otherwise be removed from an active status under section 6389, 14513, or 14514 of this title or section 740 of title 14, is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title may, in the discretion of the Secretary concerned and subject to paragraph (2), be retained on that duty for a period of not more than two years.

(2) An officer may be retained on active duty or full-time National Guard duty under paragraph (1) only if—

(A) at the end of the period for which the officer is retained the officer will be qualified for retirement under section 3911, 6323, or 8911 of this title; and

(B) the officer will not, before the end of that period, reach the age at which transfer from an active status or discharge is required by this title or title 14.

(3) An officer who is retained on active duty or full-time National Guard duty under this section may not be removed from an active status while on that duty.

(Added Pub. L. 85–861, Sec. 1(22)(B), Sept. 2, 1958, 72 Stat. 1444, Sec. 1006; amended Pub. L. 86–559, Sec. 1(3)(A), June 30, 1960, 74 Stat. 264; Pub. L. 87–651, title I, Sec. 105, Sept. 7, 1962, 76 Stat. 508; Pub. L. 90–130, Sec. 1(4), Nov. 8, 1967, 81 Stat. 374; Pub. L. 93–586, Sec. 3, Jan. 2, 1975, 88 Stat. 1920; Pub. L. 96–322, Sec. 2, Aug. 4, 1980, 94 Stat. 1015; Pub. L. 96–513, title V, Sec. 511(30), Dec. 12, 1980, 94 Stat. 2922; renumbered Sec. 12646 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1662(h)(2), 1675(d)(3), Oct. 5, 1994, 108 Stat. 2996, 3018.)

§ 12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers

Notwithstanding chapters 573, 1407, and 1409 of this title, a reserve commissioned officer, other than a commissioned warrant officer, who is assigned to the Selective Service System or who is a property and fiscal officer appointed, designated, or detailed under section 708 of title 32, may be retained in an active status in that assignment or position until he becomes 62 years of age.

(Added Pub. L. 85–861, Sec. 1(22)(B), Sept. 2, 1958, 72 Stat. 1445, Sec. 1007; amended Pub. L. 86–559, Sec. 1(3)(B), June 30, 1960, 74 Stat. 265; renumbered Sec. 12647 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1662(h)(2), 1675(d)(4), Oct. 5, 1994, 108 Stat. 2996, 3018; Pub. L. 110–417, [div. A], title V, Sec. 514(a), Oct. 14, 2008, 122 Stat. 4441.)

CHAPTER 1221—SEPARATION

Sec.	
12681.	Reserves: discharge authority.
12682.	Reserves: discharge upon becoming ordained minister of religion.
12683.	Reserve officers: limitation on involuntary separation.
12684.	Reserves: separation for absence without authority or sentence to imprisonment.
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12686.	Reserves on active duty within two years of retirement eligibility: limitation on release from active duty.
12687.	Reserves under confinement by sentence of court-martial: separation after six months confinement.

§ 12681. Reserves: discharge authority

Subject to other provisions of this title, reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

§ 12682. Reserves: discharge upon becoming ordained minister of religion

Under regulations to be prescribed by the Secretary of Defense, a Reserve who becomes a regular or ordained minister of religion is entitled upon his request to a discharge from his reserve enlistment or appointment.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

§ 12683. Reserve officers: limitation on involuntary separation

(a) An officer of a reserve component who has at least five years of service as a commissioned officer may not be separated from that component without his consent except—

(1) under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned; or

(2) by the approved sentence of a court-martial.

(b) Subsection (a) does not apply to any of the following:

(1) A separation under section 12684, 14901, or 14907 of this title.

(2) A dismissal under section 1161(a) of this title.

(3) A transfer under section 12213, 12214, 14514, or 14515 of this title.

(4) A separation of an officer who is in an inactive status in the Standby Reserve and who is not qualified for transfer to the Retired Reserve or is qualified for transfer to the Retired Reserve and does not apply for such a transfer.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997; amended Pub. L. 105-85, div. A, title V, Sec. 516, Nov. 18, 1997, 111 Stat. 1733; Pub. L. 105-261, div. A, title X, Sec. 1069(a)(8), Oct. 17, 1998, 112 Stat. 2136.)

§ 12684. Reserves: separation for absence without authority or sentence to imprisonment

The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve—

(1) who has been absent without authority for at least three months;

(2) who may be separated under section 12687 of this title by reason of a sentence to confinement adjudged by a court-martial; or

(3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998; amended Pub. L. 104-106, div. A, title V, Sec. 563(b)(2), Feb. 10, 1996, 110 Stat. 325.)

§ 12685. Reserves separated for cause: character of discharge

A member of a reserve component who is separated for cause, except under section 12684 of this title, is entitled to a discharge under honorable conditions unless—

(1) the member is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) the member consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998.)

§ 12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty

(a) LIMITATION.—Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system (other than the retirement system under chapter 1223 of this title), may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.

(b) WAIVER.—With respect to a member of a reserve component who is to be ordered to active duty (other than for training) under section 12301 of this title pursuant to an order to active duty that specifies a period of less than 180 days and who (but for this subsection) would be covered by subsection (a), the Secretary concerned may require, as a condition of such order to active duty, that the member waive the applicability of subsection (a) to the member for the period of active duty covered by that order. In carrying out this subsection, the Secretary concerned may require that

a waiver under the preceding sentence be executed before the period of active duty begins.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998; amended Pub. L. 104-201, div. A, title V, Sec. 533, Sept. 23, 1996, 110 Stat. 2520; Pub. L. 108-375, div. A, title V, Sec. 522, Oct. 28, 2004, 118 Stat. 1888.)

§ 12687. Reserves under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a Reserve sentenced by a court-martial to a period of confinement for more than six months may be separated from that Reserve's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the Reserve has served in confinement for a period of six months.

(Added Pub. L. 104-106, div. A, title V, Sec. 563(a)(2)(A), Feb. 10, 1996, 110 Stat. 325.)

CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.	
12731.	Age and service requirements.
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12731b.	Special rule for members with physical disabilities not incurred in line of duty.
12732.	Entitlement to retired pay: computation of years of service.
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§ 12731. Age and service requirements

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

(1) has attained the eligibility age applicable under subsection (f) to that person;

(2) has performed at least 20 years of service computed under section 12732 of this title;

(3) in the case of a person who completed the service requirements of paragraph (2) before April 25, 2005, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight; and

(4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Homeland Security, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

(c)(1) A person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 12732(a)(1) of this title except a regular component, is not eligible for retired pay under this chapter unless—

(A) the person performed active duty during World War I or World War II; or

(B) the person performed active duty (other than for training) during the Korean conflict, the Berlin crisis, or the Vietnam era.

(2) In this subsection:

(A) The term “World War I” means the period beginning on April 6, 1917, and ending on November 11, 1918.

(B) The term “World War II” means the period beginning on September 9, 1940, and ending on December 31, 1946.

(C) The term “Korean conflict” means the period beginning on June 27, 1950, and ending on July 27, 1953.

(D) The term “Berlin crisis” means the period beginning on August 14, 1961, and ending on May 30, 1963.

(E) The term “Vietnam era” means the period beginning on August 5, 1964, and ending on March 27, 1973.

(d) The Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice shall be sent, in writing, to the person concerned within one year after the person completes that service. The notice shall include notice of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the Supplemental Survivor Benefit Plan established under subchapter III of that chapter, and the effects of such elections.

(e) Notwithstanding section 8301 of title 5, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.

(f)(1) Subject to paragraph (2), the eligibility age for purposes of subsection (a)(1) is 60 years of age.

(2)(A) In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after January 28, 2008, the eligibility age for purposes of subsection (a)(1) shall be reduced below 60 years of age by three months for each aggregate of 90 days on which such person so performs in any fiscal year after such date, subject to subparagraph (C). A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

(B)(i) Service on active duty described in this subparagraph is service on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) or under section 12301(d) of this title. Such service does not include service on active duty pursuant to a call or order to active duty under section 12310 of this title.

(ii) Active service described in this subparagraph is also service under a call to active service authorized by the President or the Secretary of Defense under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President or supported by Federal funds.

(C) The eligibility age for purposes of subsection (a)(1) may not be reduced below 50 years of age for any person under subparagraph (A).

(iii) If a member described in subparagraph (A) is wounded or otherwise injured or becomes ill while serving on active duty pur-

suant to a call or order to active duty under a provision of law referred to in the first sentence of clause (i) or in clause (ii), and the member is then ordered to active duty under section 12301(h)(1) of this title to receive medical care for the wound, injury, or illness, each day of active duty under that order for medical care shall be treated as a continuation of the original call or order to active duty for purposes of reducing the eligibility age of the member under this paragraph.

(Aug. 10, 1956, ch. 1041, 70A Stat. 102, Sec. 1331; Pub. L. 85-704, Aug. 21, 1958, 72 Stat. 702; Pub. L. 85-861, Sec. 33(a)(8), Sept. 2, 1958, 72 Stat. 1564; Pub. L. 89-652, Sec. 1, Oct. 14, 1966, 80 Stat. 902; Pub. L. 90-485, Sec. 2, Aug. 13, 1968, 82 Stat. 754; Pub. L. 95-397, title II, Sec. 206, Sept. 30, 1978, 92 Stat. 847; Pub. L. 96-513, title V, Sec. 511(47), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98-94, title IX, Sec. 924(a), Sept. 24, 1983, 97 Stat. 644; Pub. L. 101-189, div. A, title XIV, Sec. 1404(b)(1), Nov. 29, 1989, 103 Stat. 1586; renumbered Sec. 12731 and amended Pub. L. 103-337, div. A, title VI, Sec. 636, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2790, 2999; Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(20), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105-261, div. A, title V, Sec. 561(n)(1), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 571(n)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-135; Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title VI, Sec. 631(a), (b), Dec. 2, 2002, 116 Stat. 2571, 2572; Pub. L. 108-375, div. A, title V, Sec. 501(f), Oct. 28, 2004, 118 Stat. 1874; Pub. L. 109-364, div. A, title X, Sec. 1071(a)(40), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 110-181, div. A, title VI, Sec. 647(a), Jan. 28, 2008, 122 Stat. 160; Pub. L. 111-84, div. A, title X, Sec. 1073(a)(35), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111-383, div. A, title VI, Sec. 633, Jan. 7, 2011, 124 Stat. 4240.)

§ 12731a. Temporary special retirement qualification authority

(a) **RETIREMENT WITH AT LEAST 15 YEARS OF SERVICE.**—For the purposes of section 12731 of this title, the Secretary concerned may—

(1) during the period described in subsection (b), determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member—

(A) as of October 1, 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or

(B) after that date and before the end of the period described in subsection (b), completes 15 years of service computed under that section; and

(2) upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

(b) **PERIOD OF AUTHORITY.**—The period referred to in subsection (a)(1) is the period beginning on October 23, 1992, and ending on December 31, 2001.

(c) **APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.**—(1) The Secretary concerned may limit the applicability of subsection (a) to any category of personnel defined by the Secretary in order to meet a need of the armed force under the jurisdiction of the Secretary to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a) of the National Defense Au-

thorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2713).

(3) Notwithstanding the provisions of section 4415(2) of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 106 Stat. 2714), the Secretary concerned may, consistent with the other provisions of this section, provide the notification required by section 12731(d) of this title to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability. Such notification may not be made if the disability is the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned or was incurred during a period of unauthorized absence.

(d) EXCLUSION.—This section does not apply to persons referred to in section 12731(c) of this title.

(e) REGULATIONS.—The authority provided in this section shall be subject to regulations prescribed by the Secretary of Defense and by the Secretary of Homeland Security with respect to the Coast Guard.

(Added Pub. L. 102–484, div. D, title XLIV, Sec. 4417(a), Oct. 23, 1992, 106 Stat. 2716, Sec. 1331a; amended Pub. L. 103–35, title II, Sec. 201(f)(2), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title V, Sec. 561(f)(4), 564(c), Nov. 30, 1993, 107 Stat. 1668, 1670; renumbered Sec. 12731a and amended Pub. L. 103–337, div. A, title V, Sec. 517, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2754, 2998, 3000; Pub. L. 104–106, div. A, title XV, Sec. 1501(b)(21), Feb. 21, 1996, 110 Stat. 497; Pub. L. 105–261, div. A, title V, Sec. 561(n)(2), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, Sec. 1[[div. A], title V, Sec. 571(n)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 12731b. Special rule for members with physical disabilities not incurred in line of duty

(a) In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for purposes of section 12731 of this title, determine to treat the member as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member has completed at least 15, and less than 20, years of service computed under section 12732 of this title.

(b) Notification under subsection (a) may not be made if—

(1) the disability was the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned; or

(2) the disability was incurred during a period of unauthorized absence.

(Added Pub. L. 106–65, div. A, title VI, Sec. 653(b)(1), Oct. 5, 1999, 113 Stat. 666.)

§ 12732. Entitlement to retired pay: computation of years of service

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person's years of service are computed by adding the following:

(1) The person's years of service, before July 1, 1949, in the following:

(A) The armed forces.

(B) The federally recognized National Guard before June 15, 1933.

(C) A federally recognized status in the National Guard before June 15, 1933.

(D) The National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States.

(E) The Navy Reserve Force.

(F) The Naval Militia that conformed to the standards prescribed by the Secretary of the Navy.

(G) The National Naval Volunteers.

(H) The Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901.

(I) The Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072).

(J) An active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist.

(2) Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points on the following basis:

(A) One point for each day of—

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications.

(B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32.

- (C) Points at the rate of 15 a year for membership—
 - (i) in a reserve component of an armed force,
 - (ii) in the Army or the Air Force without component, or
 - (iii) in any other category covered by subsection (a)(1) except a regular component.

(D) Points credited for the year under section 2126(b) of this title.

(E) One point for each day on which funeral honors duty is performed for at least two hours under section 12503 of this title or section 115 of title 32, unless the duty is performed while in a status for which credit is provided under another subparagraph of this paragraph.

For the purpose of clauses (A), (B), (C), (D), and (E), service in the National Guard shall be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

(3) The person's years of active service in the Commissioned Corps of the Public Health Service.

(4) The person's years of active commissioned service in the National Oceanic and Atmospheric Administration (including active commissioned service in the Environmental Science Services Administration and in the Coast and Geodetic Survey).

(a): (b) The following service may not be counted under subsection

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Navy Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer, aviation midshipman, appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a)(1).

(8) Service in the screening performed pursuant to section 10149 of this title through electronic means, regardless of

whether or not a stipend is paid the member concerned for such service under section 433a of title 37.

(Aug. 10, 1956, ch. 1041, 70A Stat. 102, Sec. 1332; Pub. L. 85–861, Sec. 33(a)(9), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 86–197, Sec. 1(1)–(3), Aug. 25, 1959, 73 Stat. 425; Pub. L. 88–636, Sec. 1, Oct. 8, 1964, 78 Stat. 1034; Pub. L. 93–545, Sec. 1, Dec. 26, 1974, 88 Stat. 1741; Pub. L. 96–513, title V, Sec. 511(48), Dec. 12, 1980, 94 Stat. 2924; renumbered Sec. 12732 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3000; Pub. L. 104–201, div. A, title V, Sec. 543(b)(1), Sept. 23, 1996, 110 Stat. 2522; Pub. L. 106–65, div. A, title V, Sec. 578(h)(1), Oct. 5, 1999, 113 Stat. 628; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(MM), Jan. 6, 2006, 119 Stat. 3234; Pub. L. 110–181, div. A, title VI, Sec. 633(c), Jan. 28, 2008, 122 Stat. 155.)

§ 12733. Computation of retired pay: computation of years of service

For the purpose of computing the retired pay of a person under this chapter, the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

- (1) The person's days of active service.
- (2) The person's days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned.
- (3) One day for each point credited to the person under clause (B), (C), or (D) of section 12732(a)(2) of this title, but not more than—
 - (A) 60 days in any one year of service before the year of service that includes September 23, 1996;
 - (B) 75 days in the year of service that includes September 23, 1996, and in any subsequent year of service before the year of service that includes October 30, 2000;
 - (C) 90 days in the year of service that includes October 30, 2000, and in any subsequent year of service before the year of service that includes October 30, 2007; and
 - (D) 130 days in the year of service that includes October 30, 2007, and in any subsequent year of service.
- (4) One day for each point credited to the person under subparagraph (E) of section 12732(a)(2) of this title.
- (5) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by section 12732(a)(1) of this title, except a regular component.

(Aug. 10, 1956, ch. 1041, 70A Stat. 103, Sec. 1333; Pub. L. 85–861, Sec. 33(a)(10), Sept. 2, 1958, 72 Stat. 1565; renumbered Sec. 12733 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3002; Pub. L. 104–201, div. A, title V, Secs. 531(a), 543(b)(2), Sept. 23, 1996, 110 Stat. 2517, 2522; Pub. L. 105–85, div. A, title X, Sec. 1073(a)(67), (c)(4), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 106–65, div. A, title V, Sec. 578(h)(2), Oct. 5, 1999, 113 Stat. 628; Pub. L. 106–398, Sec. 1 [[div. A], title VI, Sec. 652], Oct. 30, 2000, 114 Stat. 1654, 1654A–163; Pub. L. 107–107, div. A, title X, Sec. 1048(c)(16), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 110–181, div. A, title VI, Sec. 648, Jan. 28, 2008, 122 Stat. 161.)

§ 12734. Time not creditable toward years of service

(a) Service in an inactive status may not be counted in any computation of years of service under this chapter.

(b) Time spent after retirement (without pay) for failure to conform to standards and qualifications prescribed under section

12641 of this title may not be credited in a computation of years of service under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, Sec. 1334; Pub. L. 87-651, title I, Sec. 108, Sept. 7, 1962, 76 Stat. 509; renumbered Sec. 12734 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

§ 12735. Inactive status list

(a) A member who would be eligible for retired pay under this chapter but for the fact that that member is under 60 years of age may be transferred, at his request and by direction of the Secretary concerned, to such inactive status list as may be established for members of his armed force, other than members of a regular component.

(b) While on an inactive status list under subsection (a), a member is not required to participate in any training or other program prescribed for his component.

(c) The Secretary may at any time recall to active status a member who is on an inactive status list under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, Sec. 1335; renumbered Sec. 12735 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

§ 12736. Service credited for retired pay benefits not excluded for other benefits

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay under this chapter may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, under any other law, on account of civilian employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, Sec. 1336; renumbered Sec. 12736 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

§ 12737. Limitation on active duty

A member of the armed forces may not be ordered to active duty solely for the purpose of qualifying the member for retired pay under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, Sec. 1337; renumbered Sec. 12737 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

§ 12738. Limitations on revocation of retired pay

(a) After a person is granted retired pay under this chapter, or is notified in accordance with section 12731(d) of this title that the person has completed the years of service required for eligibility for retired pay under this chapter, the person's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed as required by section 12731(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person.

(b) The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination and when such a correction is made the person is entitled to retired pay

in accordance with the number of years of creditable service, as corrected, from the date the person is granted retired pay.

(Added Pub. L. 89-652, Sec. 2(1), Oct. 14, 1966, 80 Stat. 902, Sec. 1406; renumbered Sec. 1338 and amended Pub. L. 99-348, title I, Sec. 104(a), July 1, 1986, 100 Stat. 686; renumbered Sec. 12738 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

§ 12739. Computation of retired pay

(a) The monthly retired pay of a person entitled to that pay under this chapter is the product of—

(1) the retired pay base for that person as computed under section 1406(b)(2) or 1407 of this title; and

(2) 2½ percent of the years of service credited to that person under section 12733 of this title.

(b) If a person entitled to retired pay under this chapter has been credited by the Secretary concerned with extraordinary heroism in the line of duty and if the highest grade held satisfactorily by that person at any time in the armed forces is an enlisted grade, the person's retired pay shall be increased by 10 percent of the amount determined under subsection (a). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(c)(1) Except as provided in paragraph (2), the total amount of the monthly retired pay computed under subsections (a) and (b) may not exceed 75 percent of the retired pay base upon which the computation is based.

(2) In the case of a person who retires after December 31, 2006, with more than 30 years of service credited to that person under section 12733 of this title, the total amount of the monthly retired pay computed under subsections (a) and (b) may not exceed the sum of—

(A) 75 percent of the retired pay base upon which the computation is based; and

(B) the product of—

(i) the retired pay base upon which the computation is based; and

(ii) 2½ percent of the years of service credited to that person under section 12733 of this title, for service under conditions authorized for purposes of this paragraph during a period designated by the Secretary of Defense for purposes of this paragraph.

(d) Amounts computed under this section, if not a multiple of \$1, shall be rounded down to the next lower multiple of \$1.

(e)(1) If a member of the Retired Reserve is recalled to an active status in the Selected Reserve of the Ready Reserve under section 10145(d) of this title and completes not less than two years of service in such active status, the member is entitled to the re-computation under this section of the retired pay of the member.

(2) The Secretary concerned may reduce the two-year service requirement specified in paragraph (1) in the case of a member who—

(A) is recalled to serve in a position of adjutant general required under section 314 of title 32 or in a position of assistant adjutant general subordinate to such a position of adjutant general;

- (B) completes at least one year of service in such position; and
 (C) fails to complete the minimum two years of service solely because the appointment of the member to such position is terminated or vacated as described in section 324(b) of title 32.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(j)(1), Oct. 5, 1994, 108 Stat. 3004; amended Pub. L. 107-314, div. A, title VI, Sec. 632(a), (b), Dec. 2, 2002, 116 Stat. 2572; Pub. L. 109-364, div. A, title VI, Sec. 642(b), Oct. 17, 2006, 120 Stat. 2259; Pub. L. 111-84, div. A, title VI, Sec. 642(a), Oct. 28, 2009, 123 Stat. 2365.)

§ 12740. Eligibility: denial upon certain punitive discharges or dismissals

A person who—

(1) is convicted of an offense under the Uniform Code of Military Justice (chapter 47 of this title) and whose sentence includes death; or

(2) is separated pursuant to sentence of a court-martial with a dishonorable discharge, a bad conduct discharge, or (in the case of an officer) a dismissal,

is not eligible for retired pay under this chapter.

(Added Pub. L. 104-106, div. A, title VI, Sec. 632(a)(1), Feb. 10, 1996, 110 Stat. 365.)

§ 12741. Retirement for service in an active status performed in the Selected Reserve of the Ready Reserve after eligibility for regular retirement

(a) AUTHORITY TO ELECT TO RECEIVE RESERVE RETIRED PAY.—

(1) Notwithstanding the requirement in paragraph (4) of section 12731(a) of this title that a person may not receive retired pay under this chapter when the person is entitled, under any other provision of law, to retired pay or retainer pay, a person may elect to receive retired pay under this chapter, instead of receiving retired or retainer pay under chapter 65, 367, 571, or 867 of this title, if the person—

(A) satisfies the requirements specified in paragraphs (1) and (2) of such section for entitlement to retired pay under this chapter;

(B) served in an active status in the Selected Reserve of the Ready Reserve after becoming eligible for retirement under chapter 65, 367, 571, or 867 of this title (without regard to whether the person actually retired or received retired or retainer pay under one of those chapters); and

(C) completed not less than two years of satisfactory service (as determined by the Secretary concerned) in such active status (excluding any period of active service).

(2) The Secretary concerned may reduce the minimum two-year service requirement specified in paragraph (1)(C) in the case of a person who—

(A) completed at least one year of service in a position of adjutant general required under section 314 of title 32 or in a position of assistant adjutant general subordinate to such a position of adjutant general; and

(B) failed to complete the minimum years of service solely because the appointment of the person to such position was terminated or vacated as described in section 324(b) of title 32.

(b) **ACTIONS TO EFFECTUATE ELECTION.**—As of the effective date of an election made by a person under subsection (a), the Secretary concerned shall—

(1) terminate the eligibility of the person to retire under chapter 65, 367, 571, or 867 of this title, if the person is not already retired under one of those chapters, and terminate entitlement of the person to retired or retainer pay under one of those chapters, if the person was already receiving retired or retainer pay under one of those chapters; and

(2) in the case of a reserve commissioned officer, transfer the officer to the Retired Reserve.

(c) **TIME AND FORM OF ELECTION.**—An election under subsection (a) shall be made within such time and in such form as the Secretary concerned requires.

(d) **EFFECTIVE DATE OF ELECTION.**—An election made by a person under subsection (a) shall be effective—

(1) except as provided in paragraph (2)(B), as of the date on which the person attains the eligibility age applicable to the person under section 12731(f) of this title, if the Secretary concerned receives the election in accordance with this section within 180 days after that date; or

(2) on the first day of the first month that begins after the date on which the Secretary concerned receives the election in accordance with this section, if—

(A) the date of the receipt of the election is more than 180 days after the date on which the person attains the eligibility age applicable to the person under such section; or

(B) the person retires from service in an active status within that 180-day period.

(Added Pub. L. 106-398, Sec. 1[[div. A], title VI, Sec. 653(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-164; amended Pub. L. 107-107, div. A, title X, Sec. 1048(a)(31), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 109-364, div. A, title X, Sec. 1071(a)(41), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 111-84, div. A, title VI, Sec. 643(a)-(c), (e)(1), Oct. 28, 2009, 123 Stat. 2366, 2367.)

CHAPTER 1225—RETIRED GRADE

Sec.	
12771.	Reserve officers: grade on transfer to Retired Reserve.
12772.	Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve.
12773.	Limitation on accrual of increased pay or benefits.
12774.	Retired lists.

§ 12771. Reserve officers: grade on transfer to Retired Reserve

(a) GRADE ON TRANSFER.—Unless entitled to a higher grade under another provision of law, a reserve commissioned officer, other than a commissioned warrant officer, who is transferred to the Retired Reserve is entitled to be placed on the retired list established by section 12774(a) of this title in the highest grade in which he served satisfactorily, as determined by the Secretary concerned and in accordance with section 1370(d), in the armed force in which he is serving on the date of transfer.

(b) EFFECT OF SUBSEQUENT RECALL TO ACTIVE STATUS.—(1) If a member of the Retired Reserve who is a commissioned officer is recalled to an active status in the Selected Reserve of the Ready Reserve under section 10145(d) of this title and completes not less than two years of service in such active status, the member is entitled to an adjustment in the retired grade of the member in the manner provided in section 1370(d) of this title.

(2) The Secretary concerned may reduce the two-year service requirement specified in paragraph (1) in the case of a member who—

(A) is recalled to serve in a position of adjutant general required under section 314 of title 32 or in a position of assistant adjutant general subordinate to such a position of adjutant general;

(B) completes at least one year of service in such position; and

(C) fails to complete the minimum two years of service solely because the appointment of the member to such position is terminated or vacated as described in section 324(b) of title 32.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005; amended Pub. L. 111-84, div. A, title VI, Sec. 642(b), Oct. 28, 2009, 123 Stat. 2365.)

§ 12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve

Unless entitled to a higher grade under another provision of law, a reserve commissioned officer who is transferred to the Retired Reserve after having served in the position of Attending Physician to the Congress is entitled to be placed on the retired list es-

established by section 12774(a) of this title in the grade held by the officer while serving in that position.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005.)

§ 12773. Limitation on accrual of increased pay or benefits

Unless otherwise provided by law, no person is entitled to increased pay or other benefits because of sections 12771 and 12772 of this title.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005.)

§ 12774. Retired lists

(a) Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under the Secretary's jurisdiction who are in the Retired Reserve.

(b) The Secretary of the Navy shall maintain a United States Naval Reserve Retired List containing the names of members of the Navy Reserve and the Marine Corps Reserve entitled to retired pay.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1662(k)(1), Oct. 5, 1994, 108 Stat. 3006; amended Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(NN), Jan. 6, 2006, 119 Stat. 3234.)

**PART III—PROMOTION AND RETENTION OF
OFFICERS ON THE RESERVE ACTIVE-STATUS
LIST**

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CHAPTER 1401—APPLICABILITY AND RESERVE ACTIVE-STATUS LISTS

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§ 14001. Applicability of this part

This chapter and chapters 1403 through 1411 of this title apply, as appropriate, to all reserve officers of the Army, Navy, Air Force, and Marine Corps except warrant officers.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2922.)

§ 14002. Reserve active-status lists: requirement for each armed force

(a) The Secretary of each military department shall maintain a single list, to be known as the reserve active-status list, for each armed force under the Secretary's jurisdiction. That list shall include the names of all reserve officers of that armed force who are in an active status other than those on an active-duty list described in section 620 of this title or warrant officers (including commissioned warrant officers).

(b) The reserve active-status list for the Army shall include officers in the Army Reserve and the Army National Guard of the United States. The reserve active-status list for the Air Force shall include officers in the Air Force Reserve and the Air National Guard of the United States. The Secretary of the Navy shall maintain separate lists for the Navy Reserve and the Marine Corps Reserve.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2922; amended Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(OO), Jan. 6, 2006, 119 Stat. 3234.)

§ 14003. Reserve active-status lists: position of officers on the list

(a) POSITION ON LIST.—Officers shall be carried on the reserve active-status list of the armed force of which they are members in the order of seniority of the grade in which they are serving in an active status. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(b) EFFECT ON POSITION HELD BY REASON OF TEMPORARY APPOINTMENT OR ASSIGNMENT.—An officer whose position on the reserve active-status list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and po-

sition on that list that the officer would have held if the officer had not received that appointment or assignment.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2923; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(22), Feb. 10, 1996, 110 Stat. 497.)

§ 14004. Reserve active-status lists: eligibility for Reserve promotion

Except as otherwise provided by law, an officer must be on a reserve active-status list to be eligible under chapter 1405 of this title for consideration for selection for promotion or for promotion.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2923.)

§ 14005. Competitive categories

Each officer whose name appears on a reserve active-status list shall be placed in a competitive category. The competitive categories for each armed force shall be specified by the Secretary of the military department concerned under regulations prescribed by the Secretary of Defense. Officers in the same competitive category shall compete among themselves for promotion.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2923.)

§ 14006. Determination of years in grade

For the purpose of chapters 1403 through 1411 of this title, an officer's years of service in a grade are computed from the officer's date of rank in grade as determined under section 741(d) of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2923.)

CHAPTER 1403—SELECTION BOARDS

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§ 14101. Convening of selection boards

(a) PROMOTION BOARDS.—(1) Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned shall convene a selection board to recommend for promotion to the next higher grade, under chapter 1405 of this title, officers on the reserve active-status list of that armed force in a permanent grade from first lieutenant through brigadier general or, in the case of the Navy Reserve, lieutenant (junior grade) through rear admiral (lower half). A selection board convened under this subsection shall be known as a “promotion board”.

(2) A promotion board convened to recommend reserve officers of the Army or reserve officers of the Air Force for promotion (A) to fill a position vacancy under section 14315 of this title, or (B) to the grade of brigadier general or major general, shall be known as a “vacancy promotion board”. Any other promotion board convened under this subsection shall be known as a “mandatory promotion board”.

(3) Paragraph (1) does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 14308(b)(4) of this title all such officers whom the Secretary finds to be fully qualified for promotion.

(b) SELECTIVE EARLY SEPARATION BOARDS.—Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned may convene a selection board to recommend officers of that armed force—

(1) for selective early removal from the reserve active-status list under section 14704 of this title; or

(2) for selective early retirement under section 14705 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2924; amended Pub. L. 105-85, div. A, title V, Sec. 514(a), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 107-107, div. A, title V, Sec. 505(b)(3), Dec. 28, 2001, 115 Stat. 1087; Pub. L. 108-136, div. A, title V, Sec.

511(b)(1), Nov. 24, 2003, 117 Stat. 1459; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(PP), Jan. 6, 2006, 119 Stat. 3234.)

§ 14102. Selection boards: appointment and composition

(a) APPOINTMENT.—Members of selection boards convened under section 14101 of this title shall be appointed by the Secretary of the military department concerned in accordance with this section. Promotion boards and special selection boards shall consist of five or more officers. Selection boards convened under section 14101(b) of this title shall consist of three or more officers. All of the officers of any such selection board shall be of the same armed force as the officers under consideration by the board.

(b) COMPOSITION.—At least one-half of the members of such a selection board shall be reserve officers, to include at least one reserve officer from each reserve component from which officers are to be considered by the board. Each member of a selection board must hold a permanent grade higher than the grade of the officers under consideration by the board, and no member of a board may hold a grade below major or lieutenant commander.

(c) REPRESENTATION OF COMPETITIVE CATEGORIES.—(1) Except as provided in paragraph (2), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(2) A selection board need not include an officer from a competitive category to be considered by the board if there is no officer of that competitive category on the reserve active-status list or the active-duty list in a permanent grade higher than the grade of the officers to be considered by the board and otherwise eligible to serve on the board. However, in such a case, the Secretary of the military department concerned, in his discretion, may appoint as a member of the board a retired officer of that competitive category who is in the same armed force as the officers under consideration by the board who holds a higher grade than the grade of the officers under consideration.

(d) PROHIBITION OF SERVICE ON CONSECUTIVE PROMOTION BOARDS.—No officer may be a member of two successive promotion boards convened under section 14101(a) of this title for the consideration of officers of the same competitive category and grade if the second of the two boards is to consider any officer who was considered and not recommended for promotion to the next higher grade by the first of the two boards.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2924; amended Pub. L. 108–136, div. A, title V, Sec. 511(b)(2), Nov. 24, 2003, 117 Stat. 1459.)

§ 14103. Oath of members

Each member of a selection board convened under section 14101 of this title shall take an oath to perform the duties of a member of the board without prejudice or partiality, having in view both the special fitness of officers and the efficiency of the member's armed force.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2925.)

§ 14104. Nondisclosure of board proceedings

(a) PROHIBITION ON DISCLOSURE.—The proceedings of a selection board convened under section 14101 or 14502 of this title may

not be disclosed to any person not a member of the board, except as authorized or required to process the report of the board. This prohibition is a statutory exemption from disclosure, as described in section 552(b)(3) of title 5.

(b) PROHIBITED USES OF BOARD DISCUSSIONS, DELIBERATIONS, NOTES, AND RECORDS.—The discussions and deliberations of a selection board described in subsection (a) and any written or documentary record of such discussions and deliberations—

- (1) are immune from legal process;
- (2) may not be admitted as evidence; and
- (3) may not be used for any purpose in any action, suit, or judicial or administrative proceeding without the consent of the Secretary of the military department concerned.

(c) APPLICABILITY.—This section applies to all selection boards convened under section 14101 or 14502 of this title, regardless of the date on which the board was convened.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2925; amended Pub. L. 109–364, div. A, title V, Sec. 547(b), Oct. 17, 2006, 120 Stat. 2216; Pub. L. 111–383, div. A, title V, Sec. 503(c), Jan. 7, 2011, 124 Stat. 4208.)

§ 14105. Notice of convening of promotion board

(a) REQUIRED NOTICE.—At least 30 days before a promotion board is convened under section 14101(a) of this title to consider officers in a grade and competitive category for promotion to the next higher grade, the Secretary concerned shall either (1) notify in writing the officers eligible for consideration by the board for promotion regarding the convening of the board, or (2) issue a general written notice to the armed force concerned regarding the convening of the board.

(b) CONTENT OF NOTICE.—A notice under subsection (a) shall include the date on which the board is to convene and (except in the case of a vacancy promotion board) the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notice.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2925.)

§ 14106. Communication with board by officers under consideration

Subject to regulations prescribed by the Secretary of the military department concerned, an officer eligible for consideration by a promotion board convened under section 14101(a) of this title who is in the promotion zone or above the promotion zone, or who is to be considered by a vacancy promotion board, may send a written communication to the board calling attention to any matter concerning the officer which the officer considers important to the officer's case. Any such communication shall be sent so as to arrive not later than the day before the date on which the board convenes. The board shall give consideration to any timely communication under this section.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2925; amended Pub. L. 109–163, div. A, title V, Sec. 505(b), Jan. 6, 2006, 119 Stat. 3227.)

§ 14107. Information furnished by the Secretary concerned to promotion boards

(a) INTEGRITY OF THE PROMOTION SELECTION BOARD PROCESS.—(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 14101(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the promotion board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 14106 of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1) is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) In the case of an eligible officer considered for promotion to a grade above colonel or, in the case of the Navy, captain, any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(4) Information provided to a promotion board in accordance with paragraphs (2) and (3) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the promotion board.

(5) Paragraphs (2), (3), and (4) do not apply to the furnishing of appropriate administrative processing information to the promotion board by an administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(6) Information furnished to a promotion board that is described in subparagraph (B), (C), or (D) of paragraph (2), or in paragraph (3), may not be furnished to a later promotion board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2) or (3), as applicable.

(7)(A) Before information described in paragraph (2)(B) or (3) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the promotion board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished an appropriate summary of the information.

(b) INFORMATION TO BE FURNISHED.—The Secretary of the military department concerned shall furnish to a promotion board convened under section 14101(a) of this title the following:

(1) In the case of a mandatory promotion board, the maximum number (as determined in accordance with section 14307 of this title) of officers in each competitive category under consideration that the board is authorized to recommend for promotion to the next higher grade.

(2) The name of each officer in each competitive category under consideration who is to be considered by the board for promotion.

(3) The pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board.

(4) Information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including (except in the case of a vacancy promotion board) guidelines or information relating to either a minimum number or a maximum number of officers with particular skills within a competitive category.

(5) Such other information or guidelines as the Secretary concerned may determine to be necessary to enable the board to perform its functions.

(c) LIMITATION ON MODIFYING FURNISHED INFORMATION.—Information or guidelines furnished to a selection board under subsection (a) may not be modified, withdrawn, or supplemented after the board submits its report to the Secretary of the military department concerned pursuant to section 14109(a) of this title. However, in the case of a report returned to a board pursuant to section 14110(a) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(d) OFFICERS IN HEALTH-PROFESSIONS COMPETITIVE CATEGORIES.—The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a promotion board convened under section 14101(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of officers of the Navy Reserve, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2926; amended Pub. L. 109-163, div. A, title V, Secs. 506(b), 515(b)(1)(QQ), Jan. 6, 2006, 119 Stat. 3227, 3234.)

§ 14108. Recommendations by promotion boards

(a) RECOMMENDATION OF BEST QUALIFIED OFFICERS.—A promotion board convened under section 14101(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board considers best qualified for promotion within each competitive category considered by the board or, in the case of a vacancy promotion board, among those officers considered to fill a vacancy. In determining those officers who are best qualified for promotion, the board shall give due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 14107 of this title).

(b) ACTIONS REQUIRED.—A promotion board convened under section 14101(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board;

(2) a majority of the members of the board finds that the officer is fully qualified for promotion; and

(3) a majority of the members of the board, after consideration by all members of the board of any adverse information about the officer that is provided to the board under section 14107 of this title, finds that the officer is among the officers best qualified for promotion to meet the needs of the armed force concerned consistent with the requirement of exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable.

(c) BOARD RECOMMENDATION REQUIRED FOR PROMOTION.—Except as otherwise provided by law, an officer on the reserve active-status list may not be promoted to a higher grade under chapter 1405 of this title unless the officer is considered and recommended for promotion to that grade by a promotion board convened under section 14101(a) of this title (or by a special selection board convened under section 14502 of this title).

(d) DISCLOSURE OF BOARD RECOMMENDATIONS.—The recommendations of a promotion board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the

written report of the recommendations of the board, required by section 14109 of this title, is signed by each member of the board.

(e) PROHIBITION OF COERCION AND UNAUTHORIZED INFLUENCE OF ACTIONS OF BOARD MEMBERS.—The Secretary convening a promotion board under section 14101(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a promotion board or any member of a promotion board in the formulation of the board's recommendations.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2928; amended Pub. L. 109-364, div. A, title V, Sec. 512(b), Oct. 17, 2006, 120 Stat. 2184.)

§ 14109. Reports of promotion boards: in general

(a) REPORT OF OFFICERS RECOMMENDED FOR PROMOTION.—Each promotion board convened under section 14101(a) of this title shall submit to the Secretary of the military department concerned a report in writing containing a list of the names of the officers recommended by the board for promotion. The report shall be signed by each member of the board.

(b) CERTIFICATION.—Each report under subsection (a) shall include a certification—

(1) that the board has carefully considered the record of each officer whose name was furnished to the board; and

(2) that, in the case of a promotion board convened under section 14101(a) of this title, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 14107 of this title) among those officers whose names were furnished to the selection board.

(c) SHOW-CAUSE RECOMMENDATIONS.—(1) A promotion board convened under section 14101(a) of this title shall include in its report to the Secretary concerned the name of any reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required to show cause for retention in an active status.

(2) If such a report names an officer as having a record which indicates that the officer should be required to show cause for retention, the Secretary concerned may provide for the review of the record of that officer as provided under regulations prescribed under section 14902 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2928.)

§ 14110. Reports of promotion boards: review by Secretary

(a) REVIEW OF REPORT.—Upon receipt of the report of a promotion board submitted under section 14109(a) of this title, the Secretary of the military department concerned shall review the re-

port to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 14107(a) of this title. Following that review, unless the Secretary concerned makes a determination as described in subsection (b), the Secretary shall submit the report as required by section 14111 of this title.

(b) RETURN OF REPORT FOR FURTHER PROCEEDINGS.—If, on the basis of a review of the report under subsection (a), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 14107(a) of this title, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 14101(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 14109 of this title.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2929.)

§ 14111. Reports of selection boards: transmittal to President

(a) TRANSMITTAL TO PRESIDENT.—The Secretary concerned, after final review of the report of a selection board under section 14110 of this title, shall submit the report with the Secretary's recommendations, to the Secretary of Defense for transmittal by the Secretary to the President for approval or disapproval. If the authority of the President to approve or disapprove the report of a promotion board is delegated to the Secretary of Defense, that authority may not be redelegated except to an official in the Office of the Secretary of Defense.

(b) REMOVAL OF NAME FROM BOARD REPORT.—(1) Except as provided in paragraph (2), the name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(2) In the case of an officer recommended by a selection board for promotion to a grade below brigadier general or rear admiral (lower half), the name of the officer may also be removed from the report of the selection board by the Secretary of Defense or the Deputy Secretary of Defense.

(c) RECOMMENDATIONS FOR REMOVAL OF SELECTED OFFICERS FROM REPORT.—If the Secretary of a military department or the Secretary of Defense makes a recommendation under this section that the name of an officer be removed from the report of a promotion board and the recommendation is accompanied by information that was not presented to that promotion board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer cannot be given access to such information because of its classification sta-

tus, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2929; amended Pub. L. 109-364, div. A, title V, Sec. 513(b), Oct. 17, 2006, 120 Stat. 2185.)

§ 14112. Dissemination of names of officers selected

(a) TIME FOR DISSEMINATION.—The names of the officers recommended for promotion in the report of a selection board shall be disseminated to the armed force concerned as follows:

(1) In the case of officers recommended for promotion to a grade below brigadier general or rear admiral (lower half), such names may be disseminated upon, or at any time after, the transmittal of the report to the President.

(2) In the case of officers recommended for promotion to a grade above colonel or, in the case of the Navy, captain, such names may be disseminated upon, or at any time after, the approval of the report by the President.

(3) In the case of officers whose names have not been sooner disseminated, such names shall be promptly disseminated—

(A) upon confirmation of the promotion of the officers by the Senate (in the case of promotions required to be submitted to the Senate for confirmation); or

(B) upon the approval of the report by the President (in the case of promotions not required to be submitted to the Senate for confirmation).

(b) NAMES NOT DISSEMINATED.—A list of names of officers disseminated under subsection (a) may not include—

(1) any name removed by the President from the report of the selection board containing that name, if dissemination is under the authority of paragraph (2) or (3)(B) of that subsection; or

(2) the name of any officer whose promotion the Senate failed to confirm, if dissemination is under the authority of paragraph (3)(A) of that subsection.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2930; amended Pub. L. 106-398, Sec. 1 [[div. A], title V, Sec. 503(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-101.)

CHAPTER 1405—PROMOTIONS

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§ 14301. Eligibility for consideration for promotion: general rules

(a) ONE-YEAR RULE.—An officer is eligible under this chapter for consideration for promotion by a promotion board convened under section 14101(a) of this title only if—

(1) the officer is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps; and

(2) during the one-year period ending on the date of the convening of the promotion board the officer has continuously performed service on either the reserve active-status list or the active-duty list (or on a combination of both lists).

(b) REQUIREMENT FOR CONSIDERATION OF ALL OFFICERS IN AND ABOVE THE ZONE.—Whenever a promotion board (other than a vacancy promotion board) is convened under section 14101(a) of this title for consideration of officers in a competitive category who are eligible under this chapter for consideration for promotion to the next higher grade, each officer in the promotion zone, and each officer above the promotion zone, for that grade and competitive category shall be considered for promotion.

(c) PREVIOUSLY SELECTED OFFICERS NOT ELIGIBLE TO BE CONSIDERED.—A promotion board convened under section 14101(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of recommendation for promotion to that

grade any of the following officers: by an earlier selection board convened under that section or section 14502 of this title or under chapter 36 of this title.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under a provision referred to in paragraph (1), in the case of such a report that has not yet been approved by the President.

(3) An officer who has been approved for Federal recognition by a board convened under section 307 of title 32 and nominated by the President for promotion to that grade as a reserve of the Army or of the Air Force as the case may be, if that nomination is pending before the Senate.

(4) An officer who has been nominated by the President for promotion to that grade under any other provision of law, if that nomination is pending before the Senate.

(5) An officer in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who is on an approved all-fully-qualified-officers list under section 14308(b)(4) of this title.

(d) OFFICERS BELOW THE ZONE.—The Secretary of the military department concerned may, by regulation, prescribe procedures to limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion. The regulations shall include criteria for determining which officers below the promotion zone are exceptionally well qualified for promotion.

(e) CERTAIN RESERVE OFFICERS OF THE AIR FORCE.—A reserve officer of the Air Force who (1) is in the Air National Guard of the United States and holds the grade of lieutenant colonel, colonel, or brigadier general, or (2) is in the Air Force Reserve and holds the grade of colonel or brigadier general, is not eligible for consideration for promotion by a mandatory promotion board convened under section 14101(a) of this title.

(f) NONCONSIDERATION OF OFFICERS SCHEDULED FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—The Secretary of the military department concerned may, by regulation, provide for the exclusion from consideration for promotion by a promotion board of any officer otherwise eligible to be considered by the board who has an established date for removal from the reserve active-status list that is not more than 90 days after the date on which the selection board for which the officer would otherwise be eligible is to be convened.

(g) BRIGADIER GENERALS.—(1) An officer who is a reserve component brigadier general of the Army or the Air Force who is not eligible for consideration for promotion under subsection (a) because the officer is not on the reserve active status list (as required by paragraph (1) of that subsection for such eligibility) is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

(A) as of the date of the convening of the promotion board, the officer has been in an inactive status for less than one year; and

(B) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list) for at least one year.

(2) An officer who is a reserve component brigadier general of the Army or the Air Force who is on the reserve active status list but who is not eligible for consideration for promotion under subsection (a) because the officer's service does not meet the one-year-of-continuous-service requirement under paragraph (2) of that subsection is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

(A) the officer was transferred from an inactive status to the reserve active status list during the one-year period preceding the date of the convening of the promotion board;

(B) immediately before the date of the officer's most recent transfer to an active status, the officer had been in an inactive status for less than one year; and

(C) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served for at least one year on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list).

(h) OFFICERS ON EDUCATIONAL DELAY.—An officer on the reserve active-status list is ineligible for consideration for promotion, but shall remain on the reserve active-status list, while the officer—

(1) is pursuing a program of graduate level education in an educational delay status approved by the Secretary concerned; and

(2) is receiving from the Secretary financial assistance in connection with the pursuit of that program of education while in that status.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2931; amended Pub. L. 105-85, div. A, title V, Secs. 503(b), (c), 514(b), Nov. 18, 1997, 111 Stat. 1724, 1725, 1732; Pub. L. 105-261, div. A, title V, Sec. 514, Oct. 17, 1998, 112 Stat. 2008; Pub. L. 106-65, div. A, title V, Sec. 513(a), title X, Sec. 1066(a)(32), Oct. 5, 1999, 113 Stat. 593, 772; Pub. L. 107-107, div. A, title V, Sec. 505(c)(1)(B), Dec. 28, 2001, 115 Stat. 1087; Pub. L. 107-314, div. A, title V, Sec. 521, Dec. 2, 2002, 116 Stat. 2540.)

§ 14302. Promotion zones

(a) PROMOTION ZONES GENERALLY.—For purposes of this chapter, a promotion zone is an eligibility category for the consideration of officers by a mandatory promotion board. A promotion zone consists of those officers on the reserve active-status list who are in the same grade and competitive category and who meet the requirements of both paragraphs (1) and (2) or the requirements of paragraph (3), as follows:

(1)(A) In the case of officers in grades below colonel, for reserve officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy Reserve, those who have neither (i) failed of selection for promotion to the next higher grade, nor (ii) been removed from a list of officers recommended for promotion to that grade.

(B) In the case of officers in the grade of colonel or brigadier general, for reserve officers of the Army and Marine Corps, or in the grade of captain or rear admiral (lower half), for reserve officers of the Navy, those who have neither (i) been recommended for promotion to the next higher grade when considered in the promotion zone, nor (ii) been removed from a list of officers recommended for promotion to that grade.

(2) Those officers who are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade and the officer so designated.

(3) Those officers who—

(A) have been selected from below the zone for promotion to the next higher grade or by a vacancy promotion board, but whose names were removed from the list of officers recommended for promotion to that next higher grade resulting from that selection;

(B) have not failed of selection for promotion to that next higher grade; and

(C) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to that next higher grade and the officer so designated.

(b) OFFICERS ABOVE THE ZONE.—Officers on the reserve active-status list are considered to be above the promotion zone for a grade and competitive category if they—

(1) are eligible for consideration for promotion to the next higher grade;

(2) are in the same grade as those officers in the promotion zone for that competitive category; and

(3) are senior to the senior officer in the promotion zone for that competitive category.

(c) OFFICERS BELOW THE ZONE.—Officers on the reserve active-status list are considered to be below the promotion zone for a grade and competitive category if they—

(1) are eligible for consideration for promotion to the next higher grade;

(2) are in the same grade as those officers in the promotion zone for that competitive category; and

(3) are junior to the junior officer in the promotion zone for that competitive category.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2932; amended Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(RR), Jan. 6, 2006, 119 Stat. 3234.)

§ 14303. Eligibility for consideration for promotion: minimum years of service in grade

(a) OFFICERS IN PAY GRADES O-1 AND O-2.—An officer who is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant as a reserve officer of the Army, Air Force, or Marine Corps, or in the grade of ensign or lieutenant (junior grade) as a reserve officer of the Navy, may not be

promoted to the next higher grade, or granted Federal recognition in that grade, until the officer has completed the following years of service in grade:

(1) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(2) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade).

(b) OFFICERS IN PAY GRADES O-3 AND ABOVE.—Subject to subsection (d), an officer who is on the reserve active-status list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant, or who is on the reserve active-status list of the Navy in a grade above lieutenant (junior grade), may not be considered for selection for promotion to the next higher grade, or examined for Federal recognition in the next higher grade, until the officer has completed the following years of service in grade:

(1) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or in the case of a reserve officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(2) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or in the case of a reserve officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

This subsection does not apply to an adjutant general or assistant adjutant general of a State or to an appointment in a higher grade which is based upon a specific provision of law.

(c) AUTHORITY TO LENGTHEN MINIMUM PERIOD IN GRADE.—The Secretary concerned may prescribe a period of service in grade for eligibility for promotion, in the case of officers to whom subsection (a) applies, or for eligibility for consideration for promotion, in the case of officers to whom subsection (b) applies, that is longer than the applicable period specified in that subsection.

(d) WAIVERS TO ENSURE TWO BELOW-THE-ZONE CONSIDERATIONS.—Subject to section 14307(b) of this title, the Secretary of the military department concerned may waive subsection (b) to the extent necessary to ensure that officers described in paragraph (1) of that subsection have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2933.)

§ 14304. Eligibility for consideration for promotion: maximum years of service in grade

(a) CONSIDERATION FOR PROMOTION WITHIN SPECIFIED TIMES.—(1) Officers described in paragraph (3) shall be placed in the promotion zone for that officer's grade and competitive category, and shall be considered for promotion to the next higher grade by a promotion board convened under section 14101(a) of this

title, far enough in advance of completing the years of service in grade specified in the following table so that, if the officer is recommended for promotion, the promotion may be effective on or before the date on which the officer will complete those years of service.

Current Grade	Maximum years of service in grade
First lieutenant or Lieutenant (junior grade)	5 years
Captain or Navy Lieutenant	7 years
Major or Lieutenant commander	7 years

(2) Paragraph (1) is subject to subsections (a), (b), and (c) of section 14301 of this title and applies without regard to vacancies.

(3) Paragraph (1) applies to an officer who is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps and who holds a permanent appointment in the grade of first lieutenant, captain, or major as a reserve of the Army, Air Force, or Marine Corps, or to an officer on the reserve active-status list of the Navy in the grade of lieutenant (junior grade), lieutenant, or lieutenant commander as a reserve of the Navy, and who, while holding that appointment, has not been considered by a selection board convened under section 14101(a) or 14502 of this title for promotion to the next higher grade.

(b) PROMOTION DATE.—An officer holding a permanent grade specified in the table in subsection (a) who is recommended for promotion to the next higher grade by a selection board the first time the officer is considered for promotion while in or above the promotion zone and who is placed on an approved promotion list established under section 14308(a) of this title shall (if not promoted sooner or removed from that list by the President or by reason of declination) be promoted, without regard to the existence of a vacancy, on the date on which the officer completes the maximum years of service in grade specified in subsection (a). The preceding sentence is subject to the limitations of section 12011 of this title.

(c) WAIVER AUTHORITY FOR NAVY AND MARINE CORPS RUNNING MATE SYSTEM.—If the Secretary of the Navy establishes promotion zones for officers on the reserve active-status list of the Navy or the Marine Corps Reserve in accordance with a running mate system under section 14306 of this title, the Secretary may waive the requirements of subsection (a) to the extent the Secretary considers necessary in any case in which the years of service for promotion, or for consideration for promotion, within those zones will exceed the maximum years of service in grade specified in subsection (a).

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2934.)

§ 14305. Establishment of promotion zones: mandatory consideration for promotion

(a) ESTABLISHMENT OF ZONE.—Before convening a mandatory promotion board under section 14101(a) of this title, the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) NUMBER IN THE ZONE.—The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers

who are eligible for promotion in that grade and competitive category under the provisions of sections 14303 and 14304 of this title and who are otherwise eligible for promotion.

(c) **FACTORS IN DETERMINING NUMBER IN THE ZONE.**—The Secretary's determination under subsection (b) shall be made on the basis of an estimate of the following:

(1) The number of officers needed in that competitive category in the next higher grade in each of the next five years.

(2) In the case of a promotion zone for officers to be promoted to a grade to which the maximum years of in grade criteria established in section 14304 of this title apply, the number of officers in that competitive category who are required to be considered for selection for promotion to the next higher grade under that section.

(3) The number of officers that should be placed in the promotion zone in each of the next five years to provide to officers in those years relatively similar opportunities for promotion.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2935.)

§ 14306. Establishment of promotion zones: Navy Reserve and Marine Corps Reserve running mate system

(a) **AUTHORITY OF SECRETARY OF THE NAVY.**—The Secretary of the Navy may by regulation implement section 14305 of this title by requiring that the promotion zone for consideration of officers on the reserve active-status list of the Navy or the Marine Corps for promotion to the next higher grade be determined in accordance with a running mate system as provided in subsection (b).

(b) **ASSIGNMENT OF RUNNING MATES.**—An officer to whom a running mate system applies shall be assigned as a running mate an officer of the same grade on the active-duty list of the same armed force. The officer on the reserve active-status list is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title when that officer's running mate is in or above the promotion zone established for that officer's grade under chapter 36 of this title.

(c) **CONSIDERATION OF OFFICERS BELOW THE ZONE UNDER A RUNNING MATE SYSTEM.**—If the Secretary of the Navy authorizes the selection of officers for promotion from below the promotion zone in accordance with section 14307 of this title, the number of officers to be considered from below the zone may be established through the application of the running mate system or otherwise as the Secretary determines to be appropriate to meet the needs of the Navy or Marine Corps.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2935; amended Pub. L. 109-163, div. A, title V, Sec. 515(b)(3)(J), Jan. 6, 2006, 119 Stat. 3235.)

§ 14307. Number of officers to be recommended for promotion

(a) **DETERMINATION OF MAXIMUM NUMBER.**—Before convening a promotion board under section 14101(a) of this title for a grade and competitive category (other than a vacancy promotion board), the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine the

maximum number of officers in that grade and competitive category that the board may recommend for promotion. The Secretary shall make the determination under the preceding sentence of the maximum number that may be recommended with a view to having on the reserve active-status list a sufficient number of officers in each grade and competitive category to meet the needs of the armed force concerned for officers on that list. In order to make that determination, the Secretary shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, (3) the number of officers authorized by the Secretary of the military department concerned to serve on the reserve active-status list in the grade and competitive category under consideration, and (4) any statutory limitation on the number of officers in any grade or category (or combination thereof) authorized to be on the reserve active-status list.

(b) BELOW-THE-ZONE SELECTIONS.—(1) The Secretary of the military department concerned may, when the needs of the armed force concerned require, authorize the consideration of officers in the grade of captain, major, or lieutenant colonel on the reserve active-status list of the Army or Air Force, in a grade above first lieutenant on the reserve active-status list of the Marine Corps, or in a grade above lieutenant (junior grade) on the reserve active-status list of the Navy, for promotion to the next higher grade from below the promotion zone.

(2) When selection from below the promotion zone is authorized, the Secretary shall establish the number of officers that may be recommended for promotion from below the promotion zone in each competitive category to be considered. That number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the armed force concerned so require. If the maximum number determined under this paragraph is less than one, the board may recommend one officer for promotion from below the promotion zone.

(3) The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers that the board is authorized to recommend for promotion under subsection (a).

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2936.)

§ 14308. Promotions: how made

(a) PROMOTION LIST.—When the report of a selection board convened under section 14101(a) or 14502 of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers selected for promotion within a competitive category on a single list for that competitive

category, to be known as a promotion list, in the order of seniority of those officers on the reserve active-status list. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

(b) PROMOTION; HOW MADE; ORDER.—(1) Officers on a promotion list for a competitive category shall be promoted in the manner specified in section 12203 of this title.

(2) Officers on a promotion list for a competitive category shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary of the military department concerned. Except as provided in section 14311, 14312, or 14502(e) of this title or in subsection (d) or (e), promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted.

(3) Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary of the military department concerned.

(4)(A) Officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned. Such promotions shall be in the manner specified in section 12203 of this title.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter and chapter 1403 of this title.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the reserve active-status list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title upon the convening of such a board.

(c) DATE OF RANK.—(1) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d)(2) of this title.

(2) The date of rank of an officer appointed to a higher grade under this section may be adjusted in the same manner as an adjustment may be made under section 741(d)(4) of this title in the date of rank of an officer appointed to a higher grade under section 624(a) of this title. In any use of the authority under the preceding

sentence, subparagraph (C)(ii) of such section shall be applied by substituting “reserve active-status list” for “active-duty list”.

(3) Except as provided in paragraph (2) or as otherwise specifically authorized by law, a reserve officer is not entitled to additional pay or allowances if the effective date of the officer’s promotion is adjusted to reflect a date earlier than the actual date of the officer’s promotion.

(d) OFFICERS WITH RUNNING MATES.—An officer to whom a running mate system applies under section 14306 of this title and who is selected for promotion is eligible for promotion to the grade for which selected when the officer who is that officer’s running mate becomes eligible for promotion under chapter 36 of this title. The effective date of the promotion of that officer shall be the same as that of the officer’s running mate in the grade to which the running mate is promoted.

(e) ARMY RESERVE AND AIR FORCE RESERVE PROMOTIONS TO FILL VACANCIES.—Subject to this section and to section 14311(e) of this title, and under regulations prescribed by the Secretary of the military department concerned—

(1) an officer in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) of this title or a board convened under section 14502 or chapter 36 of this title may be promoted at any time to fill a vacancy in a position to which the officer is assigned; and

(2) an officer in a grade below colonel in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a vacancy promotion board convened under section 14101(a) of this title may be promoted at any time to fill the vacancy for which the officer was selected.

(f) EFFECTIVE DATE OF PROMOTION AFTER FEDERAL RECOGNITION.—The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended.

(g) ARMY AND AIR FORCE GENERAL OFFICER PROMOTIONS.—A reserve officer of the Army or the Air Force who is on a promotion list for promotion to the grade of brigadier general or major general as a result of selection by a vacancy promotion board may be promoted to that grade only to fill a vacancy in the Army Reserve or the Air Force Reserve, as the case may be, in that grade.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2937; amended Pub. L. 105–85, div. A, title V, Sec. 514(c), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 107–107, div. A, title V, Secs. 505(b)(1), 506(b), Dec. 28, 2001, 115 Stat. 1086, 1089; Pub. L. 109–364, div. A, title V, Sec. 511(d)(2), Oct. 17, 2006, 120 Stat. 2183.)

§ 14309. Acceptance of promotion; oath of office

(a) ACCEPTANCE.—An officer who is appointed to a higher grade under this chapter shall be considered to have accepted the appointment on the date on which the appointment is made unless the officer expressly declines the appointment or is granted a delay of promotion under section 14312 of this title.

(b) OATH.—An officer who has served continuously since taking the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this chapter.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2938.)

§ 14310. Removal of officers from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a promotion list at any time before the date on which the officer is promoted.

(b) REMOVAL FOR WITHHOLDING OF SENATE ADVICE AND CONSENT.—If the Senate does not give its advice and consent to the appointment to the next higher grade of an officer whose name is on a list of officers approved by the President for promotion (except in the case of promotions to a reserve grade to which appointments may be made by the President alone), the name of that officer shall be removed from the list.

(c) REMOVAL AFTER 18 MONTHS.—(1) If an officer whose name is on a list of officers approved for promotion under section 14308(a) of this title to a grade for which appointment is required by section 12203(a) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

(2) Before the end of the promotion eligibility period with respect to an officer under paragraph (1), the President may extend that period for purposes of paragraph (1) by an additional 12 months.

(3) In this subsection, the term "promotion eligibility period" means, with respect to an officer whose name is on a list of officers approved for promotion under section 14308(a) of this title to a grade for which appointment is required by section 12203(a) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the eighteenth month following the month during which the list is so approved.

(d) ADMINISTRATIVE REMOVAL.—Under regulations prescribed by the Secretary concerned, if an officer on the reserve active-status list is discharged or dropped from the rolls or transferred to a retired status after having been recommended for promotion to a higher grade under this chapter or having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer's name shall be administratively removed from the list of officers recommended for promotion by a selection board.

(e) CONTINUED ELIGIBILITY FOR PROMOTION.—An officer whose name is removed from a list under subsection (a), (b), or (c) continues to be eligible for consideration for promotion. If that officer is recommended for promotion by the next selection board convened for that officer's grade and competitive category and the officer is promoted, the Secretary of the military department concerned may,

upon the promotion, grant the officer the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the reserve active-status list, as the officer would have had if the officer's name had not been removed from the list.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2938; amended Pub. L. 109-364, div. A, title V, Sec. 515(b), Oct. 17, 2006, 120 Stat. 2186; Pub. L. 110-181, div. A, title X, Sec. 1063(a)(16), Jan. 28, 2008, 122 Stat. 322; Pub. L. 111-383, div. A, title V, Sec. 504(b), title X, Sec. 1075(f)(7), Jan. 7, 2011, 124 Stat. 4208, 4376.)

§ 14311. Delay of promotion: involuntary

(a) DELAY DURING INVESTIGATIONS AND PROCEEDINGS.—(1) Under regulations prescribed by the Secretary of Defense, the appointment of an officer to a higher grade may be delayed if any of the following applies before the date on which the appointment would otherwise be made:

(A) Sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and the charges have not been disposed of.

(B) An investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer.

(C) A board of officers has been convened under section 14903 of this title to review the record of the officer.

(D) A criminal proceeding in a Federal or State court of competent jurisdiction is pending against the officer.

(E) Substantiated adverse information about the officer that is material to the decision to appoint the officer is under review by the Secretary of Defense or the Secretary concerned.

(2) If disciplinary action is not taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not separated by the Secretary of the military department concerned as the result of having been required to show cause for retention, if the officer is acquitted of the charges, or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion, as the case may be, then (unless action to delay the officer's appointment to the higher grade has been taken under subsection (b)) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable), list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the reserve active-status list as the Secretary considers appropriate under the circumstances.

(b) **DELAY FOR LACK OF QUALIFICATIONS.**—Under regulations prescribed by the Secretary of Defense, the appointment of an officer to a higher grade may also be delayed if there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade to which selected. If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to the higher grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to the higher grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable), the list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade, and shall, upon promotion to that grade, have the same date of rank, the same effective date for pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the reserve active-status list as the Secretary considers appropriate under the circumstances.

(c) **NOTICE TO OFFICER.**—(1) The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) unless the officer is given written notice of the grounds for the delay. The preceding sentence does not apply if it is impracticable to give the officer written notice before the date on which the appointment to the higher grade would otherwise take effect, but in such a case the written notice shall be given as soon as practicable.

(2) An officer whose promotion is delayed under subsection (a) or (b) shall be given an opportunity to make a written statement to the Secretary of the military department concerned in response to the action taken. The Secretary shall give consideration to any such statement.

(d) **MAXIMUM LENGTH OF DELAY IN PROMOTION.**—The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) for more than six months after the date on which the officer would otherwise have been promoted unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against the officer in a Federal or State court of competent jurisdiction or more than 90 days after final action has been taken in any court-martial case against the officer. Except for court action, a promotion may not be delayed more than 18 months after the date on which the officer would otherwise have been promoted.

(e) **DELAY BECAUSE OF LIMITATIONS ON OFFICER STRENGTH IN GRADE OR DUTIES TO WHICH ASSIGNED.**—(1) Under regulations pre-

scribed by the Secretary of Defense, the promotion of a reserve officer on the reserve active-status list who is serving on active duty, or who is on full-time National Guard duty for administration of the reserves or the National Guard, to a grade to which the strength limitations of section 12011 of this title apply shall be delayed if necessary to ensure compliance with those strength limitations. The delay shall expire when the Secretary determines that the delay is no longer required to ensure such compliance.

(2) The promotion of an officer described in paragraph (1) shall also be delayed while the officer is on duty described in that paragraph unless the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, determines that the duty assignment of the officer requires a higher grade than the grade currently held by the officer.

(3) The date of rank and position on the reserve active-status list of a reserve officer whose promotion to or Federal recognition in the next higher grade was delayed under paragraph (1) or (2) solely as the result of the limitations imposed under the regulations prescribed by the Secretary of Defense or contained in section 12011 of this title shall be the date on which the officer would have been promoted to or recognized in the higher grade had such limitations not existed.

(4) If an officer whose promotion is delayed under paragraph (1) or (2) completes the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may request release from active duty or full-time National Guard duty. If the request is granted, the officer's promotion shall be effective upon the officer's release from such duty. The date of rank and position on the reserve active-status list of the officer shall be the date the officer would have been promoted to or recognized in the higher grade had the limitations imposed under regulations prescribed by the Secretary of Defense contained in section 12011 of this title not existed. If an officer whose promotion is delayed under paragraph (1) or (2) has not completed the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may be retained on active duty or on full-time National Guard duty in the grade in which the officer was serving before the officer's being found qualified for Federal recognition or the officer's selection for the promotion until the officer completes that required period of duty.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2939; amended Pub. L. 107-107, div. A, title V, Sec. 505(c)(2)(B), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 109-364, div. A, title V, Sec. 511(b), Oct. 17, 2006, 120 Stat. 2182; Pub. L. 111-383, div. A, title X, Sec. 1075(g)(4), Jan. 7, 2011, 124 Stat. 4377.)

§ 14312. Delay of promotion: voluntary

(a) AUTHORITY FOR VOLUNTARY DELAYS.—(1) The Secretary of the military department concerned may, by regulation, permit delays of a promotion of an officer who is recommended for promotion by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title at the request of the officer concerned. Such delays, in the case of any promotion, may extend for any period not to exceed

three years from the date on which the officer would otherwise be promoted.

(2) Regulations under this section shall provide that—

(A) a request for such a delay of promotion must be submitted by the officer concerned before the delay may be approved; and

(B) denial of such a request shall not be considered to be a failure of selection for promotion unless the officer declines to accept a promotion under circumstances set forth in subsection (c).

(b) EFFECT OF APPROVAL OF REQUEST.—If a request for delay of a promotion under subsection (a) is approved, the officer's name shall remain on the promotion list during the authorized period of delay (unless removed under any other provision of law). Upon the end of the period of the authorized delay, or at any time during such period, the officer may accept the promotion, which shall be effective on the date of acceptance. Such an acceptance of a promotion shall be made in accordance with regulations prescribed under this section.

(c) EFFECT OF DECLINING A PROMOTION.—An officer's name shall be removed from the promotion list and, if the officer is serving in a grade below colonel or, in the case of the Navy, captain, the officer shall be considered to have failed of selection for promotion if any of the following applies:

(1) The Secretary concerned has not authorized voluntary delays of promotion under subsection (a) to the grade concerned and the officer declines to accept an appointment to a higher grade.

(2) The Secretary concerned has authorized voluntary delays of promotion under subsection (a), but has denied the request of the officer for a delay of promotion and the officer then declines to accept an appointment to a higher grade.

(3) The Secretary concerned has approved the request of an officer for a delay of promotion and, upon the end of the period of delay authorized in accordance with regulations prescribed under subsection (a), the officer then declines to accept an appointment to a higher grade.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2941.)

§ 14313. Authority to vacate promotions to grade of brigadier general or rear admiral (lower half)

(a) AUTHORITY.—The President may vacate the appointment of a reserve officer to the grade of brigadier general or rear admiral (lower half) if the period of time during which the officer has served in that grade after promotion to that grade is less than 18 months.

(b) EFFECT OF PROMOTION BEING VACATED.—Except as provided in subsection (c), an officer whose promotion to the grade of brigadier general is vacated under this section holds the grade of colonel as a reserve of the armed force of which the officer is a member. An officer whose promotion to the grade of rear admiral (lower half) is vacated under this section holds the grade of captain in the Navy Reserve. Upon assuming the lower grade, the officer shall have the same position on the reserve active-status list as the

officer would have had if the officer had not served in the higher grade.

(c) **SPECIAL RULE FOR OFFICERS SERVING AS ADJUTANT GENERAL.**—In the case of an officer serving as an adjutant general or assistant adjutant general whose promotion to the grade of brigadier general is vacated under this section, the officer then holds the reserve grade held by that officer immediately before the officer's appointment as adjutant general or assistant adjutant general.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2942; amended Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(SS), Jan. 6, 2006, 119 Stat. 3234.)

§ 14314. Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general

(a) **GENERAL OFFICERS.**—Within 30 days after a reserve officer of the Army or the Air Force on the reserve active-status list in a general officer grade ceases to occupy a position commensurate with that grade (or commensurate with a higher grade), the Secretary concerned shall transfer or discharge the officer in accordance with whichever of the following the officer elects:

(1) Transfer the officer in grade to the Retired Reserve, if the officer is qualified and applies for the transfer.

(2) Transfer the officer in grade to the inactive status list of the Standby Reserve, if the officer is qualified.

(3) Discharge the officer from the officer's reserve appointment and, if the officer is qualified and applies therefor, appoint the officer in the reserve grade held by the officer as a reserve officer before the officer's appointment in a general officer grade.

(4) Discharge the officer from the officer's reserve appointment.

(b) **ADJUTANTS GENERAL.**—If a reserve officer who is federally recognized in the Army National Guard or the Air National Guard solely because of the officer's appointment as adjutant general or assistant adjutant general of a State ceases to occupy that position, the Secretary concerned, not later than 30 days after the date on which the officer ceases to occupy that position, shall—

(1) withdraw that officer's Federal recognition; and

(2) require that the officer—

(A) be transferred in grade to the Retired Reserve, if the officer is qualified and applies for the transfer;

(B) be discharged from the officer's reserve appointment and appointed in the reserve grade held by the officer as a reserve officer immediately before the appointment of that officer as adjutant general or assistant adjutant general, if the officer is qualified and applies for that appointment; or

(C) be discharged from the officer's reserve appointment.

(c) **CREDIT FOR SERVICE IN GRADE.**—An officer who is appointed under subsection (a)(3) or (b)(2)(B) shall be credited with an amount of service in the grade in which appointed that is equal to the amount of prior service in an active status in that grade and in any higher grade.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2942; amended Pub. L. 104-201, div. A, title V, Sec. 544(c), Sept. 23, 1996, 110 Stat. 2523.)

§ 14315. Position vacancy promotions: Army and Air Force officers

(a) OFFICERS ELIGIBLE FOR CONSIDERATION FOR VACANCY PROMOTIONS BELOW BRIGADIER GENERAL.—A reserve officer of the Army who is in the Army Reserve, or a reserve officer of the Air Force who is in the Air Force Reserve, who is on the reserve active-status list in the grade of first lieutenant, captain, major, or lieutenant colonel is eligible for consideration for promotion to the next higher grade under this section if each of the following applies:

(1) The officer is occupying or, under regulations prescribed by the Secretary concerned, has been recommended to occupy a position in the same competitive category as the officer and for which a grade higher than the one held by that officer is authorized.

(2) The officer is fully qualified to meet all requirements for the position as established by the Secretary of the military department concerned.

(3) The officer has held the officer's present grade for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade.

(b) CONSIDERATION FOR VACANCY PROMOTION TO BRIGADIER GENERAL OR MAJOR GENERAL.—(1) A reserve officer of the Army who is in the Army Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade in the Army Reserve or is recommended for such an assignment under regulations prescribed by the Secretary of the Army, (B) has held the officer's present grade for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade, and (C) meets the standards for consideration prescribed by the Secretary of the Army.

(2) A reserve officer of the Air Force who is in the Air Force Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force, and (B) meets the standards for consideration prescribed by the Secretary of the Air Force.

(c) VACANCY PROMOTION BOARDS.—Consideration for promotion under this section shall be by a vacancy promotion board convened under section 14101(a) of this title.

(d) EFFECT OF NONSELECTION.—An officer who is considered for promotion under this section and is not selected shall not be considered to have failed of selection for promotion.

(e) SPECIAL RULE FOR OFFICERS FAILED OF SELECTION.—A reserve officer of the Army or the Air Force who is considered as failed of selection for promotion under section 14501 of this title to

a grade may be considered for promotion under this section or, if selected, promoted to that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill the vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2943; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(25), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105-85, div. A, title V, Sec. 514(d), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 106-398, Sec. 1[[div. A], title V, Sec. 501], Oct. 30, 2000, 114 Stat. 1654, 1654A-98; Pub. L. 108-136, div. A, title V, Sec. 512(b), Nov. 24, 2003, 117 Stat. 1460.)

§ 14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion

(a) OPPORTUNITY FOR PROMOTION TO FILL A VACANCY IN THE GUARD.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States is recommended by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title for promotion to the next higher grade, an opportunity shall be given to the appropriate authority of the State to promote that officer to fill a vacancy in the Army National Guard or the Air National Guard of that jurisdiction.

(b) AUTOMATIC FEDERAL RECOGNITION.—An officer of the Army National Guard of the United States or the Air National Guard of the United States who is on a promotion list for promotion to the next higher grade as a result of selection for promotion as described in subsection (a) and who before the date of promotion is appointed in that higher grade to fill a vacancy in the Army National Guard or Air National Guard shall—

(1) be extended Federal recognition in that grade, without the examination prescribed in section 307 of title 32; and

(2) subject to section 14311(e) of this title, be promoted to that reserve grade effective on the date of the officer's appointment in that grade in the Army National Guard or Air National Guard.

(c) NATIONAL GUARD OFFICERS FAILED OF SELECTION.—An officer who is considered as failed of selection for promotion under section 14501 of this title to a grade may be extended Federal recognition in that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill a vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(d) TRANSFER TO ARMY RESERVE OR AIR FORCE RESERVE.—If, on the date on which an officer of the Army National Guard of the United States or of the Air National Guard of the United States who is on a promotion list as described in subsection (a) is to be promoted, the officer has not been promoted to fill a vacancy in the higher grade in the Army National Guard or the Air National Guard, the officer's Federal recognition in the officer's reserve grade shall be withdrawn and the officer shall be promoted and transferred to the Army Reserve or the Air Force Reserve as appropriate.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2944.)

§ 14317. Officers in transition to and from the active-status list or active-duty list

(a) EFFECT OF TRANSFER TO INACTIVE STATUS OR RETIRED STATUS.—If a reserve officer on the reserve active-status list is transferred to an inactive status or to a retired status after having been recommended for promotion to a higher grade under this chapter or chapter 36 of this title, or after having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer—

(1) shall be treated as if the officer had not been considered and recommended for promotion by the selection board or examined and been found qualified for Federal recognition; and

(2) may not be placed on a promotion list or promoted to the higher grade after returning to an active status, unless the officer is again recommended for promotion by a selection board convened under chapter 36 of this title or section 14101(a) or 14502 of this title or examined for Federal recognition under title 32.

(b) EFFECT OF PLACEMENT ON ACTIVE-DUTY LIST.—A reserve officer who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title and who before being promoted is placed on the active-duty list of the same armed force and placed in the same competitive category shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list for officers on the active-duty list established under chapter 36 of this title.

(c) OFFICERS ON A PROMOTION LIST REMOVED FROM ACTIVE-DUTY LIST.—An officer who is on the active-duty list and is on a promotion list as the result of selection for promotion by a selection board convened under chapter 36 of this title and who before being promoted is removed from the active-duty list and placed on the reserve active-status list of the same armed force and in the same competitive category (including a regular officer who on removal from the active-duty list is appointed as a reserve officer and placed on the reserve active-status list) shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list established under this chapter.

(d) OFFICERS SELECTED FOR POSITION VACANCIES.—(1) Except as provided in subsection (e), if a reserve officer is ordered to active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only) after being recommended for promotion under section 14315 of this title to fill a position vacancy or examined for Federal recognition under title 32, and before being promoted to fill that vacancy, the officer shall not be promoted while serving such active duty or full-time National Guard duty unless the officer—

(A) is ordered to active duty as a member of the unit in which the vacancy exists when that unit is ordered to active duty; or

(B) has been ordered to or is serving on active duty in support of a contingency operation.

(2) If, under this subsection, the name of an officer is removed from a list of officers recommended for promotion, the officer shall be treated as if the officer had not been considered for promotion or examined for Federal recognition

(e) OFFICERS ORDERED TO ACTIVE DUTY IN TIME OF WAR OR NATIONAL EMERGENCY.—(1) A reserve officer who is not on the active-duty list and who is ordered to active duty in time of war or national emergency may, if eligible, be considered for promotion—

(A) by a mandatory promotion board convened under section 14101(a) of this title or a special selection board convened under section 14502 of this title; or

(B) in the case of an officer who has been ordered to or is serving on active duty in support of a contingency operation, by a vacancy promotion board convened under section 14101(a) of this title, or by examination for Federal recognition under title 32.

(2) An officer may not be considered for promotion under this subsection after the end of the two-year period beginning on the date on which the officer is ordered to active duty.

(3) An officer may not be considered for promotion under this subsection during a period when the operation of this section has been suspended by the President under section 123(a) of this title.

(4) Consideration of an officer for promotion under this subsection shall be under regulations prescribed by the Secretary of the military department concerned.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2945; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(26), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105-85, div. A, title X, Sec. 1073(a)(68), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 108-136, div. A, title V, Sec. 512(a), Nov. 24, 2003, 117 Stat. 1459; Pub. L. 110-417, [div. A], title V, Sec. 513, Oct. 14, 2008, 122 Stat. 4441.)

CHAPTER 1407—FAILURE OF SELECTION FOR PROMOTION AND INVOLUNTARY SEPARATION

- Sec.
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14514. Discharge or retirement for years of service or after selection for early removal.
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§ 14501. Failure of selection for promotion

(a) OFFICERS BELOW THE GRADE OF COLONEL OR NAVY CAPTAIN.—An officer on the reserve active-status list in a grade below the grade of colonel or, in the case of an officer in the Navy Reserve, captain who is in or above the promotion zone established for that officer's grade and competitive category and who (1) is considered but not recommended for promotion (other than by a vacancy promotion board), or (2) declines to accept a promotion for which selected (other than by a vacancy promotion board), shall be considered to have failed of selection for promotion.

(b) OFFICERS TWICE FAILED OF SELECTION.—An officer shall be considered for all purposes to have twice failed of selection for promotion if any of the following applies:

- (1) The officer is considered but not recommended for promotion a second time by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502(a) of this title.

(2) The officer declines to accept a promotion for which recommended by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502(a) or 14502(b) of this title after previously failing of selection or after the officer's name was removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title after recommendation for promotion by an earlier selection board described in subsection (a).

(3) The officer's name has been removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title after recommendation by a mandatory promotion board convened under section 14101(a) or by a special selection board convened under section 14502(a) or 14502(b) of this title and—

(A) the officer is not recommended for promotion by the next mandatory promotion board convened under section 14101(a) or special selection board convened under section 14502(a) of this title for that officer's grade and competitive category; or

(B) the officer's name is again removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2946; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(28), Feb. 10, 1996, 110 Stat. 498; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(TT), Jan. 6, 2006, 119 Stat. 3234.)

§ 14502. Special selection boards: correction of errors

(a) OFFICERS NOT CONSIDERED BECAUSE OF ADMINISTRATIVE ERROR.—(1) In the case of an officer or former officer who the Secretary of the military department concerned determines was not considered for selection for promotion from in or above the promotion zone by a mandatory promotion board convened under section 14101(a) of this title because of administrative error, or whose name was not placed on an all-fully-qualified-officers list under section 14308(b)(4) of this title because of administrative error, the Secretary concerned shall convene a special selection board under this subsection to determine whether such officer or former officer should be recommended for promotion. Any such board shall be convened under regulations prescribed by the Secretary of Defense and shall be appointed and composed in accordance with section 14102 of this title and shall include the representation of competitive categories required by that section. The members of a board convened under this subsection shall be required to take an oath in the same manner as prescribed in section 14103 of this title.

(2) A special selection board convened under this subsection shall consider the record of the officer or former officer as that record would have appeared to the promotion board that should have considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in a grade below the grade of colonel or, in the case of an officer or former officer of the Navy, captain, whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion.

(b) OFFICERS CONSIDERED BUT NOT SELECTED; MATERIAL ERROR.—(1) In the case of an officer or former officer who was eligible for promotion and was considered for selection for promotion from in or above the promotion zone under this chapter by a selection board but was not selected, the Secretary of the military department concerned may, under regulations prescribed by the Secretary of Defense, convene a special selection board under this subsection to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that—

(A) the action of the selection board that considered the officer or former officer was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

(B) the selection board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall be appointed and composed in accordance with section 14102 of this title (including the representation of competitive categories required by that section), and the members of such a board shall take an oath in the same manner as prescribed in section 14103 of this title.

(3) Such board shall consider the record of the officer or former officer as that record, if corrected, would have appeared to the selection board that considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(4) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in the grade of lieutenant colonel or commander or below whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion by the board which did consider the officer but incurs no additional failure of selection for promotion from the action of the special selection board.

(c) REPORT.—Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each officer it recommends for promotion and certifying that the board has considered carefully the record of each officer whose name was referred to it.

(d) APPLICABLE PROVISIONS.—The provisions of sections 14104, 14109, 14110, and 14111 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a promotion board convened under section 14101(a) of this title.

(e) APPOINTMENT OF OFFICERS RECOMMENDED FOR PROMOTION.—(1) An officer whose name is placed on a promotion list as a result of recommendation for promotion by a special selection board convened under this section, shall, as soon as practicable, be appointed to the next higher grade in accordance with the law and policies which would have been applicable had he been recommended for promotion by the board which should have considered or which did consider him.

(2) An officer who is promoted to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon such promotion, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if the officer had been recommended for promotion to that grade by the selection board which should have considered, or which did consider, the officer.

(3) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion or a former officer whose name was referred to it for consideration, the Secretary concerned may act under section 1552 of this title to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

(f) TIME LIMITS FOR CONSIDERATION.—The Secretary of Defense may prescribe by regulation the circumstances under which consideration by a special selection board is contingent upon application for consideration by an officer or former officer and time limits within which an officer or former officer must make such application in order to be considered by a special selection board under this section.

(g) LIMITATION OF OTHER JURISDICTION.—No official or court of the United States shall have power or jurisdiction—

(1) over any claim based in any way on the failure of an officer or former officer of the armed forces to be selected for promotion by a selection board convened under chapter 1403 of this title until—

(A) the claim has been referred to a special selection board by the Secretary concerned and acted upon by that board; or

(B) the claim has been rejected by the Secretary without consideration by a special selection board; or

(2) to grant any relief on such a claim unless the officer or former officer has been selected for promotion by a special selection board convened under this section to consider the officer's claim.

(h) JUDICIAL REVIEW.—(1) A court of the United States may review a determination by the Secretary concerned under subsection (a)(1), (b)(1), or (e)(3) not to convene a special selection board. If a court finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law, it shall remand the case to the Secretary concerned, who shall provide for

consideration of the officer or former officer by a special selection board under this section.

(2) If a court finds that the action of a special selection board which considers an officer or former officer was contrary to law or involved material error of fact or material administrative error, it shall remand the case to the Secretary concerned, who shall provide the officer or former officer reconsideration by a new special selection board.

(i) DESIGNATION OF BOARDS.—The Secretary of the military department concerned may designate a promotion board convened under section 14101(a) of this title as a special selection board convened under this section. A board so designated may function in both capacities.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2947; amended Pub. L. 107-107, div. A, title V, Sec. 505(c)(3)(B), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 109-364, div. A, title V, Sec. 514(b), Oct. 17, 2006, 120 Stat. 2185.)

§ 14503. Discharge of officers with less than six years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade)

(a) AUTHORIZED DISCHARGES.—The Secretary of the military department concerned may discharge any reserve officer who—

(1) has less than six years of service in an active status as a commissioned officer; or

(2) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the grade of first lieutenant or lieutenant (junior grade).

(b) TIME FOR DISCHARGE.—(1) An officer described in subsection (a)(2)—

(A) may be discharged at any time after being found not qualified for promotion; and

(B) if not sooner discharged, shall be discharged at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(2) Paragraph (1) shall not apply if the officer is sooner promoted.

(c) REGULATIONS.—Discharges under this section shall be made under regulations prescribed by the Secretary of Defense and may be made without regard to section 12645 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2949; amended Pub. L. 110-181, div. A, title V, Sec. 503(c)(1), (2), Jan. 28, 2008, 122 Stat. 95.)

§ 14504. Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy

(a) GENERAL RULE.—A first lieutenant on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant (junior grade) on the reserve active-status list of the Navy who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the

President approves the report of the board which considered the officer for the second time.

(b) EXCEPTIONS.—Subsection (a) does not apply (1) in the case of an officer retained as provided by regulation of the Secretary of the military department concerned in order to meet planned mobilization needs for a period not in excess of 24 months beginning with the date on which the President approves the report of the selection board which resulted in the second failure, or (2) as provided in section 12646 or 12686 of this title.

(c) OFFICERS IN GRADE OF FIRST LIEUTENANT OR LIEUTENANT (JUNIOR GRADE) FOUND NOT FULLY QUALIFIED FOR PROMOTION.—For the purposes of this chapter, an officer of the Army, Air Force, or Marine Corps on a reserve active-status list who holds the grade of first lieutenant, and an officer of the Navy on a reserve active-status list who holds the grade of lieutenant (junior grade), shall be treated as having failed of selection for promotion if the Secretary of the military department concerned determines that the officer would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title if such a board were convened but is not fully qualified for promotion when recommending for promotion under section 14308(b)(4) of this title all fully qualified officers of the officer's armed force in such grade who would be eligible for such consideration.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2950; amended Pub. L. 107-107, title V, Sec. 505(b)(2), Dec. 28, 2001, 115 Stat. 1087.)

§ 14505. Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy

Unless retained as provided in section 12646 or 12686 of this title, a captain on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant on the reserve active-status list of the Navy who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade and who has not been selected for continuation on the reserve active-status list under section 14701 of this title, shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2950.)

§ 14506. Effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps and reserve lieutenant commanders of the Navy

Unless retained as provided in section 12646, 12686, 14701, or 14702 of this title, each reserve officer of the Army, Navy, Air Force, or Marine Corps who holds the grade of major or lieutenant commander who has failed of selection to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall, if not earlier removed from the reserve active-status list, be removed from

that list in accordance with section 14513 of this title on the later of (1) the first day of the month after the month in which the officer completes 20 years of commissioned service, or (2) the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2951; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(29), Feb. 10, 1996, 110 Stat. 498; Pub. L. 106-65, div. A, title V, Sec. 514(a), Oct. 5, 1999, 113 Stat. 593.)

§ 14507. Removal from the reserve active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy

(a) **LIEUTENANT COLONELS AND COMMANDERS.**—Unless continued on the reserve active-status list under section 14701 or 14702 of this title or retained as provided in section 12646 or 12686 of this title, each reserve officer of the Army, Navy, Air Force, or Marine Corps who holds the grade of lieutenant colonel or commander and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the reserve active-status list) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 28 years of commissioned service.

(b) **COLONELS AND NAVY CAPTAINS.**—Unless continued on the reserve active-status list under section 14701 or 14702 of this title or retained as provided in section 12646 or 12686 of this title, each reserve officer of the Army, Air Force, or Marine Corps who holds the grade of colonel, and each reserve officer of the Navy who holds the grade of captain, and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the reserve active-status list) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 30 years of commissioned service. This subsection does not apply to the adjutant general or assistant adjutants general of a State.

(c) **TEMPORARY AUTHORITY TO RETAIN CERTAIN OFFICERS DESIGNATED AS JUDGE ADVOCATES.**—(1) Notwithstanding the provisions of subsections (a) and (b), the Secretary of the Air Force may retain on the reserve active-status list any reserve officer of the Air Force who is designated as a judge advocate and who obtained the first professional degree in law while on an educational delay program subsequent to being commissioned through the Reserve Officers' Training Corps.

(2) No more than 50 officers may be retained on the reserve active-status list under the authority of paragraph (1) at any time.

(3) No officer may be retained on the reserve active-status list under the authority of paragraph (1) for a period exceeding three years from the date on which, but for that authority, that officer would have been removed from the reserve active-status list under subsection (a) or (b).

(4) The authority of the Secretary of the Air Force under paragraph (1) expires on September 30, 2003.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2951; amended Pub. L. 104-201, div. A, title V, Sec. 508(a), Sept. 23, 1996, 110 Stat. 2513.)

§ 14508. Removal from the reserve active-status list for years of service: reserve general and flag officers

(a) THIRTY YEARS SERVICE OR FIVE YEARS IN GRADE FOR BRIGADIER GENERALS AND REAR ADMIRALS (LOWER HALF).—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of brigadier general who has not been recommended for promotion to the grade of major general, and each reserve officer of the Navy in the grade of rear admiral (lower half) who has not been recommended for promotion to rear admiral shall, 30 days after completion of 30 years of commissioned service or on the fifth anniversary of the date of the officer's appointment in the grade of brigadier general or rear admiral (lower half), whichever is later, be separated in accordance with section 14514 of this title.

(b) THIRTY-FIVE YEARS SERVICE OR FIVE YEARS IN GRADE MAJOR GENERALS AND REAR ADMIRALS.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of major general, and each reserve officer of the Navy in the grade of rear admiral, shall, 30 days after completion of 35 years of commissioned service or on the fifth anniversary of the date of the officer's appointment in the grade of major general or rear admiral, whichever is later, be separated in accordance with section 14514 of this title.

(c) THIRTY-EIGHT YEARS OF SERVICE FOR LIEUTENANT GENERALS AND VICE ADMIRALS.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of lieutenant general and each reserve officer of the Navy in the grade of vice admiral shall be separated in accordance with section 14514 of this title on the later of the following:

(1) 30 days after completion of 38 years of commissioned service.

(2) The fifth anniversary of the date of the officer's appointment in the grade of lieutenant general or vice admiral.

(d) FORTY YEARS OF SERVICE FOR GENERALS AND ADMIRALS.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of general and each reserve officer of the Navy in the grade of admiral shall be separated in accordance with section 14514 of this title on the first day of the first month beginning after the date of the fifth anniversary of the officer's appointment to that grade or 30 days after the date on which the officer completes 40 years of commissioned service, whichever is later.

(e) RETENTION OF BRIGADIER GENERALS.—A reserve officer of the Army or Air Force in the grade of brigadier general who would otherwise be removed from an active status under subsection (a) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the last day of the month in which the officer becomes 62 years of age. Not more than 10 officers of the Army

and not more than 10 officers of the Air Force may be retained under this subsection at any one time.

(f) **RETENTION OF MAJOR GENERALS.**—A reserve officer of the Army or Air Force in the grade of major general who would otherwise be removed from an active status under subsection (b) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the date on which the officer becomes 64 years of age. Not more than 10 officers of the Army and not more than 10 officers of the Air Force may be retained under this subsection at any one time.

(g) **RETENTION OF LIEUTENANT GENERALS.**—A reserve officer of the Army or Air Force in the grade of lieutenant general who would otherwise be removed from an active status under subsection (c) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the date on which the officer becomes 66 years of age.

(h) **EXCEPTION FOR STATE ADJUTANTS GENERAL AND ASSISTANT ADJUTANTS GENERAL.**—This section does not apply to an officer who is the adjutant general or assistant adjutant general of a State.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2951; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(30), Feb. 10, 1996, 110 Stat. 498; Pub. L. 105-85, div. A, title V, Sec. 521(b), Nov. 18, 1997, 111 Stat. 1734; Pub. L. 109-364, div. A, title V, Sec. 503(e), Oct. 17, 2006, 120 Stat. 2178; Pub. L. 110-181, div. A, title V, Sec. 513, title XVIII, Sec. 1825(c)(1), Jan. 28, 2008, 122 Stat. 99, 502; Pub. L. 110-417, [div. A], title V, Sec. 515, Oct. 14, 2008, 122 Stat. 4442.)

§ 14509. Separation at age 62: reserve officers in grades below brigadier general or rear admiral (lower half)

Each reserve officer of the Army, Navy, Air Force, or Marine Corps in a grade below brigadier general or rear admiral (lower half) who has not been recommended for promotion to the grade of brigadier general or rear admiral (lower half) and is not a member of the Retired Reserve shall, on the last day of the month in which that officer becomes 62 years of age, be separated in accordance with section 14515 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2952; amended Pub. L. 109-364, div. A, title V, Sec. 503(c), Oct. 17, 2006, 120 Stat. 2178.)

§ 14510. Separation at age 62: brigadier generals and rear admirals (lower half)

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of brigadier general who has not been recommended for promotion to the grade of major general, and each reserve rear admiral (lower half) of the Navy who has not been recommended for promotion to the grade of rear admiral, except an officer covered by section 14512 of this title, shall be separated in accordance with section 14515 of this title on the last day of the month in which the officer becomes 62 years of age.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2952; amended Pub. L. 109-364, div. A, title V, Sec. 503(b), Oct. 17, 2006, 120 Stat. 2178.)

§ 14511. Separation at age 64: officers in grade of major general or rear admiral and above

(a) SEPARATION REQUIRED.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of major general or above and each reserve officer of the Navy in the grade of rear admiral or above shall be separated in accordance with section 14515 of this title on the last day of the month in which the officer becomes 64 years of age.

(b) EXCEPTION FOR OFFICERS SERVING IN O-9 AND O-10 POSITIONS.—The retirement of a reserve officer of the Army, Air Force, or Marine Corps in the grade of lieutenant general or general, or a reserve officer of the Navy in the grade of vice admiral or admiral, under subsection (a) may be deferred—

(1) by the President, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age; or

(2) by the Secretary of Defense, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 66 years of age.

(c) EXCEPTION FOR OFFICERS HOLDING CERTAIN OFFICES.—This section does not apply to an officer covered by section 14512 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2953; amended Pub. L. 109-364, div. A, title V, Sec. 503(a), Oct. 17, 2006, 120 Stat. 2178; Pub. L. 110-181, div. A, title XVIII, Sec. 1825(a)(1), Jan. 28, 2008, 122 Stat. 501.)

§ 14512. Separation at age 66: officers holding certain offices

(a) ARMY AND AIR FORCE.—(1) Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, a reserve officer of the Army or Air Force who is specified in paragraph (2) shall on the last day of the month in which the officer becomes 66 years of age, be separated in accordance with section 14515 of this title.

(2) Paragraph (1) applies to a reserve officer of the Army or Air Force who is any of the following:

(A) The Chief of the Army Reserve, Chief of the Air Force Reserve, Director of the Army National Guard, or Director of the Air National Guard.

(B) An adjutant general.

(C) If a reserve officer of the Army, the commanding general of the troops of a State.

(b) NAVY AND MARINE CORPS.—(1) The Secretary of the Navy may defer the retirement under section 14510 or 14511 of a reserve officer of the Navy in a grade above captain or a reserve officer of the Marine Corps in a grade above colonel and retain the officer in an active status until the officer becomes 66 years of age. Not more than 10 officers may be so deferred at any one time, distributed between the Navy Reserve and the Marine Corps Reserve as the Secretary determines.

(2) The Secretary of Defense may defer the retirement of a reserve officer serving in the position of Chief of the Navy Reserve or Commander of the Marine Forces Reserve, but such deferment may not extend beyond the first day of the month following the month in which the officer becomes 66 years of age. A deferment

under this paragraph shall not count toward the limitation on the total number of officers whose retirement may be deferred at any one time under paragraph (1).

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2953; amended Pub. L. 109-163, div. A, title V, Secs. 511, 515(b)(1)(UU), Jan. 6, 2006, 119 Stat. 3231, 3234; Pub. L. 109-364, div. A, title V, Sec. 503(d), Oct. 17, 2006, 120 Stat. 2178; Pub. L. 110-181, div. A, title XVIII, Sec. 1825(b), Jan. 28, 2008, 122 Stat. 502.)

§ 14513. Failure of selection for promotion: transfer, retirement, or discharge

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and whose removal from an active status or from a reserve active-status list is required by section 14504, 14505, or 14506 of this title shall (unless the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the date specified in those sections—

(1) be transferred to an inactive status if the Secretary concerned determines that the officer has skills which may be required to meet the mobilization needs of the officer's armed force;

(2) be transferred to the Retired Reserve if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(3) if the officer is not transferred to an inactive status or to the Retired Reserve, be discharged from the officer's reserve appointment.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2953; amended Pub. L. 107-107, title V, Sec. 517(b)(1), (2)(A), Dec. 28, 2001, 115 Stat. 1094.)

§ 14514. Discharge or retirement for years of service or after selection for early removal

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and who is required to be removed from an active status or from a reserve active-status list, as the case may be, under section 14507, 14508, 14704, or 14705 of this title (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law), in accordance with those sections, shall—

(1) be transferred to the Retired Reserve if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged from the officer's reserve appointment if the officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2953; amended Pub. L. 107-107, title V, Sec. 517(c), Dec. 28, 2001, 115 Stat. 1094.)

§ 14515. Discharge or retirement for age

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status or on an inactive-status list and who reaches the maximum age specified in section 14509, 14510,

14511, or 14512 of this title for the officer's grade or position shall (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the last day of the month in which the officer reaches that maximum age—

(1) be transferred to the Retired Reserve if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged from the officer's reserve appointment if the officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2954; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(31), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107-107, title V, Sec. 517(d), Dec. 28, 2001, 115 Stat. 1095.)

§ 14516. Separation to be considered involuntary

The separation of an officer pursuant to section 14513, 14514, or 14515 of this title shall be considered to be an involuntary separation for purposes of any other provision of law.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2954.)

§ 14517. Entitlement of officers discharged under this chapter to separation pay

An officer who is discharged under section 14513, 14514, or 14515 of this title is entitled to separation pay under section 1174 of this title if otherwise eligible under that section.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2954.)

§ 14518. Continuation of officers to complete disciplinary action

The Secretary concerned may delay the separation or retirement under this chapter of an officer against whom an action has been commenced with a view to trying the officer by court-martial. Any such delay may continue until the completion of the disciplinary action against the officer.

(Added Pub. L. 106-65, div. A, title V, Sec. 511(a), Oct. 5, 1999, 113 Stat. 592.)

§ 14519. Deferment of retirement or separation for medical reasons

(a) **AUTHORITY.**—If, in the case of an officer required to be retired or separated under this chapter or chapter 1409 of this title, the Secretary concerned determines that the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the officer's well being before the date on which the officer would otherwise be required to retire or be separated, the Secretary may defer the retirement or separation of the officer.

(b) **PERIOD OF DEFERMENT.**—A deferral of retirement or separation under subsection (a) may not extend for more than 30 days

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after the completion of the evaluation requiring hospitalization or medical observation.

(Added Pub. L. 107-314, div. A, title V, Sec. 522(a), Dec. 2, 2002, 116 Stat. 2540.)

**CHAPTER 1409—CONTINUATION OF OFFICERS ON THE
RESERVE ACTIVE-STATUS LIST AND SELECTIVE
EARLY REMOVAL**

Sec.	
14701.	Selection of officers for continuation on the reserve active-status list.
14702.	Retention on reserve active-status list of certain officers in the grade of major, lieutenant colonel, colonel, or brigadier general.
14703.	Authority to retain chaplains and officers in medical specialties until specified age.
14704.	Selective early removal from the reserve active-status list.
14705.	Selective early retirement: reserve general and flag officers of the Navy and Marine Corps.
14706.	Computation of total years of service.

§ 14701. Selection of officers for continuation on the reserve active-status list

(a) CONSIDERATION FOR CONTINUATION.—(1) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is required to be removed from the reserve active-status list under section 14505, 14506, or 14507 of this title may, subject to the needs of the service and to section 14509 of this title, be considered for continuation on the reserve active-status list under regulations prescribed by the Secretary of Defense.

(2) A reserve officer who holds the grade of captain in the Army, Air Force, or Marine Corps or the grade of lieutenant in the Navy and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 20 years of commissioned service.

(3) A reserve officer who holds the grade of major or lieutenant commander and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 24 years of commissioned service.

(4) A reserve officer who holds the grade of lieutenant colonel or commander and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.

(5) A reserve officer who holds the grade of colonel in the Army, Air Force, or Marine Corps or the grade of captain in the Navy and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 35 years of commissioned service.

(6) An officer who is selected for continuation on the reserve active-status list under regulations prescribed under paragraph (1) but who declines to continue on that list shall be separated in accordance with section 14513 or 14514 of this title, as the case may be.

(7) Each officer who is continued on the reserve active-status list under this section, who is not subsequently promoted or continued on the active-status list, and whose name is not on a list of officers recommended for promotion to the next higher grade shall (unless sooner separated under another provision of law) be separated in accordance with section 14513 or 14514 of this title, as appropriate, upon the expiration of the period for which the officer was continued on the reserve active-status list.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2954; amended Pub. L. 106-398, Sec. 1[[div. A], title V, Sec. 522], Oct. 30, 2000, 114 Stat. 1654, 1654A-108; Pub. L. 108-136, div. A, title V, Sec. 511(a), Nov. 24, 2003, 117 Stat. 1459.)

§ 14702. Retention on reserve active-status list of certain officers in the grade of major, lieutenant colonel, colonel, or brigadier general

(a) RETENTION.—Notwithstanding the provisions of section 14506, 14507, or 14508 of this title, the Secretary of the military department concerned may, with the officer's consent, retain on the reserve active-status list an officer in the grade of major, lieutenant colonel, colonel, or brigadier general who is—

(1) an officer of the Army National Guard of the United States and assigned to a headquarters or headquarters detachment of a State; or

(2) a reserve officer of the Army or Air Force who, as a condition of continued employment as a National Guard or Reserve technician is required by the Secretary concerned to maintain membership in a Selected Reserve unit or organization.

(b) SEPARATION FOR AGE.—An officer may be retained under this section only so long as the officer continues to meet the conditions of paragraph (1) or (2) of subsection (a). An officer described in paragraph (1) of such subsection may not be retained under this section after the last day of the month in which the officer becomes 62 years of age. An officer described in paragraph (2) of such subsection may not be retained under this section after the last day of the month in which the officer becomes 60 years of age.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2955; amended Pub. L. 105-85, div. A, title V, Sec. 521(a), Nov. 18, 1997, 111 Stat. 1734; Pub. L. 110-417, [div. A], title V, Sec. 514(b), (c)(1), Oct. 14, 2008, 122 Stat. 4441.)

§ 14703. Authority to retain chaplains and officers in medical specialties until specified age

(a) RETENTION.—Notwithstanding any provision of chapter 1407 of this title and except for officers referred to in sections 14503, 14504, 14505, and 14506 of this title and under regulations prescribed by the Secretary of Defense—

(1) the Secretary of the Army may, with the officer's consent, retain in an active status any reserve officer assigned to

the Medical Corps, the Dental Corps, the Veterinary Corps, the Medical Services Corps (if the officer has been designated as allied health officer or biomedical sciences officer in that Corps), the Optometry Section of the Medical Services Corps, the Chaplains, the Army Nurse Corps, or the Army Medical Specialists Corps;

(2) the Secretary of the Navy may, with the officer's consent, retain in an active status any reserve officer appointed in the Medical Corps, Dental Corps, Nurse Corps, or Chaplain Corps or appointed in the Medical Services Corps and designated to perform as a veterinarian, optometrist, podiatrist, allied health officer, or biomedical sciences officer; and

(3) the Secretary of the Air Force may, with the officer's consent, retain in an active status any reserve officer who is designated as a medical officer, dental officer, Air Force nurse, Medical Service Corps officer, biomedical sciences officer, or chaplain.

(b) SEPARATION AT SPECIFIED AGE.—An officer may not be retained in active status under this section later than the date on which the officer becomes 68 years of age.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2956; amended Pub. L. 106-65, div. A, title V, Sec. 516, Oct. 5, 1999, 113 Stat. 594; Pub. L. 106-398, Sec. 1 [div. A], title V, Sec. 523], Oct. 30, 2000, 114 Stat. 1654, 1654A-108; Pub. L. 110-417, [div. A], title V, Sec. 516(a), Oct. 14, 2008, 122 Stat. 4442.)

§ 14704. Selective early removal from the reserve active-status list

(a) BOARDS TO RECOMMEND OFFICERS FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—Whenever the Secretary of the military department concerned determines that there are in any reserve component under the jurisdiction of the Secretary too many officers in any grade and competitive category who have at least 30 years of service computed under section 14706 of this title or at least 20 years of service computed under section 12732 of this title, the Secretary may convene a selection board under section 14101(b) of this title to consider all officers on that list who are in that grade and competitive category, and who have that amount of service, for the purpose of recommending officers by name for removal from the reserve active-status list, in the number specified by the Secretary by each grade and competitive category.

(b) SEPARATION OF OFFICERS SELECTED.—In the case of an officer recommended for separation in the report of a board under subsection (a), the Secretary may separate the officer in accordance with section 14514 of this title.

(c) REGULATIONS.—The Secretary of the military department concerned shall prescribe regulations for the administration of this section.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2956.)

§ 14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps

(a) AUTHORITY TO CONSIDER.—An officer in the Navy Reserve in an active status serving in the grade of rear admiral (lower half) or rear admiral and an officer in the Marine Corps Reserve in an active status serving in the grade of brigadier general or major

general may be considered for early retirement whenever the Secretary of the Navy determines that such action is necessary.

(b) **BOARDS.**—(1) If the Secretary of the Navy determines that consideration of officers for early retirement under this section is necessary, the Secretary shall convene a selection board under section 14101(b) of this title to recommend an appropriate number of officers for early retirement.

(2) In the case of such a board convened to consider officers in the grade of rear admiral or major general, the Secretary of the Navy may appoint the board without regard to section 14102(b) of this title. In doing so, however, the Secretary shall ensure that—

(A) each regular commissioned officer appointed to the board holds a grade higher than the grade of rear admiral or major general; and

(B) at least one member of the board is a reserve officer who holds the grade of rear admiral or major general.

(c) **SEPARATION UNDER SECTION 14514.**—An officer selected for early retirement under this section shall be separated in accordance with section 14514 of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2957; amended Pub. L. 105-261, div. A, title V, Sec. 515, Oct. 17, 1998, 112 Stat. 2008; Pub. L. 108-136, div. A, title V, Sec. 511(b)(3), Nov. 24, 2003, 117 Stat. 1459; Pub. L. 109-163, div. A, title V, Sec. 515(b)(1)(VV), Jan. 6, 2006, 119 Stat. 3234.)

§ 14706. Computation of total years of service

(a) For the purpose of this chapter and chapter 1407 of this title, a Reserve officer's years of service include all service of the officer as a commissioned officer of a uniformed service other than the following:

(1) Service as a warrant officer.

(2) Constructive service.

(3) Service after appointment as a commissioned officer of a reserve component while in a program of advanced education to obtain the first professional degree required for appointment, designation, or assignment to a professional specialty, but only if that service occurs before the officer commences initial service on active duty or initial service in the Ready Reserve in the specialty that results from such a degree.

(b) The exclusion under subsection (a)(3) does not apply to service performed by an officer who previously served on active duty or participated as a member of the Ready Reserve in other than a student status for the period of service preceding the member's service in a student status.

(c) For purposes of subsection (a)(3), an officer shall be considered to be in a professional specialty if the officer is appointed or assigned to the Medical Corps, the Dental Corps, the Veterinary Corps, the Medical Service Corps, the Nurse Corps, or the Army Medical Specialists Corps or is designated as a chaplain or judge advocate.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2957; amended Pub. L. 106-65, div. A, title V, Sec. 515, Oct. 5, 1999, 113 Stat. 594.)

CHAPTER 1411—ADDITIONAL PROVISIONS RELATING TO INVOLUNTARY SEPARATION

Sec.	
14901.	Separation of chaplains for loss of professional qualifications.
14902.	Separation for substandard performance and for certain other reasons.
14903.	Boards of inquiry.
14904.	Rights and procedures.
14905.	Officer considered for removal: retirement or discharge.
14906.	Officers eligible to serve on boards.
14907.	Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave.

§ 14901. Separation of chaplains for loss of professional qualifications

(a) SEPARATION.—Under regulations prescribed by the Secretary of Defense, an officer on the reserve active-status list who is appointed or designated as a chaplain may, if the officer fails to maintain the qualifications needed to perform the professional function of a chaplain, be discharged. The authority under the preceding sentence applies without regard to the provisions of section 12645 of this title.

(b) EFFECT OF SEPARATION.—If an officer separated under this section is eligible for retirement, the officer may be retired. If the officer has completed the years of service required for eligibility for retired pay under chapter 1223 of this title, the officer may be transferred to the Retired Reserve.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2957.)

§ 14902. Separation for substandard performance and for certain other reasons

(a) SUBSTANDARD PERFORMANCE OF DUTY.—The Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any reserve officer to determine whether that officer should be required, because that officer's performance has fallen below standards prescribed by the Secretary concerned, to show cause for retention in an active status.

(b) MISCONDUCT, ETC.—The Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any reserve officer to determine whether that officer should be required, because of misconduct, because of moral or professional dereliction, or because the officer's retention is not clearly consistent with the interests of national security, to show cause for retention in an active status.

(c) REGULATIONS.—The authority of the Secretary of a military department under this section shall be carried out subject to such limitations as the Secretary of Defense may prescribe by regulation.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2958.)

§ 14903. Boards of inquiry

(a) **CONVENING OF BOARDS.**—The Secretary of the military department concerned shall convene a board of inquiry at such time and place as the Secretary may prescribe to receive evidence and review the case of any officer who has been required to show cause for retention in an active status under section 14902 of this title. Each board of inquiry shall be composed of not less than three officers who have the qualifications prescribed in section 14906 of this title.

(b) **RIGHT TO FAIR HEARING.**—A board of inquiry shall give a fair and impartial hearing to each officer required under section 14902 of this title to show cause for retention in an active status.

(c) **RECOMMENDATIONS TO SECRETARY.**—If a board of inquiry determines that the officer has failed to establish that the officer should be retained in an active status, the board shall recommend to the Secretary concerned that the officer not be retained in an active status.

(d) **ACTION BY SECRETARY.**—After review of the recommendation of the board of inquiry, the Secretary may—

- (1) remove the officer from an active status; or
- (2) determine that the case be closed.

(e) **ACTION IN CASES WHERE CAUSE FOR RETENTION IS ESTABLISHED.**—(1) If a board of inquiry determines that an officer has established that the officer should be retained in an active status or if the Secretary determines that the case be closed, the officer's case is closed.

(2) An officer who is required to show cause for retention under section 14902(a) of this title and whose case is closed under paragraph (1) may not again be required to show cause for retention under such subsection during the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention under section 14902(b) of this title and whose case is closed under paragraph (1) may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention under section 14902(b) of this title and who is thereafter retained in an active status may not again be required to show cause for retention under such section solely because of conduct which was the subject of the previous proceeding, unless the recommendations of the board of inquiry that considered the officer's case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2958; amended Pub. L. 104-106, div. A, title XV, Sec. 1501(b)(32), Feb. 10, 1996, 110 Stat. 498.)

§ 14904. Rights and procedures

(a) **PROCEDURAL RIGHTS.**—Under regulations prescribed by the Secretary of Defense, an officer required under section 14902 of this title to show cause for retention in an active status—

- (1) shall be notified in writing, at least 30 days before the hearing of the officer's case by a board of inquiry, of the rea-

sons for which the officer is being required to show cause for retention in an active status;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare for showing of cause for retention in an active status;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to the case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) SUMMARY OF RECORDS WITHHELD.—When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2959.)

§ 14905. Officer considered for removal: retirement or discharge

(a) VOLUNTARY RETIREMENT OR DISCHARGE.—At any time during proceedings under this chapter with respect to the removal of an officer from an active status, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement;

(2) for transfer to the Retired Reserve if the officer has completed the years of service required for eligibility for retired pay under chapter 1223 of this title and is otherwise eligible for transfer to the Retired Reserve; or

(3) for discharge in accordance with subsection (b)(3).

(b) REQUIRED RETIREMENT OR DISCHARGE.—An officer removed from an active status under section 14903 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under that provision;

(2) if eligible for transfer to the Retired Reserve and has completed the years of service required for retired pay under chapter 1223 of this title, be transferred to the Retired Reserve; and

(3) if ineligible for retirement or transfer to the Retired Reserve under paragraph (1) or (2) on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 14902 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 14902 of this title.

(c) SEPARATION PAY.—An officer who is discharged under subsection (b)(3) is entitled, if eligible therefor, to separation pay under section 1174(c) of this title.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2959.)

§ 14906. Officers eligible to serve on boards

(a) COMPOSITION OF BOARDS.—Each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention in an active status.

(2) Each member of the board shall hold a grade above major or lieutenant commander, except that at least one member of the board shall hold a grade above lieutenant colonel or commander.

(3) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) LIMITATION.—A person may not be a member of more than one board convened under this chapter to consider the same officer.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2960; amended Pub. L. 106–65, div. A, title V, Sec. 504(b), Oct. 5, 1999, 113 Stat. 591.)

§ 14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave

(a) AUTHORITY TO WITHDRAW FEDERAL RECOGNITION.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States has been absent without leave for three months, the Secretary of the Army or the Secretary of the Air Force, as appropriate, may—

(1) terminate the reserve appointment of the officer; and

(2) withdraw the officer's Federal recognition as an officer of the National Guard.

(b) DISCHARGE FROM RESERVE APPOINTMENT.—An officer of the Army National Guard of the United States or the Air National Guard of the United States whose Federal recognition as an officer of the National Guard is withdrawn under section 323(b) of title 32 shall be discharged from the officer's appointment as a reserve officer of the Army or the Air Force, as the case may be.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1611, Oct. 5, 1994, 108 Stat. 2960.)

PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

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16137.	Biennial report to Congress.

§ 16131. Educational assistance program: establishment; amount

(a) To encourage membership in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security, under regulations prescribed by the Secretary with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program to provide educational assistance to members of the Selected Reserve of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned who agree to remain members of the Selected Reserve for a period of not less than six years.

(b)(1) Except as provided in subsections (d) through (f), each educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, to each person entitled to educational assistance under this chapter who is pursuing a program of education of an educational assistance allowance at the following rates:

(A) \$251 (as increased from time to time under paragraph (2)) per month for each month of full-time pursuit of a program of education;

(B) \$188 (as increased from time to time under paragraph (2)) per month for each month of three-quarter-time pursuit of a program of education;

(C) \$125 (as increased from time to time under paragraph (2)) per month for each month of half-time pursuit of a program of education; and

(D) an appropriately reduced rate, as determined under regulations which the Secretary of Veterans Affairs shall pre-

scribe, for each month of less than half-time pursuit of a program of education, except that no payment may be made to a person for less than half-time pursuit if tuition assistance is otherwise available to the person for such pursuit from the military department concerned.

(2) With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the rates payable under subparagraphs (A), (B), and (C) of paragraph (1) equal to the percentage by which—

(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(c)(1) Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(2) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any person under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

(d)(1) Except as provided in paragraph (2), the amount of the monthly educational assistance allowance payable to a person pursuing a full-time program of apprenticeship or other on-the-job training under this chapter is—

(A) for each of the first six months of the person's pursuit of such program, 75 percent of the monthly educational assistance allowance otherwise payable to such person under this chapter;

(B) for each of the second six months of the person's pursuit of such program, 55 percent of such monthly educational assistance allowance; and

(C) for each of the months following the first 12 months of the person's pursuit of such program, 35 percent of such monthly educational assistance allowance.

(2) In any month in which any person pursuing a program of education consisting of a program of apprenticeship or other on-the-job training fails to complete 120 hours of training, the amount of the monthly educational assistance allowance payable under this chapter to the person shall be limited to the same proportion of the applicable full-time rate as the number of hours worked during such month, rounded to the nearest 8 hours, bears to 120 hours.

(3)(A) Except as provided in subparagraph (B), for each month that such person is paid a monthly educational assistance allowance under this chapter, the person's entitlement under this chapter shall be charged at the rate of—

(i) 75 percent of a month in the case of payments made in accordance with paragraph (1)(A);

(ii) 55 percent of a month in the case of payments made in accordance with paragraph (1)(B); and

(iii) 35 percent of a month in the case of payments made in accordance with paragraph (1)(C).

(B) Any such charge to the entitlement shall be reduced proportionately in accordance with the reduction in payment under paragraph (2).

(e)(1)(A) The amount of the educational assistance allowance payable under this chapter to a person who enters into an agreement to pursue, and is pursuing, a program of education exclusively by correspondence is an amount equal to 55 percent of the established charge which the institution requires nonveterans to pay for the course or courses pursued by such person.

(B) For purposes of subparagraph (A), the term "established charge" means the lesser of—

(i) the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency; or

(ii) the actual charge to the person for such course or courses.

(C) Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the person and serviced by the institution.

(2) In each case in which the amount of educational assistance is determined under paragraph (1), the period of entitlement of the person concerned shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to the individual as an educational assistance allowance.

(f)(1) Each individual who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of section 16136(c) of this title shall be paid an educational assistance allowance under this chapter in the amount equal to 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No educational assistance allowance may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The period of entitlement of an individual pursuing a program of education described in paragraph (1) shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to that individual as an educational assistance allowance for such program.

(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.

(g)(1)(A) Subject to subparagraph (B), the Secretary of Veterans Affairs shall approve individualized tutorial assistance for any person entitled to educational assistance under this chapter who—

(i) is enrolled in and pursuing a postsecondary course of education on a half-time or more basis at an educational institution; and

(ii) has a deficiency in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, the program of education.

(B) The Secretary of Veterans Affairs shall not approve individualized tutorial assistance for a person pursuing a program of education under this paragraph unless such assistance is necessary for the person to successfully complete the program of education.

(2)(A) Subject to subparagraph (B), the Secretary concerned, through the Secretary of Veterans Affairs, shall pay to a person receiving individualized tutorial assistance pursuant to paragraph (1) a tutorial assistance allowance. The amount of the allowance payable under this paragraph may not exceed \$100 for any month, nor aggregate more than \$1,200. The amount of the allowance paid under this paragraph shall be in addition to the amount of educational assistance allowance payable to a person under this chapter.

(B) A tutorial assistance allowance may not be paid to a person under this paragraph until the educational institution at which the person is enrolled certifies that—

(i) the individualized tutorial assistance is essential to correct a deficiency of the person in a subject required as a part

of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

(ii) the tutor chosen to perform such assistance is qualified to provide such assistance and is not the person's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

(iii) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

(3)(A) A person's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the person under this subsection in excess of \$600.

(B) A person's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of \$600 that is equal to the amount of the monthly educational assistance allowance which the person is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.

(h) A program of education in a course of instruction beyond the baccalaureate degree level shall be provided under this chapter, subject to the availability of appropriations.

(i)(1) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under subparagraphs (A) through (D) of subsection (b)(1) as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed \$350 per month.

(2) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, who is eligible for educational benefits under chapter 30 (other than section 3012) of title 38 and who meets the eligibility criteria specified in subparagraphs (A) and (B) of section 16132(a)(1) of this title, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under section 3015 of title 38 as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed \$350 per month.

(3) The authority provided by paragraphs (1) and (2) shall be exercised by the Secretaries concerned under regulations prescribed by the Secretary of Defense.

(j)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3452(b) of title 38 is the lesser of \$2,000 or the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for

such test by the full-time monthly institutional rate of educational assistance which, but for paragraph (1), such individual would otherwise be paid under subsection (b).

(3) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.

(Added Pub. L. 95-79, title IV, Sec. 402(a), July 30, 1977, 91 Stat. 328, Sec. 2131; amended Pub. L. 96-107, title IV, Sec. 402(a), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96-342, title IX, Sec. 906(a)(1), Sept. 8, 1980, 94 Stat. 1117; Pub. L. 96-513, title V, Sec. 511(68), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98-525, title VII, Sec. 705(a)(1), Oct. 19, 1984, 98 Stat. 2565; Pub. L. 100-689, title I, Sec. 110(a), 111(b)(1), Nov. 18, 1988, 102 Stat. 4170, 4172; Pub. L. 101-189, div. A, title VI, Sec. 642(a), (b), 645(a)(1), (b)(1), Nov. 29, 1989, 103 Stat. 1456, 1458; Pub. L. 101-237, title IV, Sec. 422(b)(2), Dec. 18, 1989, 103 Stat. 2089; Pub. L. 102-25, title III, Sec. 337(b), Apr. 6, 1991, 105 Stat. 90; Pub. L. 102-127, Sec. 2(d), Oct. 10, 1991, 105 Stat. 621; Pub. L. 102-568, title III, Sec. 301(b), (d), 310(b), 318, 320(a)(1), Oct. 29, 1992, 106 Stat. 4326, 4330, 4334, 4335; Pub. L. 103-66, title XII, Sec. 12009(b), Aug. 10, 1993, 107 Stat. 416; Pub. L. 103-160, div. A, title V, Sec. 518, Nov. 30, 1993, 107 Stat. 1651; renumbered Sec. 16131 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1663(b)(2), (3), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 104-106, div. A, title X, Sec. 1076, Feb. 10, 1996, 110 Stat. 450; Pub. L. 104-275, title I, Sec. 105(d), Oct. 9, 1996, 110 Stat. 3327; Pub. L. 105-85, div. A, title V, Sec. 553(a), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 105-178, title VIII, Sec. 8203(b)(1)-(3), June 9, 1998, 112 Stat. 493, 494; Pub. L. 106-65, div. A, title X, Sec. 1066(a)(33), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109-163, div. A, title V, Sec. 539(a), Jan. 6, 2006, 119 Stat. 3250.)

§ 16131a. Accelerated payment of educational assistance

(a) The educational assistance allowance payable under section 16131 of this title with respect to an eligible person described in subsection (b) may, upon the election of such eligible person, be paid on an accelerated basis in accordance with this section.

(b) An eligible person described in this subsection is a person entitled to educational assistance under this chapter who is—

(1) enrolled in an approved program of education not exceeding two years in duration and not leading to an associate, bachelors, masters, or other degree, subject to subsection (g); and

(2) charged tuition and fees for the program of education that, when divided by the number of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200 percent of the monthly rate of educational assistance allowance otherwise payable with respect to the person under section 16131 of this title.

(c)(1) The amount of the accelerated payment of educational assistance payable with respect to an eligible person making an election under subsection (a) for a program of education shall be the lesser of—

(A) the amount equal to 60 percent of the established charges for the program of education; or

(B) the aggregate amount of educational assistance allowance to which the person remains entitled under this chapter at the time of the payment.

(2)(A) In this subsection, except as provided in subparagraph (B), the term “established charges”, in the case of a program of education, means the actual charges (as determined pursuant to regulations prescribed by the Secretary of Veterans Affairs) for tuition and fees which similarly circumstanced individuals who are not eligible for benefits under this chapter and who are enrolled in the program of education would be required to pay. Established charges shall be determined on the following basis:

(i) In the case of an individual enrolled in a program of education offered on a term, quarter, or semester basis, the tuition and fees charged the individual for the term, quarter, or semester.

(ii) In the case of an individual enrolled in a program of education not offered on a term, quarter, or semester basis, the tuition and fees charged the individual for the entire program of education.

(B) In this subsection, the term “established charges” does not include any fees or payments attributable to the purchase of a vehicle.

(3) The educational institution providing the program of education for which an accelerated payment of educational assistance allowance is elected by an eligible person under subsection (a) shall certify to the Secretary of Veterans Affairs the amount of the established charges for the program of education.

(d) An accelerated payment of educational assistance allowance made with respect to an eligible person under this section for a program of education shall be made not later than the last day of the month immediately following the month in which the Secretary of Veterans Affairs receives a certification from the educational institution regarding—

(1) the person’s enrollment in and pursuit of the program of education; and

(2) the amount of the established charges for the program of education.

(e)(1) Except as provided in paragraph (2), for each accelerated payment of educational assistance allowance made with respect to an eligible person under this section, the person’s entitlement to educational assistance under this chapter shall be charged the number of months (and any fraction thereof) determined by dividing the amount of the accelerated payment by the full-time monthly rate of educational assistance allowance otherwise payable with respect to the person under section 16131 of this title as of the beginning date of the enrollment period for the program of education for which the accelerated payment is made.

(2) If the monthly rate of educational assistance allowance otherwise payable with respect to an eligible person under section 16131 of this title increases during the enrollment period of a program of education for which an accelerated payment of educational assistance allowance is made under this section, the charge to the person’s entitlement to educational assistance under this chapter shall be determined by prorating the entitlement chargeable, in the manner provided for under paragraph (1), for the periods covered by the initial rate and increased rate, respectively, in accordance with regulations prescribed by the Secretary of Veterans Affairs.

(f) The Secretary of Veterans Affairs shall prescribe regulations to carry out this section. The regulations shall include requirements, conditions, and methods for the request, issuance, delivery, certification of receipt and use, and recovery of overpayment of an accelerated payment of educational assistance allowance under this section. The regulations may include such elements of the regulations prescribed under section 3014A of title 38 as the Secretary of Veterans Affairs considers appropriate for purposes of this section.

(g) The aggregate amount of educational assistance payable under this section in any fiscal year for enrollments covered by subsection (b)(1) may not exceed \$4,000,000.

(Added Pub. L. 110–181, div. A, title V, Sec. 528(a)(1), Jan. 28, 2008, 122 Stat. 105.)

§ 16132. Eligibility for educational assistance

(a) A person who—

(1) after June 30, 1985—

(A) enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve for a period of not less than six years; or

(B) is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject; and

(2) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or an equivalency certificate);

is entitled to educational assistance under section 16131 of this title.

(b) Educational assistance may not be provided to a member under this chapter until the member has completed the initial period of active duty for training required of the member.

(c) Each person who becomes entitled to educational assistance under subsection (a) shall at the time the person becomes so entitled be given a statement in writing summarizing the provisions of this chapter and stating clearly and prominently the substance of sections 16134 and 16135 of this title as such sections may apply to the person. At the request of the Secretary of Veterans Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to that Secretary.

(d) A person who serves in the Selected Reserve may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) the program to which such service is to be credited. However, a person may not receive credit under the program established by this chapter for service (in any grade) on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components in a position which is included in the end strength required to be authorized each year by section 115(a)(1)(B) of this title.

(Added Pub. L. 95–79, title IV, Sec. 402(a), July 30, 1977, 91 Stat. 329, Sec. 2132; amended Pub. L. 95–485, title IV, Sec. 402(a), Oct. 20, 1978, 92 Stat. 1613; Pub. L. 96–513, title V, Sec. 511(69), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–525, title VII, Sec. 705(a)(1), Oct. 19, 1984, 98 Stat. 2565; Pub. L. 100–48, Sec. 4, June 1, 1987, 101 Stat. 331; Pub. L. 100–689, title I, Sec. 110(b), 111(b)(2)–(4), Nov. 18, 1988, 102 Stat. 4170, 4173; Pub. L. 101–189, div. A, title VI, Sec. 643(a), 645(a), (b)(2), Nov. 29, 1989, 103 Stat. 1458; Pub. L. 102–25, title VII, Sec. 701(f)(6), Apr. 6, 1991, 105 Stat. 115; renumbered Sec. 16132 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1663(b)(2), (4), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 104–106, div. A, title XV, Sec. 1501(b)(34), Feb. 10, 1996, 110 Stat. 498; Pub. L. 106–419, title I, Sec. 102(d), Nov. 1, 2000, 114 Stat. 1825.)

§ 16132a. Authority to transfer unused education benefits to family members

(a) **IN GENERAL.**—Subject to regulation prescribed by the Secretary of Defense, the Secretary concerned may permit a member described in subsection (b) who is entitled to basic educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such member's entitlement to such assistance, subject to the limitation under subsection (d).

(b) **ELIGIBLE MEMBERS.**—A member referred to in subsection (a) is a member of the Selected Reserve of the Ready Reserve who, at the time of the approval of the member's request to transfer entitlement to basic educational assistance under this section, has completed—

(1) at least six years of service in the Selected Reserve and enters into an agreement to serve at least four more years as a member of the armed forces; or

(2) the years of service as determined in regulations pursuant to subsection (j).

(c) **ELIGIBLE DEPENDENTS.**—A member approved to transfer an entitlement to basic educational assistance under this section may transfer the member's entitlement as follows:

(1) To the member's spouse.

(2) To one or more of the member's children.

(3) To a combination of the individuals referred to in paragraphs (1) and (2).

(d) **LIMITATION ON MONTHS OF TRANSFER.**—The total number of months of entitlement transferred by a member under this section may not exceed 36 months. The Secretary of Defense may prescribe regulations that would limit the months of entitlement that may be transferred under this section to no less than 18 months.

(e) **DESIGNATION OF TRANSFEREE.**—A member transferring an entitlement to basic educational assistance under this section shall—

(1) designate the dependent or dependents to whom such entitlement is being transferred;

(2) designate the number of months of such entitlement to be transferred to each such dependent; and

(3) specify the period for which the transfer shall be effective for each dependent designated under paragraph (1).

(f) **TIME FOR TRANSFER; REVOCATION AND MODIFICATION.**—(1) Subject to the time limitation for use of entitlement under section 16133, a member approved to transfer entitlement to basic educational assistance under this section may transfer such entitlement at any time after the approval of the member's request to transfer such entitlement.

(2) A member transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred. The modification or revocation of the transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs.

(3) Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(g) COMMENCEMENT OF USE.—A dependent to whom entitlement to basic educational assistance is transferred under this section may not commence the use of the transferred entitlement until—

(1) in the case of entitlement transferred to a spouse, the completion by the member making the transfer of at least—

(A) six years of service in the armed forces; or

(B) the years of service as determined in regulations pursuant to subsection (j); or

(2) in the case of entitlement transferred to a child, both—

(A) the completion by the member making the transfer of at least—

(i) ten years of service in the armed forces; or

(ii) the years of service as determined in regulations pursuant to subsection (j); and

(B) either—

(i) the completion by the child of the requirements of a secondary school diploma (or equivalency certificate); or

(ii) the attainment by the child of 18 years of age.

(h) ADDITIONAL ADMINISTRATIVE MATTERS.—(1) The use of any entitlement to basic educational assistance transferred under this section shall be charged against the entitlement of the member making the transfer at the rate of one month for each month of transferred entitlement that is used.

(2) Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6), a dependent to whom entitlement is transferred under this section is entitled to basic educational assistance under this chapter in the same manner as the member from whom the entitlement was transferred.

(3) The monthly rate of educational assistance payable to a dependent to whom entitlement is transferred under this section shall be the monthly amount payable under sections 16131 and 16131a to the member making the transfer.

(4) The death of a member transferring an entitlement under this section shall not affect the use of the entitlement by the dependent to whom the entitlement is transferred.

(5) The involuntary separation or retirement of the member—

(A) because of a nondiscretionary provision of law for age or years of service;

(B) because of a policy prescribed by the Secretary concerned mandating such separation or retirement based solely on age or years of service for the prescribed pay grade of an enlisted member;

(C) under section 16133(b); or

(D) because of medical disqualification which is not the result of gross negligence or misconduct of the member, shall not affect the use of entitlement by the dependent to whom the entitlement is transferred.

(6) A child to whom entitlement is transferred under this section may not use any entitlement so transferred after attaining the age of 26 years.

(7) The administrative provisions of this chapter shall apply to the use of entitlement transferred under this section, except that the dependent to whom the entitlement is transferred shall be treated as the eligible member for purposes of such provisions.

(8) The purposes for which a dependent to whom entitlement is transferred under this section may use such entitlement shall include the pursuit and completion of the requirements of a secondary school diploma (or equivalency certificate).

(i) OVERPAYMENT.—(1) In the event of an overpayment of basic educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the member making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685 of title 38.

(2) Except as provided in paragraph (3), if a member's eligibility is terminated under section 16134(2), the amount of any transferred entitlement under this section that is used by a dependent of the member as of the date of such termination shall be treated as an overpayment of basic educational assistance under paragraph (1).

(3) Paragraph (2) shall not apply in the case of a member who fails to complete service agreed to by the member—

(A) by reason of the death of the member; or

(B) for a reason referred to in section 16133(b).

(j) REGULATIONS.—The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section. Such regulations shall specify—

(1) the manner of authorizing the military departments to offer transfer of entitlements under this section;

(2) the eligibility criteria in accordance with subsection (b);

(3) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2); and

(4) the manner in which the provisions referred to in subsections (h)(4) and (5) shall be administered with respect to a dependent to whom entitlement is transferred under this section.

(Added Pub. L. 110-252, title V, Sec. 5006(b), June 30, 2008, 122 Stat. 2381; amended Pub. L. 111-383, div. A, title X, Sec. 1075(b)(55), Jan. 7, 2011, 124 Stat. 4372.)

§ 16133. Time limitation for use of entitlement

(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this chapter may use such person's entitlement expires on the date the person is separated from the Selected Reserve.

(b)(1) In the case of a person—

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on December 31, 2001, or the period beginning on October 1, 2007, and ending on September 30, 2014, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title,

the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title—

(A) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(B) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

(Added Pub. L. 95-79, title IV, Sec. 402(a), July 30, 1977, 91 Stat. 329, Sec. 2133; amended Pub. L. 96-107, title IV, Sec. 402(b), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96-513, title V, Sec. 511(70), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98-525, title VII, Sec. 705(a)(1), Oct. 19, 1984, 98 Stat. 2566; Pub. L. 100-456, div. A, title XII, Sec. 1233(g)(2), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 100-689, title I, Sec. 111(b)(5), Nov. 18, 1988, 102 Stat. 4173; Pub. L. 102-127, Sec. 3, Oct. 10, 1991, 105 Stat. 622; Pub. L. 102-484, div. D, title XLIV, Sec. 4419(a), Oct. 23, 1992, 106 Stat. 2717; Pub. L. 102-568, title III, Sec. 320(a)(2), Oct. 29, 1992, 106 Stat. 4335; Pub. L. 103-160, div. A, title V, Sec. 561(m), Nov. 30, 1993, 107 Stat. 1668; renumbered Sec. 16133 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1663(b)(2), (5), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 105-85, div. A, title V, Sec. 553(b), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 105-261, div. A, title V, Sec. 561(q), Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106-398, Sec. 1[[div. A], title V, Sec. 571(p)], Oct. 30, 2000, 114 Stat. 1654, 1654A-135; Pub. L. 107-314, div. A, title VI, Sec. 641(a), Dec. 2, 2002, 116 Stat. 2576; Pub. L. 110-181, div. A, title V, Sec. 529, Jan. 28, 2008, 122 Stat. 110; Pub. L. 110-252, title V, Sec. 5006(d), June 30, 2008, 122 Stat. 2386.)

§ 16134. Termination of assistance

Educational assistance may not be provided under this chapter—

(1) to a member receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers' Training Corps program; or

(2) to a member who fails to participate satisfactorily in required training as a member of the Selected Reserve.

(Added Pub. L. 95-79, title IV, Sec. 402(a), July 30, 1977, 91 Stat. 330, Sec. 2134; amended Pub. L. 98-94, title XII, Sec. 1268(14), Sept. 24, 1983, 97 Stat. 707; Pub. L. 98-525, title VII, Sec. 705(a)(1), Oct. 19, 1984, 98 Stat. 2566; renumbered Sec. 16134, Pub. L. 103-337, div. A, title XVI, Sec. 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006.)

§ 16135. Failure to participate satisfactorily; penalties

(a) PENALTIES.—At the option of the Secretary concerned, a member of the Selected Reserve of an armed force who does not participate satisfactorily in required training as a member of the Selected Reserve during a term of enlistment or other period of obligated service that created entitlement of the member to educational assistance under this chapter, and during which the member has received such assistance, may—

(1) be ordered to active duty for a period of two years or the period of obligated service the person has remaining under section 16132 of this title, whichever is less; or

(2) be subject to the repayment provisions under section 303a(e) of title 37.

(b) EFFECT OF REPAYMENT.—Any repayment under section 303a(e) of title 37 shall not affect the period of obligation of a member to serve as a Reserve in the Selected Reserve.

(Added Pub. L. 95–79, title IV, Sec. 402(a), July 30, 1977, 91 Stat. 330, Sec. 2135; amended Pub. L. 95–485, title IV, Sec. 402(b), Oct. 20, 1978, 92 Stat. 1613; Pub. L. 96–342, title IX, Sec. 906(b), Sept. 8, 1980, 94 Stat. 1117; Pub. L. 98–525, title VII, Sec. 705(a)(1), Oct. 19, 1984, 98 Stat. 2566; Pub. L. 100–689, title I, Sec. 111(b)(6), Nov. 18, 1988, 102 Stat. 4173; renumbered Sec. 16135 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1663(b)(2), (6), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 104–106, div. A, title XV, Sec. 1501(b)(35), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107–314, div. A, title VI, Sec. 642, Dec. 2, 2002, 116 Stat. 2577; Pub. L. 109–163, div. A, title VI, Sec. 687(c)(12), Jan. 6, 2006, 119 Stat. 3335.)

§ 16136. Administration of program

(a) Educational assistance under this chapter shall be provided through the Department of Veterans Affairs, under agreements to be entered into by the Secretary of Defense, and by the Secretary of Homeland Security, with the Secretary of Veterans Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Department of Veterans Affairs for the making of payments under this chapter.

(b) Except as otherwise provided in this chapter, the provisions of sections 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall be applicable to the provision of educational assistance under this chapter. The term “eligible veteran” and the term “a person”, as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

(c) The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of title 38) by an individual entitled to educational assistance under this chapter if—

(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(2) the individual possesses a valid private pilot certificate and meets, on the day the individual begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and

(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

(Added Pub. L. 98–525, title VII, Sec. 705(a)(1), Oct. 19, 1984, 98 Stat. 2567, Sec. 2136; amended Pub. L. 101–189, div. A, title VI, Sec. 642(c), 645(a)(1), Nov. 29, 1989, 103 Stat. 1457, 1458; Pub. L. 101–237, title IV, Sec. 405(d)(3), 422(b)(1), Dec. 18, 1989, 103 Stat. 2081, 2089; Pub. L. 101–510, div. A, title XIV, Sec. 1484(j)(3), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 102–16, Sec. 10(b), Mar. 22, 1991, 105 Stat. 56; Pub. L. 102–568, title III, Sec. 313(a)(6), 319, 320(a)(3), Oct. 29, 1992, 106 Stat. 4333, 4335, 4336; renumbered Sec. 16136, Pub. L. 103–337, div. A, title XVI, Sec. 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006; Pub. L. 103–446, title VI, Sec. 601(c), Nov. 2, 1994, 108 Stat. 4670; Pub. L. 105–368, title II, Sec. 204(b), Nov. 11, 1998, 112 Stat. 3327; Pub. L. 107–296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 16137. Biennial report to Congress

The Secretary of Defense shall submit to Congress a report not later than March 1 of each odd-numbered year concerning the operation of the educational assistance program established by this chapter during the preceding two fiscal years. Each such report shall include the number of members of the Selected Reserve of the Ready Reserve of each armed force receiving, and the number entitled to receive, educational assistance under this chapter during those fiscal years. The Secretary may submit the report more frequently and adjust the period covered by the report accordingly.

(Added Pub. L. 98–525, title VII, Sec. 705(a)(1), Oct. 19, 1984, 98 Stat. 2567, Sec. 2137; renumbered Sec. 16137, Pub. L. 103–337, div. A, title XVI, Sec. 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006; amended Pub. L. 104–106, div. A, title X, Sec. 1077, Feb. 10, 1996, 110 Stat. 451; Pub. L. 106–65, div. A, title V, Sec. 548(a), Oct. 5, 1999, 113 Stat. 609.)

CHAPTER 1607—EDUCATIONAL ASSISTANCE FOR RESERVE COMPONENT MEMBERS SUPPORTING CONTINGENCY OPERATIONS AND CERTAIN OTHER OPERATIONS

Sec.	
16161.	Purpose.
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16162.	Educational assistance program.
16163.	Eligibility for educational assistance.
16163a.	Authority to transfer unused education benefits to family members.
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16165.	Termination of assistance.
16166.	Administration of program.

§ 16161. Purpose

The purpose of this chapter is to provide educational assistance to members of the reserve components called or ordered to active service in response to a war or national emergency declared by the President or the Congress, in recognition of the sacrifices that those members make in answering the call to duty.

(Added Pub. L. 108–375, div. A, title V, Sec. 527(a), Oct. 28, 2004, 118 Stat. 1890.)

§ 16162. Educational assistance program

(a) PROGRAM ESTABLISHMENT.—The Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program as prescribed in this chapter to provide educational assistance to members of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned.

(b) AUTHORIZED EDUCATION PROGRAMS.—Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(c) BENEFIT AMOUNT.—(1) The educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, an educational assistance allowance to each member entitled to educational assistance under this chapter who is pursuing a program of education authorized under subsection (b).

(2) The educational assistance allowance provided under this chapter shall be based on the applicable percent under paragraph (4) to the applicable rate provided under section 3015 of title 38 for a member whose entitlement is based on completion of an obligated period of active duty of three years.

(3) The educational assistance allowance provided under this section for a person who is undertaking a program for which a re-

duced rate is specified in chapter 30 of title 38, that rate shall be further adjusted by the applicable percent specified in paragraph (4).

(4) The adjusted educational assistance allowance under paragraph (2) or (3), as applicable, shall be—

(A) 40 percent in the case of a member of a reserve component who performed active service for 90 consecutive days but less than one continuous year;

(B) 60 percent in the case of a member of a reserve component who performed active service for one continuous year but less than two continuous years; or

(C) 80 percent in the case of a member of a reserve component who performed active service for—

(i) two continuous years or more; or

(ii) an aggregate of three years or more.

(d) MAXIMUM MONTHS OF ASSISTANCE.—(1) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any member under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

(e) AVAILABILITY OF ASSISTANCE FOR LICENSING AND CERTIFICATION TESTS.—The provisions of section 16131(j) of this title shall apply to the provision of educational assistance under this chapter, except that, in applying such section under this chapter, the reference to subsection (b) in paragraph (2) of such section is deemed to be a reference to subsection (c) of this section.

(f) CONTRIBUTIONS FOR INCREASED AMOUNT OF EDUCATIONAL ASSISTANCE.—(1)(A) Any individual eligible for educational assistance under this section may contribute amounts for purposes of re-

ceiving an increased amount of educational assistance as provided for in paragraph (2).

(B) An individual covered by subparagraph (A) may make the contributions authorized by that subparagraph at any time while a member of a reserve component, but not more frequently than monthly.

(C) The total amount of the contributions made by an individual under subparagraph (A) may not exceed \$600. Such contributions shall be made in multiples of \$20.

(D) Contributions under this subsection shall be made to the Secretary concerned. Such Secretary shall deposit any amounts received as contributions under this subsection into the Treasury as miscellaneous receipts.

(2) Effective as of the first day of the enrollment period following the enrollment period in which an individual makes contributions under paragraph (1), the monthly amount of educational assistance allowance applicable to such individual under this section shall be the monthly rate otherwise provided for under subsection (c) increased by—

(A) an amount equal to \$5 for each \$20 contributed by such individual under paragraph (1) for an approved program of education pursued on a full-time basis; or

(B) an appropriately reduced amount based on the amount so contributed as determined under regulations that the Secretary of Veterans Affairs shall prescribe, for an approved program of education pursued on less than a full-time basis.

(Added Pub. L. 108–375, div. A, title V, Sec. 527(a), Oct. 28, 2004, 118 Stat. 1890; amended Pub. L. 109–163, div. A, title V, Sec. 539(b), Jan. 6, 2006, 119 Stat. 3250; Pub. L. 110–181, div. A, title V, Sec. 528(c), Jan. 28, 2008, 122 Stat. 109.)

§ 16162a. Accelerated payment of educational assistance

(a) PAYMENT ON ACCELERATED BASIS.—The educational assistance allowance payable under section 16162 of this title with respect to an eligible member described in subsection (b) may, upon the election of such eligible member, be paid on an accelerated basis in accordance with this section.

(b) ELIGIBLE MEMBERS.—An eligible member described in this subsection is a member of a reserve component entitled to educational assistance under this chapter who is—

(1) enrolled in an approved program of education not exceeding two years in duration and not leading to an associate, bachelors, masters, or other degree, subject to subsection (g); and

(2) charged tuition and fees for the program of education that, when divided by the number of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200 percent of the monthly rate of educational assistance allowance otherwise payable with respect to the member under section 16162 of this title.

(c) AMOUNT OF ACCELERATED PAYMENT.—(1) The amount of the accelerated payment of educational assistance payable with respect to an eligible member making an election under subsection (a) for a program of education shall be the lesser of—

(A) the amount equal to 60 percent of the established charges for the program of education; or

(B) the aggregate amount of educational assistance allowance to which the member remains entitled under this chapter at the time of the payment.

(2)(A) In this subsection, except as provided in subparagraph (B), the term “established charges”, in the case of a program of education, means the actual charges (as determined pursuant to regulations prescribed by the Secretary of Veterans Affairs) for tuition and fees which similarly circumstanced individuals who are not eligible for benefits under this chapter and who are enrolled in the program of education would be required to pay. Established charges shall be determined on the following basis:

(i) In the case of an individual enrolled in a program of education offered on a term, quarter, or semester basis, the tuition and fees charged the individual for the term, quarter, or semester.

(ii) In the case of an individual enrolled in a program of education not offered on a term, quarter, or semester basis, the tuition and fees charged the individual for the entire program of education.

(B) In this subsection, the term “established charges” does not include any fees or payments attributable to the purchase of a vehicle.

(3) The educational institution providing the program of education for which an accelerated payment of educational assistance allowance is elected by an eligible member under subsection (a) shall certify to the Secretary of Veterans Affairs the amount of the established charges for the program of education.

(d) TIME OF PAYMENT.—An accelerated payment of educational assistance allowance made with respect to an eligible member under this section for a program of education shall be made not later than the last day of the month immediately following the month in which the Secretary of Veterans Affairs receives a certification from the educational institution regarding—

(1) the member’s enrollment in and pursuit of the program of education; and

(2) the amount of the established charges for the program of education.

(e) CHARGE AGAINST ENTITLEMENT.—(1) Except as provided in paragraph (2), for each accelerated payment of educational assistance allowance made with respect to an eligible member under this section, the member’s entitlement to educational assistance under this chapter shall be charged the number of months (and any fraction thereof) determined by dividing the amount of the accelerated payment by the full-time monthly rate of educational assistance allowance otherwise payable with respect to the member under section 16162 of this title as of the beginning date of the enrollment period for the program of education for which the accelerated payment is made.

(2) If the monthly rate of educational assistance allowance otherwise payable with respect to an eligible member under section 16162 of this title increases during the enrollment period of a program of education for which an accelerated payment of educational

assistance allowance is made under this section, the charge to the member's entitlement to educational assistance under this chapter shall be determined by prorating the entitlement chargeable, in the manner provided for under paragraph (1), for the periods covered by the initial rate and increased rate, respectively, in accordance with regulations prescribed by the Secretary of Veterans Affairs.

(f) REGULATIONS.—The Secretary of Veterans Affairs shall prescribe regulations to carry out this section. The regulations shall include requirements, conditions, and methods for the request, issuance, delivery, certification of receipt and use, and recovery of overpayment of an accelerated payment of educational assistance allowance under this section. The regulations may include such elements of the regulations prescribed under section 3014A of title 38 as the Secretary of Veterans Affairs considers appropriate for purposes of this section.

(g) LIMITATION.—The aggregate amount of educational assistance payable under this section in any fiscal year for enrollments covered by subsection (b)(1) may not exceed \$3,000,000.

(Added Pub. L. 110-181, div. A, title V, Sec. 528(b)(1), Jan. 28, 2008, 122 Stat. 107.)

§ 16163. Eligibility for educational assistance

(a) ELIGIBILITY.—On or after September 11, 2001, a member of a reserve component is entitled to educational assistance under this chapter if the member—

(1) served on active duty in support of a contingency operation for 90 consecutive days or more; or

(2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full time National Guard duty under section 502(f) of title 32 for 90 consecutive days or more when authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(b) DISABLED MEMBERS.—Notwithstanding the eligibility requirements in subsection (a), a member who was ordered to active service as prescribed under subsection (a)(1) or (a)(2) but is released from duty before completing 90 consecutive days because of an injury, illness or disease incurred or aggravated in the line of duty shall be entitled to educational assistance under this chapter at the rate prescribed in section 16162(c)(4)(A) of this title.

(c) WRITTEN NOTIFICATION.—(1) Each member who becomes entitled to educational assistance under subsection (a) shall be given a statement in writing prior to release from active service that summarizes the provisions of this chapter and stating clearly and prominently the substance of section 16165 of this title as such section may apply to the member.

(2) At the request of the Secretary of Veterans Affairs, the Secretary concerned shall transmit a notice of entitlement for each such member to that Secretary.

(d) BAR FROM DUAL ELIGIBILITY.—A member who qualifies for educational assistance under this chapter may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall make an irrevocable election (in such form and manner as the Sec-

retary of Veterans Affairs may prescribe) as to the program to which such service is to be credited.

(e) **BAR FROM DUPLICATION OF EDUCATIONAL ASSISTANCE ALLOWANCE.**—

(1) Except as provided in paragraph (2), an individual entitled to educational assistance under this chapter who is also eligible for educational assistance under chapter 1606 of this title, chapter 30, 31, 32, 33, or 35 of title 38, or under the Hostage Relief Act of 1980 (Public Law 96–449; 5 U.S.C. 5561 note) may not receive assistance under more than one such program and shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) under which program the member elects to receive educational assistance.

(2) The restriction on duplication of educational assistance under paragraph (1) does not apply to the entitlement of educational assistance under section 16131(i) of this title.

(Added Pub. L. 108–375, div. A, title V, Sec. 527(a), Oct. 28, 2004, 118 Stat. 1892; amended Pub. L. 109–163, div. A, title V, Sec. 540(a), Jan. 6, 2006, 119 Stat. 3251; Pub. L. 110–252, title V, Sec. 5003(b)(1)(C), June 30, 2008, 122 Stat. 2375; Pub. L. 111–84, div. A, title X, Sec. 1073(a)(36), Oct. 28, 2009, 123 Stat. 2474.)

§ 16163a. Authority to transfer unused education benefits to family members

(a) **IN GENERAL.**—Subject to the provisions of this section, the Secretary concerned may permit, at such Secretary’s sole discretion, a member described in subsection (b) who is entitled to basic educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such member’s entitlement to such assistance, subject to the limitation under subsection (d).

(b) **ELIGIBLE MEMBERS.**—A member referred to in subsection (a) is a member of the armed forces who, at the time of the approval of the member’s request to transfer entitlement to basic educational assistance under this section, has completed at least—

(1) six years of service in the armed forces and enters into an agreement to serve at least four more years as a member of the armed forces; or

(2) the years of service as determined in regulations pursuant to subsection (j).

(c) **ELIGIBLE DEPENDENTS.**—A member approved to transfer an entitlement to basic educational assistance under this section may transfer the member’s entitlement as follows:

(1) To the member’s spouse.

(2) To one or more of the member’s children.

(3) To a combination of the individuals referred to in paragraphs (1) and (2).

(d) **LIMITATION ON MONTHS OF TRANSFER.**—The total number of months of entitlement transferred by a member under this section may not exceed 36 months. The Secretary of Defense may prescribe regulations that would limit the months of entitlement that may be transferred under this section to no less than 18 months.

(e) **DESIGNATION OF TRANSFEREE.**—A member transferring an entitlement to basic educational assistance under this section shall—

(1) designate the dependent or dependents to whom such entitlement is being transferred;

(2) designate the number of months of such entitlement to be transferred to each such dependent; and

(3) specify the period for which the transfer shall be effective for each dependent designated under paragraph (1).

(f) TIME FOR TRANSFER; REVOCATION AND MODIFICATION.—(1) Subject to the time limitation for use of entitlement under section 16164, a member approved to transfer entitlement to basic educational assistance under this section may transfer such entitlement only while serving as a member of the armed forces when the transfer is executed.

(2) A member transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred. The modification or revocation of the transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs.

(3) Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(g) COMMENCEMENT OF USE.—A dependent to whom entitlement to basic educational assistance is transferred under this section may not commence the use of the transferred entitlement until—

(1) in the case of entitlement transferred to a spouse, the completion by the member making the transfer of at least—

(A) six years of service in the armed forces; or

(B) the years of service as determined in regulations pursuant to subsection (j); or

(2) in the case of entitlement transferred to a child, both—

(A) the completion by the member making the transfer of at least—

(i) ten years of service in the armed forces; or

(ii) the years of service as determined in regulations pursuant to subsection (j); and

(B) either—

(i) the completion by the child of the requirements of a secondary school diploma (or equivalency certificate); or

(ii) the attainment by the child of 18 years of age.

(h) ADDITIONAL ADMINISTRATIVE MATTERS.—(1) The use of any entitlement to basic educational assistance transferred under this section shall be charged against the entitlement of the member making the transfer at the rate of one month for each month of transferred entitlement that is used.

(2) Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6), a dependent to whom entitlement is transferred under this section is entitled to basic educational assistance under this chapter in the same manner as the member from whom the entitlement was transferred.

(3) The monthly rate of educational assistance payable to a dependent to whom entitlement is transferred under this section

shall be the monthly amount payable under sections 16162 and 16162a to the member making the transfer.

(4) The death of a member transferring an entitlement under this section shall not affect the use of the entitlement by the dependent to whom the entitlement is transferred.

(5) Notwithstanding section 16164(a)(2), a child to whom entitlement is transferred under this section may use the benefit without regard to the 10-year delimiting date, but may not use any entitlement so transferred after attaining the age of 26 years.

(6) The administrative provisions of this chapter shall apply to the use of entitlement transferred under this section, except that the dependent to whom the entitlement is transferred shall be treated as the eligible member for purposes of such provisions.

(7) The purposes for which a dependent to whom entitlement is transferred under this section may use such entitlement shall include the pursuit and completion of the requirements of a secondary school diploma (or equivalency certificate).

(i) OVERPAYMENT.—

(1) JOINT AND SEVERAL LIABILITY.—In the event of an overpayment of basic educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the member making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685 of title 38.

(2) FAILURE TO COMPLETE SERVICE AGREEMENT.—Except as provided in paragraph (3), if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under subsection (b)(1) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of educational assistance under paragraph (1).

(3) Paragraph (2) shall not apply in the case of an individual who fails to complete service agreed to by the individual—

(A) by reason of the death of the individual; or

(B) for a reason referred to in section 16133(b).

(j) REGULATIONS.—(1) The Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section.

(2) Such regulations shall specify—

(A) the manner of authorizing the transfer of entitlements under this section;

(B) the eligibility criteria in accordance with subsection (b); and

(C) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2).

(k) SECRETARY CONCERNED DEFINED.—For purposes of this section, the term “Secretary concerned” has the meaning given in section 101(a)(9) in the case of a member of the armed forces.

(Added Pub. L. 110–252, title V, Sec. 5006(c), June 30, 2008, 122 Stat. 2383; amended Pub. L. 111–383, div. A, title X, Sec. 1075(b)(56), Jan. 7, 2011, 124 Stat. 4372.)

§ 16164. Time limitation for use of entitlement

(a) DURATION OF ENTITLEMENT.—Except as provided in subsection (b), a member remains entitled to educational assistance under this chapter—

(1) while the member is serving—

(A) in the Selected Reserve of the Ready Reserve, in the case of a member called or ordered to active service while serving in the Selected Reserve; or

(B) in the Ready Reserve, in the case of a member ordered to active duty while serving in the Ready Reserve (other than the Selected Reserve); and

(2) in the case of a person who separates from the Selected Reserve of the Ready Reserve after completion of a period of active service described in section 16163 of this title and completion of a service contract under honorable conditions, during the 10-year period beginning on the date on which the person separates from the Selected Reserve.

(b) DURATION OF ENTITLEMENT FOR DISABLED MEMBERS.—(1)

In the case of a person who is separated from the Ready Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter, such person's entitlement to educational assistance expires at the end of the 10-year period beginning on the date on which such person became entitled to such assistance.

(2) The provisions of subsections (d) and (f) of section 3031 of title 38 shall apply to the period of entitlement prescribed by paragraph (1).

(Added Pub. L. 108-375, div. A, title V, Sec. 527(a), Oct. 28, 2004, 118 Stat. 1892; amended Pub. L. 110-181, div. A, title V, Sec. 530(a)(1), Jan. 28, 2008, 122 Stat. 110; Pub. L. 110-417, [div. A], title V, Sec. 546(a), Oct. 14, 2008, 122 Stat. 4466.)

§ 16165. Termination of assistance

(a) IN GENERAL.—Except as provided in subsection (b), educational assistance may not be provided under this chapter, or if being provided under this chapter, shall be terminated—

(1) if the member is receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers' Training Corps program; or

(2) when the member separates from the Ready Reserve as provided in section 16164(a)(1) of this title, or upon completion of the period provided for in section 16164(a)(2) of this title, as applicable.

(b) EXCEPTION.—Under regulations prescribed by the Secretary of Defense, educational assistance may be provided under this chapter to a member of the Selected Reserve of the Ready Reserve who incurs a break in service in the Selected Reserve if the member continues to serve in the Ready Reserve during and after such break in service.

(Added Pub. L. 108-375, div. A, title V, Sec. 527(a), Oct. 28, 2004, 118 Stat. 1893; amended Pub. L. 109-163, div. A, title V, Sec. 540(b), Jan. 6, 2006, 119 Stat. 3251; Pub. L. 110-181, div. A, title V, Sec. 530(a)(2), (b), Jan. 28, 2008, 122 Stat. 110.)

§ 16166. Administration of program

(a) ADMINISTRATION.—Educational assistance under this chapter shall be provided through the Department of Veterans Affairs, under agreements to be entered into by the Secretary of Defense, and by the Secretary of Homeland Security, with the Secretary of Veterans Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Department of Veterans Affairs for the making of payments under this chapter.

(b) PROGRAM MANAGEMENT.—Except as otherwise provided in this chapter, the provisions of sections 503, 511, 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall be applicable to the provision of educational assistance under this chapter. The term “eligible veteran” and the term “person”, as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

(c) FLIGHT TRAINING.—The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of title 38) by an individual entitled to educational assistance under this chapter if—

(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(2) the individual possesses a valid private pilot certificate and meets, on the day the member begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and

(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

(d) TRUST FUND.—Amounts for payments for benefits under this chapter shall be derived from the Department of Defense Education Benefits Fund under section 2006 of this title.

(Added Pub. L. 108–375, div. A, title V, Sec. 527(a), Oct. 28, 2004, 118 Stat. 1893.)

CHAPTER 1608—HEALTH PROFESSIONS STIPEND PROGRAM

Sec.	
16201.	Financial assistance: health-care professionals in reserve components.
16202.	Reserve service: required active duty for training.
16203.	Penalties and limitations.
16204.	Regulations.

§ 16201. Financial assistance: health-care professionals in reserve components

(a) ESTABLISHMENT OF PROGRAM.—For the purpose of obtaining adequate numbers of commissioned officers in the reserve components who are qualified in health professions, the Secretary of each military department may establish and maintain a program to provide financial assistance under this chapter to persons engaged in training that leads to a degree in medicine or dentistry or training in a health professions specialty that is critically needed in wartime. Under such a program, the Secretary concerned may agree to pay a financial stipend to persons engaged in health care education and training in return for a commitment to subsequent service in the Ready Reserve.

(b) MEDICAL AND DENTAL SCHOOL STUDENTS.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is eligible to be appointed as an officer in a reserve component;

(B) is enrolled or has been accepted for enrollment in an institution in a course of study that results in a degree in medicine or dentistry;

(C) signs an agreement that, unless sooner separated, the person will—

(i) complete the educational phase of the program;

(ii) accept a reappointment or redesignation within the person's reserve component, if tendered, based upon the person's health profession, following satisfactory completion of the educational and intern programs; and

(iii) participate in a residency program; and

(D) if required by regulations prescribed by the Secretary of Defense, agrees to apply for, if eligible, and accept, if offered, residency training in a health profession skill which has been designated by the Secretary of Defense as a critically needed wartime skill.

(2) Under the agreement—

(A) the Secretary of the military department concerned shall agree to pay the participant a stipend, in the amount determined under subsection (f), for the period or the remainder of the period that the student is satisfactorily progressing to—

ward a degree in medicine or dentistry while enrolled in an accredited medical or dental school;

(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as an officer for service in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve in the Selected Reserve, upon successful completion of the program, for the period of service applicable under paragraph (3).

(3)(A) Subject to subparagraph (B), the period for which a participant is required to serve in the Selected Reserve under the agreement pursuant to paragraph (2)(D) shall be one year for each period of six months, or part thereof, for which the participant is provided a stipend pursuant to the agreement.

(B) In the case of a participant who enters into a subsequent agreement under subsection (c) and successfully completes residency training in a specialty designated by the Secretary of Defense as a specialty critically needed by the military department in wartime, the requirement to serve in the Selected Reserve may be reduced to one year for each year, or part thereof, for which the stipend was provided while enrolled in medical or dental school.

(c) PHYSICIANS AND DENTISTS IN CRITICAL WARTIME SPECIALTIES.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is a graduate of a medical school or dental school;

(B) is eligible for appointment, designation, or assignment as a medical officer or dental officer in the Reserve of the armed force concerned or has been appointed as a medical or dental officer in the Reserve of the armed force concerned; and

(C) is enrolled or has been accepted for enrollment in a residency program for physicians or dentists in a medical or dental specialty designated by the Secretary concerned as a specialty critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend, in an amount determined under subsection (f), for the period or the remainder of the period of the residency program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as a medical officer or dental officer for service in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, one year in the Ready Reserve for each six months, or part thereof, for which the stipend is pro-

vided, to be served in the Selected Reserve or in the Individual Ready Reserve as specified in the agreement.

(d) REGISTERED NURSES IN CRITICAL SPECIALTIES.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is a registered nurse;

(B) is eligible for appointment as—

(i) a Reserve officer for service in the Army Reserve in the Army Nurse Corps;

(ii) a Reserve officer for service in the Navy Reserve in the Navy Nurse Corps; or

(iii) a Reserve officer for service in the Air Force Reserve with a view to designation as an Air Force nurse under section 8067(e) of this title; and

(C) is enrolled or has been accepted for enrollment in an accredited program in nursing in a specialty designated by the Secretary concerned as a specialty critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend, in an amount determined under subsection (f), for the period or the remainder of the period of the nursing program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before being appointed as a Reserve officer for service in the Ready Reserve—

(i) in the Nurse Corps of the Army or Navy; or

(ii) as an Air Force nurse of the Air Force;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, one year in the Ready Reserve for each six months, or part thereof, for which the stipend is provided, to be served in the Selected Reserve or in the Individual Ready Reserve as specified in the agreement.

(e) BACCALAUREATE STUDENTS IN NURSING OR OTHER HEALTH PROFESSIONS.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) will, upon completion of the program, be eligible to be appointed, designated, or assigned as a Reserve officer for duty as a nurse or other health professional; and

(B) is enrolled, or has been accepted for enrollment in the third or fourth year of—

(i) an accredited baccalaureate nursing program; or

(ii) any other accredited baccalaureate program leading to a degree in a health-care profession designated by the Secretary concerned as a profession critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for the period or the remainder of the period of the baccalaureate program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before enlistment in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon graduation from the baccalaureate program, one year in the Ready Reserve for each year, or part thereof, for which the stipend is paid.

(f) AMOUNT OF STIPEND.—The amount of a stipend under an agreement under subsection (b) or (c) shall be—

(1) the stipend rate in effect for participants in the Armed Forces Health Professions Scholarship Program under section 2121(d) of this title, if the participant has agreed to serve in the Selected Reserve; or

(2) one-half of that rate, if the participant has agreed to serve in the Individual Ready Reserve.

(Added Pub. L. 100–180, div. A, title VII, Sec. 711(a)(3), Dec. 4, 1987, 101 Stat. 1108, Sec. 2128; renumbered Sec. 16201 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1663(c)(2), (5), Oct. 5, 1994, 108 Stat. 3007, 3008; Pub. L. 104–106, div. A, title VII, Sec. 736, Feb. 10, 1996, 110 Stat. 383; Pub. L. 107–107, div. A, title V, Sec. 539, Dec. 28, 2001, 115 Stat. 1108; Pub. L. 109–163, div. A, title V, Sec. 515(b)(1)(WW), Jan. 6, 2006, 119 Stat. 3234; Pub. L. 110–417, [div. A], title VI, Sec. 616(c), Oct. 14, 2008, 122 Stat. 4486; Pub. L. 111–84, div. A, title X, Sec. 1073(c)(3), Oct. 28, 2009, 123 Stat. 2474.)

§ 16202. Reserve service: required active duty for training

(a) SELECTED RESERVE.—A person who is required under an agreement under section 16201 of this title to serve in the Selected Reserve shall serve not less than 12 days of active duty for training each year during the period of service required by the agreement.

(b) IRR SERVICE.—A person who is required under an agreement under section 16201 of this title to serve in the Individual Ready Reserve shall serve—

(1) not less than 30 days of initial active duty for training;

and

(2) not less than five days of active duty for training each year during the period of service required by the agreement.

(Added Pub. L. 100–180, div. A, title VII, Sec. 711(a)(3), Dec. 4, 1987, 101 Stat. 1111, Sec. 2129; renumbered Sec. 16202 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1663(c)(3), (6), Oct. 5, 1994, 108 Stat. 3007, 3008.)

§ 16203. Penalties and limitations

(a) FAILURE TO COMPLETE PROGRAM OF TRAINING.—(1) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in training, or for other reasons, shall be required, at the discretion of the Secretary concerned—

(A) to perform one year of active duty for each year (or part thereof) for which such person was provided financial assistance under this section; or

(B) to comply with the repayment provisions of section 303a(e) of title 37.

(2) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member participating in the program who is dropped from the program from any requirement that may be imposed under paragraph (1), but such relief shall not relieve him from any military obligation imposed by any other law.

(b) PROHIBITIONS OF DUPLICATE BENEFITS.—Financial assistance may not be provided under this section to a member receiving financial assistance under section 2107 of this title.

(Added Pub. L. 100–180, div. A, title VII, Sec. 711(a)(3), Dec. 4, 1987, 101 Stat. 1111, Sec. 2130; renumbered Sec. 16203 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1663(c)(4), Oct. 5, 1994, 108 Stat. 3008; Pub. L. 109–163, div. A, title VI, Sec. 687(c)(13), Jan. 6, 2006, 119 Stat. 3335.)

§ 16204. Regulations

This chapter shall be administered under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 103–337, div. A, title XVI, Sec. 1663(c)(1), Oct. 5, 1994, 108 Stat. 3007.)

CHAPTER 1609—EDUCATION LOAN REPAYMENT PROGRAMS

- Sec.
16301. Education loan repayment program: members of Selected Reserve.
16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages.
16303. Loan repayment program: chaplains serving in the Selected Reserve.

§ 16301. Education loan repayment program: members of Selected Reserve

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.);

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.); or

(D) any loan incurred for educational purposes made by a lender that is—

(i) an agency or instrumentality of a State;

(ii) a financial or credit institution (including an insurance company) that is subject to examination and supervision by an agency of the United States or any State;

(iii) a pension fund approved by the Secretary for purposes of this section; or

(iv) a nonprofit private entity designated by a State, regulated by that State, and approved by the Secretary for purposes of this section.

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary of Defense may repay loans described in paragraph (1) in the case of any person for service performed as a member of the Selected Reserve of the Ready Reserve of an armed force in a reserve component and in an officer program or military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 15 percent or \$500, whichever is greater, for each year of service, plus the amount of any interest that may accrue during the current year.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required. For the purposes of this section, any interest that has accrued on the loan for periods

before the current year shall be considered as within the total loan amount that shall be repaid.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 2171 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 2171 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 2171(a) of this title.

(g) The Secretary of Homeland Security may repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

(h) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 2171 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) of title 37.

(i) The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member's death or disability.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1663(d)(1), Oct. 5, 1994, 108 Stat. 3008; Pub. L. 104-106, div. A, title X, Sec. 1079(b), Feb. 10, 1996, 110 Stat. 451; Pub. L. 106-65, div. A, title VI, Sec. 676, Oct. 5, 1999, 113 Stat. 676; Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108-136, div. A, title V, Sec. 534, Nov. 24, 2003, 117 Stat. 1474; Pub. L. 108-375, div. A, title V, Sec. 526, Oct. 28, 2004, 118 Stat. 1890; Pub. L. 110-181, div. A, title VI, Sec. 672(a)-(c)(1), Jan. 28, 2008, 122 Stat. 184, 185; Pub. L. 111-383, div. A, title V, Sec. 552(b), Jan. 7, 2011, 124 Stat. 4220.)

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(a) Under regulations prescribed by the Secretary of Defense and subject to the other provisions of this section, the Secretary concerned may repay—

(1) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(2) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(3) a loan made under part E of such title (20 U.S.C. 1087aa et seq.) after October 1, 1975;

(4) a health professions education loan made or insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part B of title VIII of such Act (42 U.S.C. 297 et seq.); and

(5) a loan made, insured, or guaranteed through a recognized financial or educational institution if that loan was used to finance education regarding a basic professional qualifying degree (as determined under regulations prescribed by the Secretary of Defense) or graduate education in a health profession that the Secretary of Defense determines to be critically needed in order to meet identified wartime combat medical skill shortages.

(b) The Secretary concerned may repay loans described in subsection (a) only in the case of a person who—

(1) performs satisfactory service as an officer in the Selected Reserve of an armed force; and

(2) possesses professional qualifications, or is enrolled in a program of education leading to professional qualifications, in a health profession that the Secretary of Defense has determined to be needed critically in order to meet identified wartime combat medical skill shortages.

(c)(1) The amount of any repayment of a loan made under this section on behalf of any person shall be determined on the basis of each complete year of service that is described in subsection (b)(1) and performed by the person after the date on which the loan was made.

(2) The annual maximum amount of a loan that may be repaid under this section shall be the same as the maximum amount in effect for the same year under subsection (e)(2) of section 2173 of this title for the education loan repayment program under such section.

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer on or before December 31, 2011.

(Added Pub. L. 99–145, title VI, Sec. 671(a)(1), Nov. 8, 1985, 99 Stat. 662, Sec. 2172; amended Pub. L. 100–180, div. A, title VII, Sec. 713, Dec. 4, 1987, 101 Stat. 1112; Pub. L. 101–189, div. A, title VII, Sec. 701(a)–(c), Nov. 29, 1989, 103 Stat. 1467; Pub. L. 102–484, div. A, title VI, Sec. 612(f), Oct. 23, 1992, 106 Stat. 2421; Pub. L. 103–160, div. A, title VI, Sec. 613(f), Nov. 30, 1993, 107 Stat. 1681; renumbered Sec. 16302 and amended Pub. L. 103–337, div. A, title VI, Sec. 613(e), title X, Sec. 1070(a)(9), title XVI, Sec. 1663(d)(2), Oct. 5, 1994, 108 Stat. 2783, 2855, 3009; Pub. L. 104–106, div. A, title VI, Sec. 613(h), title X, Sec. 1079(c), Feb. 10, 1996, 110 Stat. 360, 452; Pub. L. 104–201, div. A, title VI, Sec. 613(g), Sept. 23, 1996, 110 Stat. 2544; Pub. L. 105–85, div. A, title VI, Sec. 611(h), Nov. 18, 1997, 111 Stat. 1785; Pub. L. 105–261, div. A, title VI, Secs. 611(h), 654, Oct. 17, 1998, 112 Stat. 2039, 2052; Pub. L. 106–65, div. A, title VI, Sec. 611(h), Oct. 5, 1999, 113 Stat. 650; Pub. L. 106–398, Sec. 1[[div. A], title VI, Sec. 621(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–151; Pub. L. 107–107, div. A, title VI, Sec. 611(h), Dec. 28, 2001, 115 Stat. 1135; Pub. L. 107–314, div. A, title VI, Sec. 612(b), Dec. 2, 2002, 116 Stat. 2567; Pub. L. 108–136, div. A, title VI, Sec. 612(b), Nov. 24, 2003, 117 Stat. 1501; Pub. L. 108–375, div. A, title VI, Secs. 612(b), 662, Oct. 28, 2004, 118 Stat. 1947, 1974; Pub. L. 109–163, div. A, title VI, Sec. 622(b), Jan. 6, 2006, 119 Stat. 3294; Pub. L. 109–364, div. A, title VI, Sec. 612(b), Oct. 17, 2006, 120 Stat. 2248; Pub. L. 110–181, div. A, title VI, Sec. 612(b), Jan. 28, 2008, 122 Stat. 148; Pub. L. 110–417, [div. A], title V, Sec. 547, title VI, Sec. 612(b), Oct. 14, 2008, 122 Stat. 4466, 4484; Pub. L. 111–84, div. A, title VI, Sec. 612(a)(2), Oct. 28, 2009, 123 Stat. 2353; Pub. L. 111–383, div. A, title VI, Sec. 612(a)(2), Jan. 7, 2011, 124 Stat. 4236.)

§ 16303. Loan repayment program: chaplains serving in the Selected Reserve

(a) **AUTHORITY TO REPAY EDUCATION LOANS.**—For purposes of maintaining adequate numbers of chaplains in the Selected Reserve, the Secretary concerned may repay a loan that was obtained by a person who—

(1) satisfies the requirements for accessioning and commissioning of chaplains, as prescribed in regulations;

(2) holds, or is fully qualified for, an appointment as a chaplain in a reserve component of an armed force; and

(3) signs a written agreement with the Secretary concerned to serve not less than three years in the Selected Reserve.

(b) **EXCEPTION FOR CHAPLAIN CANDIDATE PROGRAM.**—A person accessioned into the Chaplain Candidate Program is not eligible for the repayment of a loan under subsection (a).

(c) **LOAN REPAYMENT PROCESS; MAXIMUM AMOUNT.**—(1) Subject to paragraph (2), the repayment of a loan under subsection (a) may consist of the payment of the principal, interest, and related expenses of the loan.

(2) The amount of any repayment of a loan made under subsection (a) on behalf of a person may not exceed \$20,000 for each three year period of obligated service that the person agrees to serve in an agreement described in subsection (a)(3). Of such amount, not more than an amount equal to 50 percent of such amount may be paid before the completion by the person of the first year of obligated service pursuant to the agreement. The balance of such amount shall be payable at such time or times as are prescribed in regulations.

(d) **EFFECT OF FAILURE TO COMPLETE OBLIGATION.**—A person on whose behalf a loan is repaid under subsection (a) who fails to commence or complete the period of obligated service specified in the agreement described in subsection (a)(3) shall be subject to the repayment provisions of section 303a(e) of title 37.

(e) **REGULATIONS.**—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added and amended Pub. L. 109–163, div. A, title VI, Secs. 684(a), 687(c)(14), Jan. 6, 2006, 119 Stat. 3324, 3335.)

CHAPTER 1611—OTHER EDUCATIONAL ASSISTANCE PROGRAMS

Sec.
16401. Marine Corps Platoon Leaders Class: college tuition assistance program.

§ 16401. Marine Corps Platoon Leaders Class: college tuition assistance program

(a) **AUTHORITY.**—The Secretary of the Navy may provide financial assistance to an eligible member of the Marine Corps Reserve for expenses of the member while the member is pursuing on a full-time basis at an institution of higher education a program of education approved by the Secretary that leads to—

- (1) a baccalaureate degree in less than five academic years;
- or
- (2) a doctor of jurisprudence or bachelor of laws degree in not more than four academic years.

(b) **ELIGIBILITY.**—(1) To be eligible for financial assistance under this section, a member of the Marine Corps Reserve must—

(A) be a member of the Marine Corps Platoon Leaders Class program and have successfully completed one six-week (or longer) increment of military training required under that program;

(B) be enrolled on a full-time basis in a program of education referred to in subsection (a) at any institution of higher education; and

(C) enter into a written agreement with the Secretary described in paragraph (2).

(2) A written agreement referred to in paragraph (1)(C) is an agreement between the member and the Secretary in which the member agrees—

(A) to accept an appointment as a commissioned officer in the Marine Corps, if tendered by the President;

(B) to serve on active duty for at least five years; and

(C) under such terms and conditions as shall be prescribed by the Secretary, to serve in the Marine Corps Reserve until the eighth anniversary of the date of the appointment.

(c) **COVERED EXPENSES.**—Expenses for which financial assistance may be provided under this section are—

(1) tuition and fees charged by the institution of higher education involved;

(2) the cost of books; and

(3) in the case of a program of education leading to a baccalaureate degree, laboratory expenses.

(d) **AMOUNT.**—The amount of financial assistance provided to a member under this section shall be prescribed by the Secretary, but may not exceed \$5,200 for any academic year.

(e) LIMITATIONS.—(1) Financial assistance may be provided to a member under this section only for three consecutive academic years.

(2) Not more than 1,200 members may participate in the financial assistance program under this section in any academic year.

(f) FAILURE TO COMPLETE PROGRAM.—(1) An enlisted member who receives financial assistance under this section may be ordered to active duty in the Marine Corps by the Secretary to serve in an appropriate enlisted grade for such period as the Secretary prescribes, but not for more than four years, and an officer who receives financial assistance under this section shall be subject to the repayment provisions of section 303a(e) of title 37, if the member—

(A) completes the military and academic requirements of the Marine Corps Platoon Leaders Class program and refuses to accept an appointment as a commissioned officer in the Marine Corps when offered or, if already a commissioned officer in the Marine Corps, refuses to accept an assignment on active duty when offered;

(B) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program; or

(C) is disenrolled from the Marine Corps Platoon Leaders Class program for failure to maintain eligibility for an original appointment as a commissioned officer under section 532 of this title.

(2) Any requirement to repay any portion of financial assistance received under this section shall be administered under the regulations issued under section 303a(e) of title 37. The Secretary of the Navy may waive the requirements of paragraph (1) in the case of a person who—

(A) becomes unqualified to serve on active duty as an officer due to a circumstance not within the control of the person;

(B) is not physically qualified for appointment under section 532 of this title and later is determined by the Secretary of the Navy under section 505 of this title to be unqualified for service as an enlisted member of the Marine Corps due to a physical or medical condition that was not the result of misconduct or grossly negligent conduct; or

(C) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program due to a circumstance not within the control of the person.

(g) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term “institution of higher education” has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(Added Pub. L. 106–65, div. A, title V, Sec. 551(a)(1), Oct. 5, 1999, 113 Stat. 612; amended Pub. L. 106–398, Sec. 1 [[div. A], title V, Sec. 533(a)–(d), (f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110, 1654A–111; Pub. L. 109–163, div. A, title VI, Sec. 687(c)(15), Jan. 6, 2006, 119 Stat. 3336.)

**PART V—SERVICE, SUPPLY, AND
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CHAPTER 1801—ISSUE OF SERVICEABLE MATERIAL TO RESERVE COMPONENTS

[No present sections]

CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

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§ 18231. Purpose

The purpose of this chapter is to provide for—

(1) the acquisition, by purchase, lease, transfer, construction, expansion, rehabilitation, or conversion of facilities necessary for the proper development, training, operation, and maintenance of the reserve components of the armed forces, including troop housing and messing facilities;

(2) the joint use of those facilities by units of two or more of those reserve components, to the greatest practicable extent for efficiency and economy;

(3) the use of those facilities, in time of war or national emergency, by those units and other units of the armed forces, to the greatest practicable extent for efficiency and economy; and

(4) any other use of those facilities by the United States, in time of war or national emergency, to the greatest practicable extent for efficiency and economy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120, Sec. 2231; Pub. L. 85–215, Sec. 1, Aug. 29, 1957, 71 Stat. 489; renumbered Sec. 18231, Pub. L. 103–337, div. A, title XVI, Sec. 1664(b)(2), Oct. 5, 1994, 108 Stat. 3010.)

§ 18232. Definitions

In this chapter:

(1) The term “State” means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States

and includes political subdivisions and military units thereof and tax-supported agencies therein.

(2) The term “facility” includes any (A) interest in land, (B) armory, readiness center, or other structure, and (C) storage or other facility normally needed for the administration and training of any unit of the reserve components of the armed forces.

(3) The terms “armory” and “readiness center” mean a structure that houses one or more units of a reserve component and is used for training and administering those units. Such terms include a structure that is appurtenant to such a structure and houses equipment used for that training and administration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, Sec. 2232; Pub. L. 85–861, Sec. 1(36), Sept. 2, 1958, 72 Stat. 1456; Pub. L. 97–214, Sec. 3(d)(1), July 12, 1982, 96 Stat. 170; Pub. L. 100–26, Sec. 7(k)(2), Apr. 21, 1987, 101 Stat. 284; renumbered Sec. 18232, Pub. L. 103–337, div. A, title XVI, Sec. 1664(b)(2), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 106–398, Sec. 1 [div. B, title XXVIII, Sec. 2807(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

§ 18233. Acquisition

(a) Subject to sections 18233a, 18234, 18235, 18236, and 18238 of this title and to subsection (c), the Secretary of Defense may—

(1) acquire by purchase, lease, or transfer, and construct, expand, rehabilitate, or convert and equip, such facilities as are authorized by law to carry out the purposes of this chapter;

(2) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it or by the United States for use jointly by units of two or more reserve components of the armed forces or to acquire or construct facilities for such use;

(3) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it (or to acquire, construct, expand, rehabilitate, or convert additional facilities) made necessary by the conversion, redesignation, or reorganization of units of the Army National Guard of the United States or the Air National Guard of the United States authorized by the Secretary of the military department concerned;

(4) contribute to any State such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by it of additional facilities as he determines to be required by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States;

(5) contribute to any State amounts for the acquisition, construction, expansion, rehabilitation, and conversion by such State of such additional facilities as the Secretary determines to be required because of the failure of existing facilities to meet the purposes of this chapter; and

(6) contribute to any State such amounts for the construction, alteration, or rehabilitation of critical portions of facilities as the Secretary determines to be required to meet a change in Department of Defense construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility.

(b) Title to property acquired by the United States under subsection (a)(1) vests in the United States. Such property may be transferred to any State incident to the expansion, rehabilitation, or conversion of such property under subsection (a)(2) so long as the transfer of such property does not result in the creation of an enclave owned by a State within a Federal installation.

(c) The Secretary of Defense may delegate any of his authority or functions under this chapter to any department, agency, or officer of the Department of Defense.

(d) The expenses of leasing property under subsection (a)(1) may be paid from appropriations available for the payment of rent.

(e) The Secretary of Defense may procure, or contribute to any State such amounts as the Secretary determines to be necessary to procure, architectural and engineering services and construction design in connection with facilities to be established or developed under this chapter which are not otherwise authorized by law.

(f)(1) Authority provided by law to construct, expand, rehabilitate, convert, or equip any facility under this section includes authority to expend funds for surveys, administration, overhead, planning, design, and supervision incident to any such activity.

(2) Authority to acquire real property under this section includes authority to make surveys and to acquire interests in land (including temporary interests) by purchase or gift.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, Sec. 2233; Pub. L. 85-685, title VI, Sec. 601(1), (2), Aug. 20, 1958, 72 Stat. 664; Pub. L. 85-861, Sec. 1(37)-(39), Sept. 2, 1958, 72 Stat. 1456; Pub. L. 96-125, title VII, Sec. 703, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97-99, title VIII, Sec. 803, 804, Dec. 23, 1981, 95 Stat. 1380, 1381; Pub. L. 97-214, Sec. 3(a), (d)(2), (e)(1), 10(a)(2), July 12, 1982, 96 Stat. 169, 170, 175; Pub. L. 98-407, title VII, Sec. 703(a), Aug. 28, 1984, 98 Stat. 1517; Pub. L. 98-525, title XIV, Sec. 1405(34), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99-167, title VII, Sec. 702(a), Dec. 3, 1985, 99 Stat. 985; Pub. L. 102-190, div. B, title XXVIII, Sec. 2801, Dec. 5, 1991, 105 Stat. 1537; renumbered Sec. 18233 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1664(b)(2), (4), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 106-65, div. B, title XXVIII, Sec. 2805, Oct. 5, 1999, 113 Stat. 850; Pub. L. 108-375, div. B, title XXVIII, Sec. 2809(b), Oct. 28, 2004, 118 Stat. 2127; Pub. L. 109-364, div. A, title X, Sec. 1071(a)(42), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 111-84, div. B, title XXVIII, Sec. 2805, Oct. 28, 2009, 123 Stat. 2662.)

§ 18233a. Notice and wait requirements for certain projects

(a) CONGRESSIONAL NOTIFICATION.—Except as provided in subsection (b), an expenditure or contribution in an amount in excess of \$750,000 may not be made under section 18233 of this title for any facility until—

(1) the Secretary of Defense has notified the congressional defense committees of the location, nature, and estimated cost of the facility; and

(2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(b) CERTAIN EXPENDITURES OR CONTRIBUTIONS EXEMPTED.—Subsection (a) does not apply to expenditures or contributions for the following:

(1) Facilities acquired by lease.

(2) A project for a facility that has been authorized by Congress, if the location and purpose of the facility are the same as when authorized and if, based upon bids received—

- (A) the scope of work of the project, as approved by Congress, is not proposed to be reduced by more than 25 percent; and
- (B) the current working estimate of the cost of the project does not exceed the amount approved for the project by more than the lesser of the following:
- (i) 25 percent.
 - (ii) 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project.
- (3) A repair project (as that term is defined in section 2811(e) of this title) that costs less than \$7,500,000.

(Added Pub. L. 85-685, title VI, Sec. 601(3), Aug. 20, 1958, 72 Stat. 665, Sec. 2233a; amended Pub. L. 87-554, title VII, Sec. 701, July 27, 1962, 76 Stat. 243; Pub. L. 93-552, title VII, Sec. 703, Dec. 27, 1974, 88 Stat. 1770; Pub. L. 94-107, title VII, Sec. 703, Oct. 7, 1975, 89 Stat. 569; Pub. L. 96-125, title VII, Sec. 704, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97-214, Sec. 3(c)(1), July 12, 1982, 96 Stat. 169; Pub. L. 98-115, title VII, Sec. 702, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98-407, title VII, Sec. 702, Aug. 28, 1984, 98 Stat. 1517; Pub. L. 100-26, Sec. 7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100-180, div. B, subdiv. 3, title I, Sec. 2304(a), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 102-190, div. B, title XXVIII, Sec. 2804, Dec. 5, 1991, 105 Stat. 1537; renumbered Sec. 18233a and amended Pub. L. 103-337, div. A, title XVI, Sec. 1664(b)(2), (5), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 104-201, div. B, title XXVIII, Sec. 2801(b), (c), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 106-65, div. A, title X, Sec. 1067(1), div. B, title XXVIII, Sec. 2806, Oct. 5, 1999, 113 Stat. 774, 850; Pub. L. 106-398, Sec. 1 [[div. A], title X, Sec. 1087(a)(22)], Oct. 30, 2000, 114 Stat. 1654, 1654A-291; Pub. L. 108-375, div. B, title XXVIII, Sec. 2808(a), Oct. 28, 2004, 118 Stat. 2124.)

§ 18233b. Authority to carry out small projects with operation and maintenance funds

Under such regulations as the Secretary of Defense may prescribe, the Secretary may expend, from appropriations available for operation and maintenance, amounts necessary to carry out any project authorized under section 18233(a) of this title that costs not more than—

- (1) the amount specified in section 2805(c)(1)(A) of this title, in the case of a project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or
- (2) the amount specified in section 2805(c)(1)(B) of this title, in the case of any other project.

(Added Pub. L. 108-375, div. B, title XXVIII, Sec. 2808(b), Oct. 28, 2004, 118 Stat. 2125.)

§ 18234. Location and use

No expenditures or contribution may be made for a facility under section 18233 of this title, unless the Secretary of Defense determines that—

- (1) the number of units of the reserve components of the armed forces located or to be located in the area within which the facility is to be provided is not and will not be larger than the number that can reasonably be expected to be maintained at authorized strength, considering the number of persons living in the area who are qualified for membership in those reserve units; and
- (2) the plan under which the facility is to be provided makes provision for the greatest practicable use of the facility jointly by units of two or more of those components.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, Sec. 2234; renumbered Sec. 18234 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1664(b)(2), (6), Oct. 5, 1994, 108 Stat. 3010.)

§ 18235. Administration; other use permitted by Secretary

(a) The Secretary of Defense, after consulting the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives on matters of policy, may—

(1) administer, operate, maintain, and equip facilities constructed, expanded, rehabilitated, or converted under section 18233 of this title or otherwise acquired and used for the purposes of this chapter;

(2) permit persons or organizations other than members and units of the armed forces to use those facilities under such leases or other agreements as he considers appropriate; and

(3) cover the payments received under those leases or agreements into the Treasury to the credit of the appropriation from which the cost of maintaining the facility, including its utilities and services, is paid.

(b) The Secretary may not permit any use or disposition to be made of a facility covered by subsection (a) that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 122, Sec. 2235; renumbered Sec. 18235 and amended Pub. L. 103-337, div. A, title XVI, Sec. 1664(b)(2), (7), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 18236. Contributions to States; other use permitted by States

(a) Contributions under section 18233 of this title are subject to such terms as the Secretary of Defense, after consulting the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, considers necessary for the purposes of this chapter. Except as otherwise agreed when the contribution is made, a facility provided by a contribution under paragraph (3) or (4) of section 18233(a) of this title may be used jointly by units of two or more reserve components of the armed forces only to the extent that the State considers practicable.

(b) A contribution made for an armory or readiness center under paragraph (4) or (5) of section 18233(a) of this title may not exceed the sum of—

(1) 100 percent of the cost of architectural, engineering and design services (including advance architectural, engineering and design services under section 18233(e) of this title); and

(2) a percentage of the cost of construction (exclusive of the cost of architectural, engineering and design services) calculated so that upon completion of construction the total contribution (including the contribution for architectural, engineering and design services) equals 75 percent of the total cost

of construction (including the cost of architectural, engineering and design services).

For the purpose of computing the cost of construction under this subsection, the amount contributed by a State may not include the cost or market value of any real property that it has contributed.

(c) If a State acquires, constructs, expands, rehabilitates, or converts a facility with amounts contributed under section 18233 of this title, it may—

(1) permit persons or organizations other than members and units of the armed forces to use the facility under such leases or other agreements as it considers appropriate; and

(2) apply amounts received under those leases or agreements to the cost of maintaining the facility.

(d) Except as otherwise agreed when the contribution is made, and except as the agreement is later changed, a State may not permit any use or disposition of the facility that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 122, Sec. 2236; Pub. L. 85–861, Sec. 1(40), Sept. 2, 1958, 72 Stat. 1456; Pub. L. 97–214, Sec. 3(d)(2), (3), (e)(2), July 12, 1982, 96 Stat. 170; Pub. L. 99–167, title VII, Sec. 702(b), Dec. 3, 1985, 99 Stat. 985; Pub. L. 99–661, div. A, title XIII, Sec. 1343(a)(11), Nov. 14, 1986, 100 Stat. 3993; renumbered Sec. 18236 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1664(b)(2), (8), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 104–106, div. A, title XV, Sec. 1501(b)(36), 1502(a)(2), Feb. 10, 1996, 110 Stat. 498, 502; Pub. L. 106–65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, Sec. 1 [div. B, title XXVIII, Sec. 2807(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

§ 18237. Supervision of construction: compliance with State law

(a) Any construction, expansion, rehabilitation, or conversion under section 18233(a)(1) of this title may be performed under the supervision of the Chief of Engineers of the Army or the head of such office or agency in the Department of the Navy as the Secretary of the Navy may designate.

(b) The construction, expansion, rehabilitation, or conversion of facilities in a State under paragraph (2), (3), (4), (5), or (6) of section 18233(a) of this title shall be done according to the laws of that jurisdiction and under the supervision of its officials, subject to the inspection and approval of the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 123, Sec. 2237; Pub. L. 85–861, Sec. 1(41), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 89–718, Sec. 19, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 97–214, Sec. 3(d)(2), July 12, 1982, 96 Stat. 170; renumbered Sec. 18237 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1664(b)(2), (9), div. B, title XXVIII, Sec. 2852, Oct. 5, 1994, 108 Stat. 3010, 3011, 3072; Pub. L. 104–106, div. A, title XV, Sec. 1501(b)(37), Feb. 10, 1996, 110 Stat. 498.)

§ 18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units

A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 123, Sec. 2238; Pub. L. 85–861, Sec. 1(43), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 97–214, Sec. 3(d)(4), July 12, 1982, 96 Stat. 170; renumbered Sec. 18238, Pub. L. 103–337, div. A, title XVI, Sec. 1664(b)(2), Oct. 5, 1994, 108 Stat. 3010.)

§ 18239. Waiver of certain restrictions

(a) The Secretary of Defense and the Secretary of each military department may make expenditures and contributions under section 18233 of this title without regard to section 3324(a) and (b) of title 31.

(b) Authority provided by law to place permanent or temporary improvements on land under section 18233 of this title may be exercised on land not owned by the United States—

(1) before title to the land on which the improvement is located (or is to be located) is approved under section 3111 of title 40; and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(Added Pub. L. 97–214, Sec. 3(b)(1), July 12, 1982, 96 Stat. 169, Sec. 2239; amended Pub. L. 97–295, Sec. 1(23), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 97–321, title VIII, Sec. 805(a)(2), Oct. 15, 1982, 96 Stat. 1573; renumbered Sec. 18239 and amended Pub. L. 103–337, div. A, title XVI, Sec. 1664(b)(2), (10), Oct. 5, 1994, 108 Stat. 3010, 3011; Pub. L. 107–217, Sec. 3(b)(42), Aug. 21, 2002, 116 Stat. 1298.)

§ 18240. Acquisition of facilities by exchange

(a) EXCHANGE AUTHORITY.—In addition to the acquisition authority provided by section 18233 of this title, the Secretary of Defense may authorize the Secretary of a military department to acquire a facility, or addition to an existing facility, needed to satisfy military requirements for a reserve component by carrying out an exchange of an existing facility under the control of that Secretary through an agreement with an Executive agency (as defined in section 105 of title 5), the United States Postal Service, or a State, local government, local authority, or private entity. The acquisition of a facility or an addition to an existing facility under this section may include the acquisition of utilities, equipment, and furnishings for the facility.

(b) FACILITIES ELIGIBLE FOR EXCHANGE.—Only a facility of a reserve component that is not excess property (as defined in section 102(3) of title 40) may be exchanged using the authority provided by this section.

(c) EQUAL VALUE EXCHANGE.—In any exchange carried out using the authority provided by this section, the value of the replacement facility, or addition to an existing facility, including any utilities, equipment, and furnishings, to be acquired by the United States shall be at least equal to the fair market value of the facility conveyed by the United States under the agreement. If the values are unequal, the values may not be equalized by any payment of cash consideration by either party to the agreement.

(d) REQUIREMENTS FOR REPLACEMENT FACILITIES.—The Secretary of a military department may not accept a replacement facility, or addition to an existing facility, to be acquired by the United States in an exchange carried out using the authority provided by this section until that Secretary determines that the facility or addition—

(1) is complete and usable, fully functional, and ready for occupancy;

(2) satisfies all operational requirements; and

(3) meets all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.

(e) CONSULTATION REQUIREMENTS.—The Secretary of a military department authorized to enter into an agreement under subsection (a) to convey an existing facility under the control of that Secretary by exchange shall consult with representatives of other reserve components to evaluate—

(1) the value of using the facility to meet the military requirements of another reserve component, instead of conveying the facility under this section; and

(2) the feasibility of using the conveyance of the facility to acquire a facility, or an addition to an existing facility, that would be jointly used by more than one reserve component or unit.

(f) ADVANCE NOTICE OF PROPOSED EXCHANGE.—(1) When a decision is made to enter into an agreement under subsection (a) to exchange a facility using the authority provided by this section, the Secretary of the military department authorized to enter into the agreement shall submit to the congressional defense committees a report on the proposed agreement. The report shall include the following:

(A) A description of the agreement, including the terms and conditions of the agreement, the parties to be involved in the agreement, the origin of the proposal that lead to the agreement, the intended use of the facility to be conveyed by the United States under the agreement, and any costs to be incurred by the United States to make the exchange under the agreement.

(B) A description of the facility to be conveyed by the United States under the agreement, including the current condition and fair market value of the facility, and a description of the method by which the fair market value of the facility was determined.

(C) Information on the facility, or addition to an existing facility, to be acquired by the United States under the agreement and the intended use of the facility or addition, which shall meet requirements for information provided to Congress for military construction projects to obtain a similar facility or addition to an existing facility.

(D) A certification that the Secretary complied with the consultation requirements under subsection (e).

(E) A certification that the conveyance of the facility under the agreement is in the best interests of the United States and that the Secretary used competitive procedures to the maximum extent practicable to protect the interests of the United States.

(2) The agreement described in a report prepared under paragraph (1) may be entered into, and the exchange covered by the agreement made, only after the end of the 30-day period beginning on the date the report is received by the congressional defense committees or, if earlier, the end of the 21-day period beginning on the

date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(3) Section 2662 of this title shall not apply to an exchange carried out using the authority provided by this section.

(g) RELATION TO OTHER MILITARY CONSTRUCTION REQUIREMENTS.—The acquisition of a facility, or an addition to an existing facility, using the authority provided by this section shall not be treated as a military construction project for which an authorization is required by section 2802 of this title.

(Added Pub. L. 108–375, div. B, title XXVIII, Sec. 2809(a)(1), Oct. 28, 2004, 118 Stat. 2125; amended Pub. L. 109–163, div. B, title XXVIII, Sec. 2808(a), Jan. 6, 2006, 119 Stat. 3508; Pub. L. 110–181, div. B, title XXVIII, Sec. 2807, Jan. 28, 2008, 122 Stat. 541.)

CHAPTER 1805—MISCELLANEOUS PROVISIONS

- Sec.
18501. Reserve components: personnel and logistic support by military departments.
18502. Reserve components: supplies, services, and facilities.
18505. Reserves traveling for inactive-duty training: space-required travel on military aircraft.
[18506. Repealed.]

§ 18501. Reserve components: personnel and logistic support by military departments

The Secretary concerned is responsible for providing the personnel, equipment, facilities, and other general logistic support necessary to enable units and Reserves in the Ready Reserve of the reserve components under his jurisdiction to satisfy the training requirements and mobilization readiness requirements for those units and Reserves as recommended by the Secretary concerned and by the Chairman of the Joint Chiefs of Staff and approved by the Secretary of Defense, and as recommended by the Commandant of the Coast Guard and approved by the Secretary of Homeland Security when the Coast Guard is not operated as a service of the Navy.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1664(c)(1), Oct. 5, 1994, 108 Stat. 3011; amended Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

§ 18502. Reserve components: supplies, services, and facilities

(a) The Secretary concerned shall make available to the reserve components under his jurisdiction the supplies, services, and facilities of the armed forces under his jurisdiction that he considers necessary to support and develop those components.

(b) Whenever he finds it to be in the best interest of the United States, the Secretary concerned may issue supplies of the armed forces under his jurisdiction to the reserve components under his jurisdiction, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(c) Whenever he finds it to be in the best interest of the United States, the Secretary of the Army or the Secretary of the Air Force may issue to the Army National Guard or the Air National Guard, as the case may be, supplies of the armed forces under his jurisdiction that are in addition to supplies issued to that National Guard under section 702 of title 32 or charged against its appropriations under section 106 or 107 of title 32, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(d) Supplies issued under subsection (b) or (c) may be repossessed or redistributed as prescribed by the Secretary concerned.

(Added Pub. L. 103-337, div. A, title XVI, Sec. 1664(c)(1), Oct. 5, 1994, 108 Stat. 3012.)

§ 18505. Reserves traveling for inactive-duty training: space-required travel on military aircraft¹

(a) A member of a reserve component traveling for inactive-duty training (including a place other than the place of the member's unit training assembly if the member is performing inactive-duty training in another location) may travel in a space-required status on aircraft of the armed forces between the member's home and the place of the inactive-duty training.

(b) A member traveling in a space-required status on any such aircraft under subsection (a) is not authorized to receive travel, transportation, or per diem allowances in connection with that travel.

(Added Pub. L. 106-65, div. A, title V, Sec. 517(a)(1), Oct. 5, 1999, 113 Stat. 594; amended Pub. L. 106-398, Sec. 1[[div. A], title III, Sec. 384(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-87; Pub. L. 107-107, div. A, title V, Sec. 518, Dec. 28, 2001, 115 Stat. 1096.)

[§ 18506. Repealed. Pub. L. 109-163, div. A, title V, Sec. 589(b)(1), Jan. 6, 2006, 119 Stat. 3279]

¹ So in original. No sections 18503 and 18504 have been enacted.

**LAWS PROVIDING THAT CERTAIN PROVISIONS
OF TITLE 10 ARE APPLICABLE TO THE COM-
MISSIONED CORPS OF THE PUBLIC HEALTH
SERVICE AND THE NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION**

1. SECTION 221 OF THE PUBLIC HEALTH SERVICE ACT

(42 U.S.C. 213a)

RIGHTS, PRIVILEGES, ETC. OF OFFICERS AND SURVIVING
BENEFICIARIES

SEC. 221. (a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10, United States Code:

(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

(2) Chapter 61, Retirement or Separation for Physical Disability, except that sections 1201, 1202, and 1203 do not apply to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days.

(3) Chapter 69, Retired Grade, except sections 1370, 1374, 1375, and 1376(a).

(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.

(5) Chapter 73, Retired Serviceman's Family Protection Plan, Survivor Benefit Plan.

(6) Chapter 75, Death Benefits.

(7) Section 2771, Final settlement of accounts: deceased members.

(8) Chapter 163, Military Claims, but only when commissioned officers of the Service are entitled to military benefits under section 212 of this Act.

(9) Section 2603, Acceptance of fellowships, scholarships, or grants.

(10) Section 2634 Motor vehicles: for members on permanent change of station.

(11) Section 1035, Deposit of savings.

(12) Section 1552, Correction of military records: claims incident thereto.

(13) Section 1553, Review of discharge or dismissal.

(14) Section 1554, Review of retirement or separation without pay for physical disability.

(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.

(16) Section 1052, Reimbursement for adoption expenses.

(17) Section 1059, Transitional compensation and commissary and exchange benefits for dependents of members separated for dependent abuse.

(b) The authority vested by title 10, United States Code, in the “military departments”, “the Secretary concerned”, or “the Secretary of Defense” with respect to the rights, privileges, immunities, and benefits referred to in subsection (a) shall be exercised, with respect to commissioned officers of the Service, by the Secretary of Health, Education, and Welfare or his designee.

2. SECTION 261 OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS ACT OF 2002

(33 U.S.C. 3071)

SEC. 261. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 10, UNITED STATES CODE.

(a) PROVISIONS MADE APPLICABLE TO THE CORPS.—The rules of law that apply to the Armed Forces under the following provisions of title 10, United States Code, as those provisions are in effect from time to time, apply also to the commissioned officer corps of the Administration:

- (1) Chapter 40, relating to leave.
- (2) Section 533(b), relating to constructive service.
- (3) Section 716, relating to transfers between the armed forces and to and from National Oceanic and Atmospheric Administration.
- (4) Section 1035, relating to deposits of savings.
- (5) Section 1036, relating to transportation and travel allowances for escorts for dependents of members.
- (6) Section 1052, relating to reimbursement for adoption expenses.
- (7) Section 1174a, relating to special separation benefits (except that benefits under subsection (b)(2)(B) of such section are subject to the availability of appropriations for such purpose and are provided at the discretion of the Secretary of Commerce).
- (8) Chapter 61, relating to retirement or separation for physical disability.
- (9) Chapter 69, relating to retired grade, except sections 1370, 1375, and 1376.
- (10) Chapter 71, relating to computation of retired pay.
- (11) Chapter 73, relating to annuities based on retired or retainer pay.
- (12) Subchapter II of chapter 75, relating to death benefits.
- (13) Section 2634, relating to transportation of motor vehicles for members on permanent change of station.
- (14) Sections 2731 and 2735, relating to property loss incident to service.
- (15) Section 2771, relating to final settlement of accounts of deceased members.
- (16) Such other provisions of subtitle A of that title as may be adopted for applicability to the commissioned officer corps of the National Oceanic and Atmospheric Administration by any other provision of law.

(b) REFERENCES.—The authority vested by title 10, United States Code, in the “military departments”, “the Secretary concerned”, or “the Secretary of Defense” with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the Administration, by the Secretary of Commerce or the Secretary’s designee.