

Defense is planned to be made or whenever classified information concerning a special access program of the Department of Defense is to be declassified and made public, the Secretary of Defense shall submit to the defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

(2) Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.

(3) If the Secretary determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Department of Defense, the Secretary may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.

(d) Whenever there is a modification or termination of the policy and criteria used for designating a program of the Department of Defense as a special access program, the Secretary of Defense shall promptly notify the defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.

(e)(1) The Secretary of Defense may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the Secretary determines that inclusion of that information in the report would adversely affect the national security. Any such waiver shall be made on a case-by-case basis.

(2) If the Secretary exercises the authority provided under paragraph (1), the Secretary shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chairman and ranking minority member of each of the defense committees.

(f) A special access program may not be initiated until—

(1) the defense committees are notified of the program; and

(2) a period of 30 days elapses after such notification is received.

(g) In this section, the term “defense committees” means—

(1) the Committee on Armed Services and the Committee on Appropriations, and the Defense Subcommittee of the Committee on Appropriations, of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations, and the Subcommittee on Defense of the Committee on Appropriations, of the House of Representatives.

(Added Pub. L. 100-180, div. A, title XI, §1132(a)(1), Dec. 4, 1987, 101 Stat. 1151; amended

Pub. L. 101-510, div. A, title XIV, §§1461, 1482(a), Nov. 5, 1990, 104 Stat. 1698, 1709; Pub. L. 104-106, div. A, title X, §1055, title XV, §1502(a)(4), Feb. 10, 1996, 110 Stat. 442, 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107-107, div. A, title X, §1048(a)(2), Dec. 28, 2001, 115 Stat. 1222.)

#### AMENDMENTS

2001—Subsec. (g)(2). Pub. L. 107-107 substituted “Subcommittee on Defense” for “National Security Subcommittee”.

1999—Subsec. (g)(2). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

1996—Subsec. (a)(1). Pub. L. 104-106, §1055, substituted “March 1” for “February 1”.

Subsec. (g). Pub. L. 104-106, §1502(a)(4), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) the Committees on Armed Services and Appropriations of the Senate and House of Representatives; and

“(2) the Defense Subcommittees of the Committees on Appropriations of the Senate and House of Representatives.”

1990—Subsec. (c). Pub. L. 101-510, §1461(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Whenever a change is made in the status of a program of the Department of Defense as a special access program, the Secretary of Defense shall submit to the defense committees a report describing the change. Any such report shall be submitted not later than 30 days after the date on which the change takes effect.”

Subsec. (f). Pub. L. 101-510, §1482(a)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 101-510, §1461(b), inserted “and Appropriations” after “Armed Services” in par. (1).

Subsec. (g). Pub. L. 101-510, §1482(a)(1), redesignated subsec. (f) as (g).

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-510, div. A, title XIV, §1482(d), Nov. 5, 1990, 104 Stat. 1710, provided that: “The amendments made by this section [enacting section 2214 of this title and amending this section and section 1584 of this title] shall take effect on October 1, 1991.”

#### INITIAL REPORTS ON SPECIAL ACCESS PROGRAMS

Pub. L. 100-180, div. A, title XI, §1132(b), (c), Dec. 4, 1987, 101 Stat. 1152, required that the first report under subsec. (a) of this section set forth the amount that had been requested in the President’s budget for each of the five previous fiscal years for special access programs of the Department of Defense and the amount appropriated for each such year for such programs, and required that the first report under subsec. (b) of this section cover existing special access programs.

#### CHAPTER 3—GENERAL POWERS AND FUNCTIONS

Sec.	Regulations.
121.	Official registers.
122.	Public availability of Department of Defense reports required by law.
122a.	Authority to suspend officer personnel laws during war or national emergency.
123.	Suspension of end-strength and other strength limitations in time of war or national emergency.
123a.	Forces stationed abroad: limitation on number.
123b.	Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency.
124.	

- Sec. 125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition.
- 126. Transfer of funds and employees.
- 127. Emergency and extraordinary expenses.
- 127a. Operations for which funds are not provided in advance: funding mechanisms.
- 127b. Assistance in combating terrorism: rewards.
- 127c. Purchase of weapons overseas: force protection.
- 127d. Allied forces participating in combined operations: authority to provide logistic support, supplies, and services.
- 128. Physical protection of special nuclear material: limitation on dissemination of unclassified information.
- 129. Prohibition of certain civilian personnel management constraints.
- 129a. General policy for total force management.
- 129b. Authority to procure personal services.
- 129c. Medical personnel: limitations on reductions.
- 129d. Disclosure to litigation support contractors.
- 130. Authority to withhold from public disclosure certain technical data.
- [130a. Repealed.]
- 130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information.
- 130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations.
- 130d. Treatment under Freedom of Information Act of certain confidential information shared with State and local personnel.
- 130e. Treatment under Freedom of Information Act of critical infrastructure security information.
- 130f. Congressional notification regarding sensitive military operations.<sup>1</sup>

AMENDMENTS

2013—Pub. L. 113-66, div. A, title X, §§1041(a)(2), 1091(a)(2), Dec. 26, 2013, 127 Stat. 857, 875, added item 130f and substituted “Treatment under Freedom of Information Act of critical infrastructure security information” for “Treatment under Freedom of Information Act of certain critical infrastructure security information” in item 130e.

2011—Pub. L. 112-81, div. A, title VIII, §802(a)(2), title IX, §931(b), title X, §1091(b), Dec. 31, 2011, 125 Stat. 1485, 1543, 1605, added items 129d and 130e and substituted “General policy for total force management” for “General personnel policy” in item 129a.

Pub. L. 111-383, div. A, title X, §1061(a)(2), Jan. 7, 2011, 124 Stat. 4362, added item 122a.

2008—Pub. L. 110-417, [div. A], title IV, §416(c)(2), Oct. 14, 2008, 122 Stat. 4430, substituted “Suspension of end-strength and other strength limitations in time of war or national emergency” for “Suspension of end-strength limitations in time of war or national emergency” in item 123a.

Pub. L. 110-181, div. A, title X, §1063(a)(1)(B), Jan. 28, 2008, 122 Stat. 321, which directed amendment of chapter 3 of title 10 “by revising the table of sections at the beginning of such chapter to reflect the redesignation and transfer made by paragraph (1)”, was executed to reflect the probable intent of Congress by amending the analysis to this chapter to reflect the redesignation and transfer made by section 1063(a)(1)(A) of Pub. L. 110-181, which redesignated the section 127c relating to allied forces participating in combined operations as 127d, and transferred it so as to appear immediately after section 127c relating to purchase of weapons overseas.

Pub. L. 110-181, div. A, title IX, §901(a)(2), Jan. 28, 2008, 122 Stat. 272, struck out item 130a “Major Department of Defense headquarters activities personnel: limitation”.

2006—Pub. L. 109-364, div. A, title XII, §1201(b), title XIV, §1405(b), Oct. 17, 2006, 120 Stat. 2412, 2436, added items 127c, relating to allied forces participating in combined operations, and 130d.

Pub. L. 109-163, div. A, title XII, §1231(b), Jan. 6, 2006, 119 Stat. 3468, added item 127c relating to purchase of weapons overseas.

2003—Pub. L. 108-136, div. A, title VIII, §841(b)(2), Nov. 24, 2003, 117 Stat. 1552, substituted “Authority to procure personal services” for “Experts and consultants: authority to procure services of” in item 129b.

2002—Pub. L. 107-314, div. A, title X, §1065(b), Dec. 2, 2002, 116 Stat. 2656, added item 127b.

2000—Pub. L. 106-398, §1 [[div. A], title X, §1073(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-280, added item 130c.

1999—Pub. L. 106-65, div. A, title IX, §921(a)(2), title X, §1044(b), Oct. 5, 1999, 113 Stat. 723, 762, substituted “Major Department of Defense headquarters activities personnel: limitation” for “Management headquarters and headquarters support activities personnel: limitation” in item 130a and added item 130b.

1997—Pub. L. 105-85, div. A, title IX, §911(a)(2), Nov. 18, 1997, 111 Stat. 1858, added item 130a.

1996—Pub. L. 104-106, div. A, title XV, §1504(a)(8), Feb. 10, 1996, 110 Stat. 513, made technical correction to directory language of Pub. L. 103-337, §1312(a)(2). See 1994 Amendment note below.

Pub. L. 104-106, div. A, title V, §564(a)(2), title X, §1003(a)(2), Feb. 10, 1996, 110 Stat. 326, 417, substituted “Operations for which funds are not provided in advance: funding mechanisms” for “Expenses for contingency operations” in item 127a and added item 129c.

1994—Pub. L. 103-337, div. A, title XVI, §1671(b)(2), Oct. 5, 1994, 108 Stat. 3013, added item 123 and struck out former item 123 “Suspension of certain provisions of law relating to reserve commissioned officers”.

Pub. L. 103-337, div. A, title XIII, §1312(a)(2), Oct. 5, 1994, 108 Stat. 2894, as amended by Pub. L. 104-106, div. A, title XV, §1504(a)(8), Feb. 10, 1996, 110 Stat. 513, added item 123b.

1993—Pub. L. 103-160, div. A, title XI, §1108(a)(2), Nov. 30, 1993, 107 Stat. 1752, added item 127a.

1990—Pub. L. 101-510, div. A, title XIV, §§1481(b)(2), 1483(c)(2), Nov. 5, 1990, 104 Stat. 1705, 1715, added items 123a, 129a, and 129b.

1989—Pub. L. 101-189, div. A, title XII, §1202(a)(2), Nov. 29, 1989, 103 Stat. 1563, added item 124.

1987—Pub. L. 100-180, div. A, title XI, §1123(b), Dec. 4, 1987, 101 Stat. 1150, added item 128.

Pub. L. 100-26, §9(b)(1), Apr. 21, 1987, 101 Stat. 287, struck out item 128 “Funds transfers for foreign cryptologic support”.

1986—Pub. L. 99-433, title I, §110(c)(2), (e)(1), title II, §211(c)(2), Oct. 1, 1986, 100 Stat. 1002, 1003, 1017, inserted “and Functions” after “General Powers” in chapter heading, struck out item 124 “Combatant commands: establishment; composition; functions; administration and support”, and added items 127 to 130.

1962—Pub. L. 87-651, title II, §201(b), Sept. 7, 1962, 76 Stat. 517, added items 124 to 126.

1958—Pub. L. 85-861, §1(2)(B), Sept. 2, 1958, 72 Stat. 1437, added items 122 and 123.

§ 121. Regulations

The President may prescribe regulations to carry out his functions, powers, and duties under this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 6.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
121 .....	[No source].	[No source].

The revised section is inserted to make express the President’s general authority to issue regulations, which has been expressly reflected in many laws and left to inference in the remainder.

<sup>1</sup> So in original. Does not conform to section catchline.

### § 122. Official registers

The Secretary of a military department may have published, annually or at such other times as he may designate, official registers containing the names of, and other pertinent information about, such regular and reserve officers of the armed forces under his jurisdiction as he considers appropriate. The register may also contain any other list that the Secretary considers appropriate.

(Added Pub. L. 85-861, §1(2)(A), Sept. 2, 1958, 72 Stat. 1437.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
122 .....	10 App.:20b. 34 App.:609.	July 24, 1956, ch. 677, §1, 70 Stat. 623.

### § 122a. Public availability of Department of Defense reports required by law

(a) IN GENERAL.—To the maximum extent practicable, on or after the date on which each report described in subsection (b) is submitted to Congress, the Secretary of Defense, acting through the Office of the Assistant Secretary of Defense for Public Affairs, shall ensure that the report is made available to the public by—

(1) posting the report on a publicly accessible Internet website of the Department of Defense; and

(2) upon request, transmitting the report by other means, as long as such transmission is at no cost to the Department.

(b) COVERED REPORTS.—(1) Except as provided in paragraph (2), a report described in this subsection is any report that is required by law to be submitted to Congress by the Secretary of Defense, or by any element of the Department of Defense.

(2) A report otherwise described in paragraph (1) is not a report described in this subsection if the report contains—

(A) classified information;

(B) proprietary information;

(C) information that is exempt from disclosure under section 552 of title 5 (commonly referred to as the “Freedom of Information Act”); or

(D) any other type of information that the Secretary of Defense determines should not be made available to the public in the interest of national security.

(Added Pub. L. 111-383, div. A, title X, §1061(a)(1), Jan. 7, 2011, 124 Stat. 4362; amended Pub. L. 112-81, div. A, title X, §1068, Dec. 31, 2011, 125 Stat. 1589; Pub. L. 113-66, div. A, title X, §1081(a), Dec. 26, 2013, 127 Stat. 871.)

#### AMENDMENTS

2013—Subsec. (a). Pub. L. 113-66 amended subsec. (a) generally. Prior to amendment, text read as follows: “The Secretary of Defense shall ensure that each report described in subsection (b) is

“(1) made available to the public, upon request submitted on or after the date on which such report is submitted to Congress, through the Office of the Assistant Secretary of Defense for Public Affairs; and

“(2) to the maximum extent practicable, transmitted in an electronic format.”

2011—Subsec. (a). Pub. L. 112-81 substituted pars. (1) and (2) for “made available to the public, upon request submitted on or after the date on which such report is submitted to Congress, through the Office of the Assistant Secretary of Defense for Public Affairs.”

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113-66, div. A, title X, §1081(b), Dec. 26, 2013, 127 Stat. 871, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to reports submitted to Congress after the date of the enactment of this Act [Dec. 26, 2013].”

#### EFFECTIVE DATE

Pub. L. 111-383, div. A, title X, §1061(b), Jan. 7, 2011, 124 Stat. 4362, provided that: “Section 122a of title 10, United States Code (as added by subsection (a)), shall take effect 90 days after the date of the enactment of this Act [Jan. 7, 2011], and shall apply with respect to reports that are required by law to be submitted to Congress on or after that date.”

### § 123. Authority to suspend officer personnel laws during war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard Reserve. So long as such war or national emergency continues, any such suspension may be extended by the President.

(b) Any such suspension 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 the termination of the emergency.

(c) If a provision of law pertaining to the promotion of reserve officers is suspended under this section and if the Secretary of Defense submits to Congress proposed legislation to adjust the grades and dates of rank of reserve commissioned officers other than commissioned warrant officers, such proposed legislation shall, so far as practicable, be the same as that recommended for adjusting the grades and dates of rank of officers of the regular component of the armed force concerned.

(d) 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. 85-861, §1(2)(A), Sept. 2, 1958, 72 Stat. 1437; amended Pub. L. 86-559, §1(1), June 30, 1960, 74 Stat. 264; Pub. L. 89-718, §1, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90-130, §1(1), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96-513, title V, §§501(3), 511(1), Dec. 12, 1980, 94 Stat. 2907, 2920; Pub. L. 97-22, §10(b)(1), July 10, 1981, 95 Stat. 137; Pub. L. 103-337, div. A, title XVI, §1622(a), Oct. 5, 1994, 108 Stat. 2961; Pub. L. 104-106, div. A, title XV, §1501(c)(4), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107-107, div. A, title V, §508(b), Dec. 28, 2001, 115 Stat. 1090.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
123 .....	50:1199 (less applicability to National Guard).	Sept. 3, 1954, ch. 1257, §209 (less applicability to National Guard), 68 Stat. 1152.

In subsection (b), the words “the same as” are substituted for the word “comparable”, since any necessary differences in the recommended legislation between Reserves and Regulars are fully taken account of in the words “So far as practicable”.

#### REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 644 of this title prior to repeal by Pub. L. 103-337, §1622(b).

#### AMENDMENTS

2001—Subsec. (d). Pub. L. 107-107 added subsec. (d).  
 1996—Subsec. (a). Pub. L. 104-106 struck out “281, 592, 1002, 1005, 1006, 1007, 1374, 3217, 3218, 3219, 3220, 3352(a) (last sentence),” after “armed force:”, “5414, 5457, 5458, 5506,” after “3855,” and “8217, 8218, 8219,” after “6410,” and substituted “8855, 10214, 12003, 12004, 12005, 12007, 12202, 12213(a) (second sentence), 12642, 12645, 12646, 12647, 12771, 12772, and 12773” for “and 8855”.  
 1994—Pub. L. 103-337 substituted “Authority to suspend officer personnel laws during war or national emergency” for “Suspension of certain provisions of law relating to reserve commissioned officers” as section catchline and amended text generally, substituting subsecs. (a) to (c) for former subsecs. (a) and (b).  
 1981—Subsec. (a). Pub. L. 97-22 struck out references to sections 3494 and 8494.  
 1980—Subsec. (a). Pub. L. 96-513 struck out references to sections 3571, 3847, 5867, 8370, 8571, and 8847.  
 1967—Subsec. (a). Pub. L. 90-130 struck out reference to section 3391.  
 1966—Subsec. (a). Pub. L. 89-718 struck out reference to section 5907.  
 1960—Subsec. (a). Pub. L. 86-559 inserted references to sections 281, 3855, and 8855 and struck out references to sections 3841, 3842, 3849, 8841, 8842, and 8849.

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-22, §10(b), July 10, 1981, 95 Stat. 137, provided that the amendment made by that section is effective Sept. 15, 1981.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(3) of Pub. L. 96-513, striking out references to sections 3571, 5867, and 8571, effective Sept. 15, 1981, and amendment by section 511(1) of Pub. L. 96-513, striking out references to sections 3847, 8370, and 8847, effective Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

#### TRANSFER OF FUNCTIONS

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

#### DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(11) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

#### DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, and authority of President under this section as invoked by section 2 of Ex. Ord. No. 13223 delegated to Secretary of Homeland Security by section 5 of Ex. Ord. No. 13223, as amended, set out as a note under section 12302 of this title.

### § 123a. Suspension of end-strength and other strength limitations in time of war or national emergency

(a) DURING WAR OR NATIONAL EMERGENCY.—(1) If at the end of any fiscal year there is in effect a war or national emergency, the President may waive any statutory end strength with respect to that fiscal year. Any such waiver may be issued only for a statutory end strength that is prescribed by law before the waiver is issued.

(2) When a designation of a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) is in effect, the President may waive any statutory limit that would otherwise apply during the period of the designation on the number of members of a reserve component who are authorized to be on active duty under subparagraph (A) or (B) of section 115(b)(1) of this title, if the President determines the waiver is necessary to provide assistance in responding to the major disaster or emergency.

(b) TERMINATION OF WAIVER.—(1) Upon the termination of a war or national emergency with respect to which the President has exercised the authority provided by subsection (a)(1), the President may defer the effectiveness of any statutory end strength with respect to the fiscal year during which the termination occurs. Any such deferral may not extend beyond the last day of the sixth month beginning after the date of such termination.

(2) A waiver granted under subsection (a)(2) shall terminate not later than 90 days after the date on which the designation of the major disaster or emergency that was the basis for the waiver expires.

(c) STATUTORY END STRENGTH.—In this section, the term “statutory end strength” means any end-strength limitation with respect to a fiscal year that is prescribed by law for any military or civilian component of the armed forces or of the Department of Defense.

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(1), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 107–107, div. A, title IV, §421(b), Dec. 28, 2001, 115 Stat. 1076; Pub. L. 110–417, [div. A], title IV, §416(a)–(c)(1), Oct. 14, 2008, 122 Stat. 4430.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(4) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

#### AMENDMENTS

2008—Pub. L. 110–417 in section catchline substituted “Suspension of end-strength and other strength limitations in time of war or national emergency” for “Suspension of end-strength limitations in time of war or national emergency”, in subsec. (a) designated existing provisions as par. (1) and added par. (2), and in subsec. (b) substituted “Termination of Waiver” for “Upon Termination of War or National Emergency” in heading, designated existing provisions as par. (1), substituted “subsection (a)(1)” for “subsection (a)”, and added par. (2).

2001—Pub. L. 107–107 amended text generally. Prior to amendment, text read as follows: “If at the end of any fiscal year there is in effect a war or national emergency, the President may defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the armed forces or of the Department of Defense. Any such deferral may not extend beyond November 30 of the following fiscal year.”

#### DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, and authority of President under this section as invoked by section 2 of Ex. Ord. No. 13223 delegated to Secretary of Homeland Security by section 5 of Ex. Ord. No. 13223, as amended, set out as a note under section 12302 of this title.

#### § 123b. Forces stationed abroad: limitation on number

(a) END-STRENGTH LIMITATION.—No funds appropriated to the Department of Defense may be used to support a strength level of members of the armed forces assigned to permanent duty ashore in nations outside the United States at the end of any fiscal year at a level in excess of 203,000.

(b) EXCEPTION FOR WARTIME.—Subsection (a) does not apply in the event of a declaration of war or an armed attack on any member nation of the North Atlantic Treaty Organization, Japan, the Republic of Korea, or any other ally of the United States.

(c) PRESIDENTIAL WAIVER.—The President may waive the operation of subsection (a) if the President declares an emergency. The President shall immediately notify Congress of any such waiver.

(Added Pub. L. 103–337, div. A, title XIII, §1312(a)(1), Oct. 5, 1994, 108 Stat. 2894.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102–484, div. A, title XIII, §1302, Oct. 23, 1992, 106 Stat. 2545, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 103–337, §1312(c).

#### EFFECTIVE DATE

Pub. L. 103–337, div. A, title XIII, §1312(b), Oct. 5, 1994, 108 Stat. 2894, provided that: “Section 123b of title 10, United States Code, as added by subsection (a), does not apply with respect to a fiscal year before fiscal year 1996.”

#### § 124. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency

(a) LEAD AGENCY.—(1) The Department of Defense shall serve as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States.

(2) The responsibility conferred by paragraph (1) shall be carried out in support of the counterdrug activities of Federal, State, local, and foreign law enforcement agencies.

(b) PERFORMANCE OF DETECTION AND MONITORING FUNCTION.—(1) To carry out subsection (a), Department of Defense personnel may operate equipment of the Department to intercept a vessel or an aircraft detected outside the land area of the United States for the purposes of—

(A) identifying and communicating with that vessel or aircraft; and

(B) directing that vessel or aircraft to go to a location designated by appropriate civilian officials.

(2) In cases in which a vessel or an aircraft is detected outside the land area of the United States, Department of Defense personnel may begin or continue pursuit of that vessel or aircraft over the land area of the United States.

(c) UNITED STATES DEFINED.—In this section, the term “United States” means the land area of the several States and any territory, commonwealth, or possession of the United States.

(Added Pub. L. 101–189, div. A, title XII, §1202(a)(1), Nov. 29, 1989, 103 Stat. 1563; amended Pub. L. 102–190, div. A, title X, §1088(b), Dec. 5, 1991, 105 Stat. 1485.)

#### PRIOR PROVISIONS

A prior section 124, added Pub. L. 87–651, title II, §201(a), Sept. 7, 1962, 76 Stat. 514; amended Pub. L. 98–525, title XIII, §1301(a), Oct. 19, 1984, 98 Stat. 2611; Pub. L. 99–145, title XIII, §1303(a)(1), Nov. 8, 1985, 99 Stat. 738, related to establishment, composition, and functions of combatant commands, prior to repeal by Pub. L. 99–433, §211(c)(1). See section 161 et seq. of this title. Similar provisions were contained in Pub. L. 100–456, div. A, title XI, §1102, Sept. 29, 1988, 102 Stat. 2042, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–189, §1202(b).

## AMENDMENTS

1991—Subsec. (a). Pub. L. 102-190 designated existing provisions as par. (1) and added par. (2).

## CONDITION ON DEVELOPMENT OF FORWARD OPERATING LOCATIONS FOR UNITED STATES SOUTHERN COMMAND COUNTER-DRUG DETECTION AND MONITORING FLIGHTS

Pub. L. 106-65, div. A, title X, §1024, Oct. 5, 1999, 113 Stat. 748, provided that:

“(a) CONDITION.—Except as provided in subsection (b), none of the funds appropriated or otherwise made available to the Department of Defense for any fiscal year may be obligated or expended for the purpose of improving the physical infrastructure at any proposed forward operating location outside the United States from which the United States Southern Command may conduct counter-drug detection and monitoring flights until a formal agreement regarding the extent and use of, and host nation support for, the forward operating location is executed by both the host nation and the United States.

“(b) EXCEPTION.—The limitation in subsection (a) does not apply to an unspecified minor military construction project authorized by section 2805 of title 10, United States Code.”

## COUNTER-DRUG DETECTION AND MONITORING SYSTEMS PLAN

Pub. L. 102-484, div. A, title X, §1043, Oct. 23, 1992, 106 Stat. 2492, provided that:

“(a) REQUIREMENTS OF DETECTION AND MONITORING SYSTEMS.—The Secretary of Defense shall establish requirements for counter-drug detection and monitoring systems to be used by the Department of Defense in the performance of its mission under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the transit of illegal drugs into the United States. Such requirements shall be designed—

“(1) to minimize unnecessary redundancy between counter-drug detection and monitoring systems;

“(2) to grant priority to assets and technologies of the Department of Defense that are already in existence or that would require little additional development to be available for use in the performance of such mission;

“(3) to promote commonality and interoperability between counter-drug detection and monitoring systems in a cost-effective manner; and

“(4) to maximize the potential of using counter-drug detection and monitoring systems for other defense missions whenever practicable.

“(b) EVALUATION OF SYSTEMS.—The Secretary of Defense shall identify and evaluate existing and proposed counter-drug detection and monitoring systems in light of the requirements established under subsection (a). In carrying out such evaluation, the Secretary shall—

“(1) assess the capabilities, strengths, and weaknesses of counter-drug detection and monitoring systems; and

“(2) determine the optimal and most cost-effective combination of use of counter-drug detection and monitoring systems to carry out activities relating to the reconnaissance, detection, and monitoring of drug traffic.

“(c) SYSTEMS PLAN.—Based on the results of the evaluation under subsection (b), the Secretary of Defense shall prepare a plan for the development, acquisition, and use of improved counter-drug detection and monitoring systems by the Armed Forces. In developing the plan, the Secretary shall also make every effort to determine which counter-drug detection and monitoring systems should be eliminated from the counter-drug program based on the results of such evaluation. The plan shall include an estimate by the Secretary of the full cost to implement the plan, including the cost to develop, procure, operate, and maintain equipment used in counter-drug detection and monitoring activities performed under the plan and training and personnel costs associated with such activities.

“(d) REPORT.—Not later than six months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to Congress a report on the requirements established under subsection (a) and the results of the evaluation conducted under subsection (b). The report shall include the plan prepared under subsection (c).

“(e) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), none of the funds appropriated or otherwise made available for the Department of Defense for fiscal year 1993 pursuant to an authorization of appropriations in this Act [see Tables for classification] may be obligated or expended for the procurement or upgrading of a counter-drug detection and monitoring system, for research and development with respect to such a system, or for the lease or rental of such a system until after the date on which the Secretary of Defense submits to Congress the report required under subsection (d).

“(2) Paragraph (1) shall not prohibit obligations or expenditures of funds for—

“(A) any procurement, upgrading, research and development, or lease of a counter-drug detection and monitoring system that is necessary to carry out the evaluation required under subsection (b); or

“(B) the operation and maintenance of counter-drug detection and monitoring systems used by the Department of Defense as of the date of the enactment of this Act.

“(f) DEFINITION.—For purposes of this section, the term ‘counter-drug detection and monitoring systems’ means land-, air-, and sea-based detection and monitoring systems suitable for use by the Department of Defense in the performance of its mission—

“(1) under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the aerial and maritime transit of illegal drugs into the United States; and

“(2) to provide support to law enforcement agencies in the detection, monitoring, and communication of the movement of traffic at, near, and outside the geographic boundaries of the United States.”

## INTEGRATION OF COMMUNICATIONS NETWORK

Pub. L. 101-189, div. A, title XII, §1204(a), Nov. 29, 1989, 103 Stat. 1564, provided that:

“(1) The Secretary of Defense shall integrate into an effective communications network the command, control, communications, and technical intelligence assets of the United States that are dedicated (in whole or in part) to the interdiction of illegal drugs into the United States.

“(2) The Secretary shall carry out this subsection in consultation with the Director of National Drug Control Policy.”

## RESEARCH AND DEVELOPMENT

Pub. L. 101-189, div. A, title XII, §1205, Nov. 29, 1989, 103 Stat. 1564, provided that: “The Secretary of Defense shall ensure that adequate research and development activities of the Department of Defense, including research and development activities of the Defense Advanced Research Projects Agency, are devoted to technologies designed to improve—

“(1) the ability of the Department to carry out the detection and monitoring function of the Department under section 124 of title 10, United States Code, as added by section 1202; and

“(2) the ability to detect illicit drugs and other dangerous and illegal substances that are concealed in containers.”

## TRAINING EXERCISES IN DRUG-INTERDICTION AREAS

Pub. L. 101-189, div. A, title XII, §1206, Nov. 29, 1989, 103 Stat. 1564, provided that:

“(a) EXERCISES REQUIRED.—The Secretary of Defense shall direct that the armed forces, to the maximum extent practicable, shall conduct military training exer-

cises (including training exercises conducted by the reserve components) in drug-interdiction areas.

“(b) REPORT.—(1) Not later than February 1 of 1991 and 1992, the Secretary shall submit to Congress a report on the implementation of subsection (a) during the preceding fiscal year.

“(2) The report shall include—

“(A) a description of the exercises conducted in drug-interdiction areas and the effectiveness of those exercises in the national counter-drug effort; and

“(B) a description of those additional actions that could be taken (and an assessment of the results of those actions) if additional funds were made available to the Department of Defense for additional military training exercises in drug-interdiction areas for the purpose of enhancing interdiction and deterrence of drug smuggling.

“(c) DRUG-INTERDICTION AREAS DEFINED.—For purposes of this section, the term ‘drug-interdiction areas’ includes land and sea areas in which, as determined by the Secretary, the smuggling of drugs into the United States occurs or is believed by the Secretary to have occurred.”

### § 125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition

(a) Subject to section 2 of the National Security Act of 1947 (50 U.S.C. 401),<sup>1</sup> the Secretary of Defense shall take appropriate action (including the transfer, reassignment, consolidation, or abolition of any function, power, or duty) to provide more effective, efficient, and economical administration and operation, and to eliminate duplication, in the Department of Defense. However, except as provided by subsections (b) and (c), a function, power, or duty vested in the Department of Defense, or an officer, official, or agency thereof, by law may not be substantially transferred, reassigned, consolidated, or abolished.

(b) Notwithstanding subsection (a), if the President determines it to be necessary because of hostilities or an imminent threat of hostilities, any function, power, or duty vested by law in the Department of Defense, or an officer, official, or agency thereof, including one assigned to the Army, Navy, Air Force, or Marine Corps by section 3062(b), 5062, 5063, or 8062(c) of this title, may be transferred, reassigned, or consolidated. The transfer, reassignment, or consolidation remains in effect until the President determines that hostilities have terminated or that there is no longer an imminent threat of hostilities, as the case may be.

(c) Notwithstanding subsection (a), the Secretary of Defense may assign or reassign the development and operational use of new weapons or weapons systems to one or more of the military departments or one or more of the armed forces.

(Added Pub. L. 87-651, title II, §201(a), Sept. 7, 1962, 76 Stat. 515; amended Pub. L. 89-501, title IV, §401, July 13, 1966, 80 Stat. 278; Pub. L. 98-525, title XIV, §1405(1), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99-433, title I, §103, title III, §301(b)(1), title V, §514(c)(1), Oct. 1, 1986, 100 Stat. 996, 1022, 1055; Pub. L. 101-510, div. A, title XIII, §1301(3), Nov. 5, 1990, 104 Stat. 1668.)

<sup>1</sup> See References in Text note below.

### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
125(a) .....	5:171a(c)(1), (2). 5:171n(a) (as applicable to 5:171a(c)(1)).	July 26, 1947, ch. 343, § 202(c)(1), (2), (4), (5), (6); added Aug. 10, 1949, ch. 412, §5(3d, 4th, 6th, 7th, and 8th pars.); re- stated Aug. 6, 1958, Pub. L. 85-599, §3(a), (1st, 2d, 5th, 6th, and 7th pars.), 72 Stat. 514, 515.
125(b) .....	5:171a(c)(5). 5:171n(a) (as applicable to 5:171a(c)(5)).	July 26, 1947, ch. 343, § 308(a) (as applicable to §202(c)(1), (5), (6)), 61 Stat. 509.
125(c) .....	5:171a(c)(4).	
125(d) .....	5:171a(c)(6). 5:171n(a) (as applicable to 5:171a(c)(6)).	

In subsection (a), the following substitutions are made: “Except as provided by subsections (b) and (c)” for “except as otherwise provided in this subsection”; “vested . . . by law” for “established by law to be performed by”; “recommending” for “stating”; “proposes” for “contemplates”; and “the period” for “the thirty-day period or the forty-day period”. The words “on the first day after” are inserted for clarity. The words “if carried out” are omitted as surplusage.

In subsection (b), the words “Notwithstanding subsection (a)” are substituted for the words “Notwithstanding other provisions of this subsection”; and “Unless the President determines otherwise” for “subject to the determination of the President”.

In subsection (c), the following substitutions are made: “Notwithstanding subsection (a)” for “Notwithstanding the provisions of paragraph (1) hereof”; and “armed forces” for “services”.

In subsection (d), the following substitutions are made: “In subsection (a) (1)” for “within the meaning of paragraph (1) hereof”; and “considers” for “deems”. The words “advantageous to the Government in terms of” are omitted as surplusage.

### REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (a), is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§3001 et seq.) of Title 50. Section 2 of the Act is now classified to section 3002 of Title 50. For complete classification of this Act to the Code, see Tables.

### AMENDMENTS

1990—Subsec. (c). Pub. L. 101-510 struck out at end “However, notwithstanding any other provision of this title or any other law, the Secretary of Defense shall not direct or approve a plan to initiate or effect a substantial reduction or elimination of a major weapons system until the Secretary of Defense has reported all the pertinent details of the proposed action to the Congress of the United States while the Congress is in session.”

1986—Subsec. (a). Pub. L. 99-433, §103(1), struck out provision under which the Secretary of Defense could substantially transfer, reassign, consolidate, or abolish functions, powers, or duties vested in the Department of Defense by law if the Secretary reported the details of the proposed transfer, reassignment, consolidation, or abolition to Congress and if Congress did not affirmatively reject the proposal.

Subsec. (b). Pub. L. 99-433, §§103(2), 514(c)(1), inserted “vested by law in the Department of Defense, or an officer, official, or agency thereof” and substituted “5062, 5063” for “5012, 5013”.

Subsec. (d). Pub. L. 99-433, §301(b)(1), struck out subsec. (d) which read as follows: “In subsection (a)(1), ‘major combatant function, power, or duty’ does not include a supply or service activity common to more than one military department. The Secretary of Defense shall, whenever he determines it will be more effective, economical, or efficient, provide for the performance of such an activity by one agency or such other organizations as he considers appropriate.”

1984—Subsec. (a). Pub. L. 98-525 substituted “section 2 of the National Security Act of 1947 (50 U.S.C. 401)” for “section 401 of title 50”.

1966—Subsec. (c). Pub. L. 89-501 required the Secretary of Defense to report to the Congress all the pertinent details regarding any substantial reduction or elimination of a major weapons system before action could be initiated or effected by the Department of Defense.

RESOLUTIONS RELATING TO TRANSFERS, REASSIGNMENTS, CONSOLIDATIONS, OR ABOLITIONS OF COMBATANT FUNCTIONS

Pub. L. 87-651, title III, §303, Sept. 7, 1962, 76 Stat. 525, provided that:

“(a) For the purposes of this section, any resolution reported to the Senate or the House of Representatives pursuant to the provisions of section 125 of title 10, United States Code, shall be treated for the purpose of consideration by either House, in the same manner as a resolution with respect to a reorganization plan reported by a committee within the meaning of the Reorganization Act of 1949 as in effect on July 1, 1958 (5 U.S.C. 133z and the following) [63 Stat. 203; 71 Stat. 611], and shall be governed by the provisions applicable to the consideration of any such resolution by either House of the Congress as provided by sections 205 and 206 of that Act [63 Stat. 207].

“(b) The provisions of this section are enacted by the Congress—

“(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, and supersede other rules only to the extent that they are inconsistent therewith; and

“(2) with full recognition of the constitutional right of either House to change the rules (as far as relating to the procedure in that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.”

§ 126. Transfer of funds and employees

(a) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred or assigned to another department or agency of that department, balances of appropriations that the Secretary of Defense determines are available and needed to finance or discharge that function, power, duty, or activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty or activity, as the case may be, is transferred, and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

- (1) be credited to any applicable appropriation account of the receiving department or agency; or
- (2) be credited to a new account that may be established on the books of the Department of the Treasury;

and be merged with the funds already credited to that account and accounted for as one fund. Balances of appropriations credited to an account under clause (1) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under clause (2) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred to another de-

partment or agency of that department, those civilian employees of the department or agency from which the transfer is made that the Secretary of Defense determines are needed to perform that function, power, or duty, or for that activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty, or activity, as the case may be, is transferred. The authorized strength in civilian employees of a department or agency from which employees are transferred under this section is reduced by the number of employees so transferred. The authorized strength in civilian employees of a department or agency to which employees are transferred under this section is increased by the number of employees so transferred.

(Added Pub. L. 87-651, title II, §201(a), Sept. 7, 1962, 76 Stat. 516; amended Pub. L. 96-513, title V, §511(2), Dec. 12, 1980, 94 Stat. 2920.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
126(a) .....	5:172f(a). 5:171n(a) (as applicable to 5:172f(a)).	July 26, 1947, ch. 343, § 407; added Aug. 10, 1949, ch. 412, § 11 (21st and 22d pars.), 63 Stat. 589.
126(b) .....	5:172f (less (a)).	July 26, 1947, ch. 343, § 308(a) (as applicable to § 407), 61 Stat. 509.

In subsection (a), the words “under authority of law” are omitted as surplusage. The following substitutions are made: “needed” for “necessary”; “used” for “be available for use by”; and “those appropriations” for “said funds”.

In subsection (b), 5 U.S.C. 172f(b) is restated to reflect more clearly its purpose to authorize “transfers of personnel” (Senate Report No. 366, 81st Congress, p. 23).

AMENDMENTS

1980—Subsec. (b) Pub. L. 96-513 substituted “President” for “Director of the Bureau of the Budget”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to approve transfers of balances of appropriations provided for therein delegated to Director of Office of Management and Budget, see section 9(2) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 127. Emergency and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United



States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

(b) The authority conferred by this section may be delegated by the Secretary of Defense to any person in the Department of Defense, by the Inspector General to any person in the Office of the Inspector General, or by the Secretary of a military department to any person within his department, with or without the authority to make successive redelegations.

(c)(1) Funds may not be obligated or expended in an amount in excess of \$500,000 under the authority of subsection (a) or (b) until the Secretary of Defense has notified 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 of the intent to obligate or expend the funds, and—

(A) in the case of an obligation or expenditure in excess of \$1,000,000, 15 days have elapsed since the date of the notification; or

(B) in the case of an obligation or expenditure in excess of \$500,000, but not in excess of \$1,000,000, 5 days have elapsed since the date of the notification.

(2) Subparagraph (A) or (B) of paragraph (1) shall not apply to an obligation or expenditure of funds otherwise covered by such subparagraph if the Secretary of Defense determines that the national security objectives of the United States will be compromised by the application of the subparagraph to the obligation or expenditure. If the Secretary makes a determination with respect to an obligation or expenditure under the preceding sentence, the Secretary shall immediately notify the committees referred to in paragraph (1) that such obligation or expenditure is necessary and provide any relevant information (in classified form, if necessary) jointly to the chairman and ranking minority member (or their designees) of such committees.

(3) A notification under paragraph (1) and information referred to in paragraph (2) shall include the amount to be obligated or expended, as the case may be, and the purpose of the obligation or expenditure.

(d) ANNUAL REPORT.—Not later than December 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures during the preceding fiscal year under subsections (a) and (b).

(Added Pub. L. 94-106, title VIII, §804(a), Oct. 7, 1975, 89 Stat. 538, §140; amended Pub. L. 98-94, title XII, §1268(2), Sept. 24, 1983, 97 Stat. 705; renumbered §127 and amended Pub. L. 99-433, title I, §§101(a)(3), 110(d)(4), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 103-160, div. A, title III, §361, Nov. 30, 1993, 107 Stat. 1627; Pub. L. 103-337, div. A, title III, §378, Oct. 5, 1994, 108 Stat. 2737; Pub. L. 104-106, div. A, title IX, §915, title XV, §1502(a)(5), Feb. 10, 1996, 110 Stat. 413, 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, §1031(a)(2), Nov. 24, 2003, 117 Stat. 1596.)

## AMENDMENTS

2003—Subsec. (d). Pub. L. 108-136 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “In any case in which funds are expended under the authority of subsections (a) and (b), the Secretary of Defense shall submit a report of such expenditures on a quarterly basis 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.”

1999—Subsecs. (c)(1), (d). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (c). Pub. L. 104-106, §915(2), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 104-106, §1502(a)(5), substituted “Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of” for “Committees on Armed Services and Appropriations of the Senate and”.

Subsec. (d). Pub. L. 104-106, §915(1), redesignated subsec. (c), as amended by Pub. L. 104-106, §§1502(a)(5), 1506, as (d).

1994—Subsec. (c). Pub. L. 103-337 struck out par. (1) designation before “In any case” and struck out par. (2) which read as follows: “The amount of funds expended by the Inspector General of the Department of Defense under subsections (a) and (b) during a fiscal year may not exceed \$400,000.”

1993—Subsec. (a). Pub. L. 103-160, §361(1), inserted “, the Inspector General of the Department of Defense,” after “the Secretary of Defense” and “or the Inspector General” after “the Secretary concerned” and after “The Secretary concerned”.

Subsec. (b). Pub. L. 103-160, §361(2), inserted “, by the Inspector General to any person in the Office of the Inspector General,” after “the Department of Defense”.

Subsec. (c). Pub. L. 103-160, §361(3), designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99-433 renumbered section 140 of this title as this section and substituted “Emergency” for “Emergencies” in section catchline.

1983—Subsec. (a). Pub. L. 98-94 struck out “of this section” after “subsection (c)”.

Subsec. (c). Pub. L. 98-94 struck out “of this section” after “subsections (a) and (b)”.

## CONSTRUCTION AUTHORITY OF SECRETARY OF DEFENSE UNDER DECLARATION OF WAR OR NATIONAL EMERGENCY

Pub. L. 97-99, title IX, §903, Dec. 23, 1981, 95 Stat. 1382, which authorized the Secretary of Defense, in the event of a declaration of war or the declaration of a national emergency by the President, to undertake military construction without regard to any other provisions of law, was repealed and restated as section 2808 of this title by Pub. L. 97-214, §§2(a), 7(18), July 12, 1982, 96 Stat. 157, 174, effective Oct. 1, 1982.

**§ 127a. Operations for which funds are not provided in advance: funding mechanisms**

(a) IN GENERAL.—(1) The Secretary of Defense shall use the procedures prescribed by this section with respect to any operation specified in paragraph (2) that involves—

(A) the deployment (other than for a training exercise) of elements of the armed forces for a purpose other than a purpose for which funds have been specifically provided in advance; or

(B) the provision of humanitarian assistance, disaster relief, or support for law enforcement (including immigration control) for which funds have not been specifically provided in advance.

(2) This section applies to—

(A) any operation the incremental cost of which is expected to exceed \$50,000,000; and

(B) any other operation the expected incremental cost of which, when added to the expected incremental costs of other operations that are currently ongoing, is expected to result in a cumulative incremental cost of ongoing operations of the Department of Defense in excess of \$100,000,000.

Any operation the incremental cost of which is expected not to exceed \$10,000,000 shall be disregarded for the purposes of subparagraph (B).

(3) This section does not provide authority for the President or the Secretary of Defense to carry out any operation, but establishes mechanisms for the Department of Defense by which funds are provided for operations that the armed forces are required to carry out under some other authority.

(b) WAIVER OF REQUIREMENT TO REIMBURSE SUPPORT UNITS.—(1) The Secretary of Defense shall direct that, when a unit of the armed forces participating in an operation described in subsection (a) receives services from an element of the Department of Defense that operates through the Defense Business Operations Fund (or a successor fund), such unit of the armed forces may not be required to reimburse that element for the incremental costs incurred by that element in providing such services, notwithstanding any other provision of law or any Government accounting practice.

(2) The amounts which but for paragraph (1) would be required to be reimbursed to an element of the Department of Defense (or a fund) shall be recorded as an expense attributable to the operation and shall be accounted for separately.

(c) TRANSFER AUTHORITY.—(1) Whenever there is an operation of the Department of Defense described in subsection (a), the Secretary of Defense may transfer amounts described in paragraph (3) to accounts from which incremental expenses for that operation were incurred in order to reimburse those accounts for those incremental expenses. Amounts so transferred shall be merged with and be available for the same purposes as the accounts to which transferred.

(2) The total amount that the Secretary of Defense may transfer under the authority of this section in any fiscal year is \$200,000,000.

(3) Transfers under this subsection may only be made from amounts appropriated to the Department of Defense for any fiscal year that remain available for obligation, other than amounts within any operation and maintenance appropriation that are available for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(4) The authority provided by this subsection is in addition to any other authority provided by law authorizing the transfer of amounts available to the Department of Defense. However, the Secretary may not use any such authority under another provision of law for a purpose described in paragraph (1) if there is authority available under this subsection for that purpose.

(5) The authority provided by this subsection to transfer amounts may not be used to provide authority for an activity that has been denied authorization by Congress.

(6) A transfer made from one account to another under the authority of this subsection shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

[~~(d) Repealed. Pub. L. 108-136, div. A, title X, §1031(a)(3), Nov. 24, 2003, 117 Stat. 1596.]~~

(e) LIMITATIONS.—(1) The Secretary may not restore balances in the Defense Business Operations Fund through increases in rates charged by that fund in order to compensate for costs incurred and not reimbursed due to subsection (b).

(2) The Secretary may not restore balances in the Defense Business Operations Fund or any other fund or account through the use of unobligated amounts in an operation and maintenance appropriation that are available within that appropriation for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(f) SUBMISSION OF REQUESTS FOR SUPPLEMENTAL APPROPRIATIONS.—It is the sense of Congress that whenever there is an operation described in subsection (a), the President should, not later than 90 days after the date on which notification is provided pursuant to subsection (a)(3), submit to Congress a request for the enactment of supplemental appropriations for the then-current fiscal year in order to provide funds to replenish the Defense Business Operations Fund or any other fund or account of the Department of Defense from which funds for the incremental expenses of that operation were derived under this section and should, as necessary, submit subsequent requests for the enactment of such appropriations.

(g) INCREMENTAL COSTS.—For purposes of this section, incremental costs of the Department of Defense with respect to an operation are the costs of the Department that are directly attributable to the operation (and would not have been incurred but for the operation). Incremental costs do not include the cost of property or services acquired by the Department that are paid for by a source outside the Department or out of funds contributed by such a source.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—This section may not be construed as altering or superseding the War Powers Resolution. This section does not provide authority to conduct any military operation.

(i) GAO COMPLIANCE REVIEWS.—The Comptroller General of the United States shall from time to time, and when requested by a committee of Congress, conduct a review of the defense funding structure under this section to determine whether the Department of Defense is complying with the requirements and limitations of this section.

(Added Pub. L. 103-160, div. A, title XI, §1108(a)(1), Nov. 30, 1993, 107 Stat. 1751; amended Pub. L. 104-106, div. A, title X, §1003(a)(1), Feb. 10, 1996, 110 Stat. 415; Pub. L. 108-136, div. A, title X, §1031(a)(3), Nov. 24, 2003, 117 Stat. 1596; Pub. L.

111-383, div. A, title X, §1075(b)(2), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 112-81, div. A, title X, §1061(1), Dec. 31, 2011, 125 Stat. 1583.)

## REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (h), is Pub. L. 93-148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

## AMENDMENTS

2011—Subsec. (a)(1)(A). Pub. L. 111-383, §1075(b)(2)(A), substituted “armed forces” for “Armed Forces”.

Subsec. (a)(3), (4). Pub. L. 112-81 redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “Whenever an operation to which this section applies is commenced or subsequently becomes covered by this section, the Secretary of Defense shall designate and identify that operation for the purposes of this section and shall promptly notify Congress of that designation (and of the identification of the operation).”

Subsec. (b)(1). Pub. L. 111-383, §1075(b)(2)(B), substituted “armed forces” for “Armed Forces” in two places.

2003—Subsec. (d). Pub. L. 108-136 struck out subsec. (d) which required Secretary of Defense, within 45 days after identifying an operation pursuant to subsec. (a)(2), to submit a report to Congress relating to the funding, objectives, duration, cost, and exit criteria of the operation.

1996—Pub. L. 104-106 substituted “Operations for which funds are not provided in advance: funding mechanisms” for “Expenses for contingency operations” as section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (h) relating to funding procedures for operations designated by the Secretary of Defense as National Contingency Operations.

## EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title X, §1003(b), Feb. 10, 1996, 110 Stat. 417, provided that: “The amendment to section 127a of title 10, United States Code, made by subsection (a) shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any operation of the Department of Defense that is in effect on or after that date, whether such operation is begun before, on, or after such date of enactment. In the case of an operation begun before such date, any reference in such section to the commencement of such operation shall be treated as referring to the effective date under the preceding sentence.”

**§ 127b. Assistance in combating terrorism: rewards**

(a) **AUTHORITY.**—The Secretary of Defense may pay a monetary amount, or provide a payment-in-kind, to a person as a reward for providing United States Government personnel, or government personnel of allied forces participating in a combined operation with the armed forces, with information or nonlethal assistance that is beneficial to—

(1) an operation or activity of the armed forces, or of allied forces participating in a combined operation with the armed forces, conducted outside the United States against international terrorism; or

(2) force protection of the armed forces, or of allied forces participating in a combined operation with the armed forces.

(b) **LIMITATION.**—The amount or value of a reward provided under this section may not exceed \$5,000,000.

(c) **DELEGATION OF AUTHORITY.**—(1) The authority of the Secretary of Defense under subsection (a) may be delegated only—

(A) to the Deputy Secretary of Defense and an Under Secretary of Defense, without further redelegation; and

(B) to the commander of a combatant command, but only for a reward in an amount or with a value not in excess of \$1,000,000.

(2) A commander of a combatant command to whom authority to provide rewards under this section is delegated under paragraph (1) may further delegate that authority, but only for a reward in an amount or with a value not in excess of \$10,000, except that such a delegation may be made to the commander’s deputy commander, or to the commander of a command directly subordinate to that commander, without regard to such limitation. Such a delegation may be made to the commander of a command directly subordinate to the commander of a combatant command only with the approval of the Secretary of Defense, the Deputy Secretary of Defense, or an Under Secretary of Defense to whom authority has been delegated under subparagraph (1)(A).

(3)(A) Subject to subparagraphs (B) and (C), an official who has authority delegated under paragraph (1) or (2) may use that authority, acting through government personnel of allied forces, to offer and make rewards.

(B) The Secretary of Defense shall prescribe policies and procedures for making rewards in the manner described in subparagraph (A), which shall include guidance for the accountability of funds used for making rewards in that manner. The policies and procedures shall not take effect until 30 days after the date on which the Secretary submits the policies and procedures to the congressional defense committees. Rewards may not be made in the manner described in subparagraph (A) except under policies and procedures that have taken effect.

(C) Rewards may not be made in the manner described in subparagraph (A) after September 30, 2014.

(D) Not later than April 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report on the implementation of this paragraph. The report shall identify each reward made in the manner described in subparagraph (A) and, for each such reward—

(i) identify the type, amount, and recipient of the reward;

(ii) explain the reason for making the reward; and

(iii) assess the success of the reward in advancing the effort to combat terrorism.

(d) **COORDINATION.**—(1) The Secretary of Defense shall prescribe policies and procedures for the offering and making of rewards under this section and otherwise for administering the authority under this section. Such policies and procedures shall be prescribed in consultation with the Secretary of State and the Attorney General and shall ensure that the making of a reward under this section does not duplicate or interfere with the payment of a reward authorized by the Secretary of State or the Attorney General.

(2) The Secretary of Defense shall consult with the Secretary of State regarding the making of any reward under this section in an amount or with a value in excess of \$2,000,000.

(e) PERSONS NOT ELIGIBLE.—The following persons are not eligible to receive a reward under this section:

(1) A citizen of the United States.

(2) An officer or employee of the United States.

(3) An employee of a contractor of the United States.

(f) ANNUAL REPORT.—(1) Not later than February 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the rewards program under this section during the preceding fiscal year.

(2) Each report for a fiscal year under this subsection shall include the following:

(A) Information on the total amount expended during that fiscal year to carry out the rewards program under this section during that fiscal year.

(B) Specification of the amount, if any, expended during that fiscal year to publicize the availability of rewards under this section.

(C) With respect to each reward provided during that fiscal year—

(i) the amount or value of the reward and whether the reward was provided as a monetary payment or in some other form;

(ii) the recipient of the reward and the recipient's geographic location; and

(iii) a description of the information or assistance for which the reward was paid, together with an assessment of the significance and benefit of the information or assistance.

(D) Information on the implementation of paragraph (3) of subsection (c).

(E) A description of the status of program implementation in each geographic combatant command.

(F) A description of efforts to coordinate and de-conflict the authority under subsection (a) with similar rewards programs administered by the United States Government.

(G) An assessment of the effectiveness of the program in meeting its objectives.

(3) The Secretary may submit the report in classified form if the Secretary determines that it is necessary to do so.

(g) DETERMINATIONS BY THE SECRETARY.—A determination by the Secretary under this section is final and conclusive and is not subject to judicial review.

(Added Pub. L. 107-314, div. A, title X, §1065(a), Dec. 2, 2002, 116 Stat. 2655; amended Pub. L. 109-163, div. A, title X, §1056(c)(2), Jan. 6, 2006, 119 Stat. 3439; Pub. L. 109-364, div. A, title XIV, §1401, Oct. 17, 2006, 120 Stat. 2433; Pub. L. 110-181, div. A, title X, §1033, Jan. 28, 2008, 122 Stat. 307; Pub. L. 111-84, div. A, title X, §1071, Oct. 28, 2009, 123 Stat. 2470; Pub. L. 111-383, div. A, title X, §1031, Jan. 7, 2011, 124 Stat. 4351; Pub. L. 112-81, div. A, title X, §§1033, 1064(3), Dec. 31, 2011, 125 Stat. 1572, 1587; Pub. L. 112-239, div. A, title X, §1021(a), Jan. 2, 2013, 126 Stat. 1911.)

## AMENDMENTS

2013—Subsec. (c)(3)(C). Pub. L. 112-239 substituted “September 30, 2014” for “September 30, 2013”.

2011—Subsec. (c)(3)(C). Pub. L. 112-81, §1033(1), substituted “September 30, 2013” for “September 30, 2011”.

Pub. L. 111-383 substituted “2011” for “2010”.

Subsec. (f)(1). Pub. L. 112-81, §1064(3), which directed the substitution of “February 1” for “December 1”, could not be executed because of the intervening amendment by Pub. L. 112-81, §1033(2)(A). See note below.

Pub. L. 112-81, §1033(2)(A), substituted “February” for “December”.

Subsec. (f)(2)(C)(ii). Pub. L. 112-81, §1033(2)(B)(i), inserted “and the recipient's geographic location” after “reward”.

Subsec. (f)(2)(E) to (G). Pub. L. 112-81, §1033(2)(B)(ii), added subpars. (E) to (G).

2009—Subsec. (c)(3)(C). Pub. L. 111-84 substituted “2010” for “2009”.

2008—Subsec. (a). Pub. L. 110-181, §1033(b)(1)(A), in introductory provisions, inserted “, or government personnel of allied forces participating in a combined operation with the armed forces,” after “United States Government personnel”.

Subsec. (a)(1). Pub. L. 110-181, §1033(b)(1)(B), inserted “, or of allied forces participating in a combined operation with the armed forces,” after “armed forces”.

Subsec. (a)(2). Pub. L. 110-181, §1033(b)(1)(C), inserted “, or of allied forces participating in a combined operation with the armed forces” after “armed forces”.

Subsec. (b). Pub. L. 110-181, §1033(a)(1), substituted “\$5,000,000” for “\$200,000”.

Subsec. (c)(1)(B). Pub. L. 110-181, §1033(a)(2), substituted “\$1,000,000” for “\$50,000”.

Subsec. (c)(3). Pub. L. 110-181, §1033(b)(2), added par. (3).

Subsec. (d)(2). Pub. L. 110-181, §1033(a)(3), substituted “\$2,000,000” for “\$100,000”.

Subsec. (f)(2)(D). Pub. L. 110-181, §1033(c), added subpar. (D).

2006—Subsec. (c)(2). Pub. L. 109-364 substituted “\$10,000” for “\$2,500”, inserted “, or to the commander of a command directly subordinate to that commander,” after “deputy commander”, and inserted at end “Such a delegation may be made to the commander of a command directly subordinate to the commander of a combatant command only with the approval of the Secretary of Defense, the Deputy Secretary of Defense, or an Under Secretary of Defense to whom authority has been delegated under subparagraph (1)(A).”

Subsec. (d)(1). Pub. L. 109-163 substituted “Such policies” for “Such polices”.

### § 127c. Purchase of weapons overseas: force protection

(a) AUTHORITY.—When elements of the armed forces are engaged in ongoing military operations in a country, the Secretary of Defense may, for the purpose of protecting United States forces in that country, purchase weapons from any foreign person, foreign government, international organization, or other entity located in that country.

(b) LIMITATION.—The total amount expended during any fiscal year for purchases under this section may not exceed \$15,000,000.

(c) SEMIANNUAL CONGRESSIONAL REPORT.—In any case in which the authority provided in subsection (a) is used during the period of the first six months of a fiscal year, or during the period of the second six months of a fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and Committee on Armed Services of the House of Representatives a report on the use of that au-

thority during that six-month period. Each such report shall be submitted not later than 30 days after the end of the six-month period during which the authority is used. Each such report shall include the following:

(1) The number and type of weapons purchased under subsection (a) during that six-month period covered by the report, together with the amount spent for those weapons and the Secretary's estimate of the fair market value of those weapons.

(2) A description of the dispositions (if any) during that six-month period of weapons purchased under subsection (a).

(Added Pub. L. 109-163, div. A, title XII, §1231(a), Jan. 6, 2006, 119 Stat. 3467.)

#### CODIFICATION

Another section 127c was renumbered section 127d of this title.

### § 127d. Allied forces participating in combined operations: authority to provide logistic support, supplies, and services

(a) **AUTHORITY.**—(1) Subject to subsections (b) and (c), the Secretary of Defense may provide logistic support, supplies, and services to allied forces participating in a combined operation with the armed forces of the United States.

(2) In addition to any logistic support, supplies, and services provided under paragraph (1), the Secretary may provide logistic support, supplies, and services to allied forces solely for the purpose of enhancing the interoperability of the logistical support systems of military forces participating in combined operations with the United States in order to facilitate such operations. Such logistic support, supplies, and services may also be provided under this paragraph to a nonmilitary logistics, security, or similar agency of an allied government if such provision would directly benefit the armed forces of the United States.

(3) Provision of support, supplies, and services pursuant to paragraph (1) or (2) may be made only with the concurrence of the Secretary of State.

(b) **LIMITATIONS.**—(1) The authority provided by subsection (a)(1) may be used only in accordance with the Arms Export Control Act and other export control laws of the United States.

(2) The authority provided by subsection (a)(1) may be used only for a combined operation—

(A) that is carried out during active hostilities or as part of a contingency operation or a noncombat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance, a country stabilization operation, or a peacekeeping operation under chapter VI or VII of the Charter of the United Nations); and

(B) in a case in which the Secretary of Defense determines that the allied forces to be provided logistic support, supplies, and services—

(i) are essential to the success of the combined operation; and

(ii) would not be able to participate in the combined operation but for the provision of such logistic support, supplies, and services by the Secretary.

(c) **LIMITATIONS ON VALUE.**—(1) The value of logistic support, supplies, and services provided under subsection (a)(1) in any fiscal year may not exceed \$100,000,000.

(2) The value of the logistic support, supplies, and services provided under subsection (a)(2) in any fiscal year may not exceed \$5,000,000.

(d) **ANNUAL REPORT.**—(1) Not later than December 31 each year, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives a report on the use of the authority provided by subsection (a) during the preceding fiscal year.

(2) Each report under paragraph (1) shall be prepared in coordination with the Secretary of State.

(3) Each report under paragraph (1) shall include, for the fiscal year covered by the report, the following:

(A) Each nation provided logistic support, supplies, and services through the use of the authority provided by subsection (a).

(B) For each such nation, a description of the type and value of logistic support, supplies, and services so provided.

(e) **DEFINITION.**—In this section, the term “logistic support, supplies, and services” has the meaning given that term in section 2350(1) of this title.

(Added Pub. L. 109-364, div. A, title XII, §1201(a), Oct. 17, 2006, 120 Stat. 2410, §127c; renumbered §127d, Pub. L. 110-181, div. A, title X, §1063(a)(1)(A), Jan. 28, 2008, 122 Stat. 321; Pub. L. 111-383, div. A, title X, §1075(b)(3), title XII, §1202, Jan. 7, 2011, 124 Stat. 4369, 4385.)

#### REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (b)(1), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383, §1202(a), designated existing provisions as par. (1), inserted “of the United States” after “armed forces”, struck out “Provision of such support, supplies, and services to the forces of an allied nation may be made only with the concurrence of the Secretary of State.” at end, and added pars. (2) and (3).

Subsec. (b). Pub. L. 111-383, §1202(b)(1), substituted “subsection (a)(1)” for “subsection (a)” in par. (1) and in introductory provisions of par. (2).

Subsec. (c)(1). Pub. L. 111-383, §1202(b)(2)(A), substituted “The” for “Except as provided in paragraph (2), the” and “subsection (a)(1)” for “this section”.

Subsec. (c)(2). Pub. L. 111-383, §1202(b)(2)(B), substituted “The value of the logistic support, supplies, and services provided under subsection (a)(2) in any fiscal year may not” for “In addition to any logistic support, supplies, and services provided under subsection (a) that are covered by paragraph (1), the value of logistic support, supplies, and services provided under this section solely for the purposes of enhancing the interoperability of the logistical support systems of military forces participating in combined operation of the United States in order to facilitate such operations may not, in any fiscal year.”.

Subsec. (d)(1). Pub. L. 111-383, §1075(b)(3), substituted “Committee on Foreign Affairs” for “Committee on International Relations”.

2008—Pub. L. 110-181 renumbered section 127c of this title, relating to allied forces participating in combined operations, as this section.

**§ 128. Physical protection of special nuclear material: limitation on dissemination of unclassified information**

(a)(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, the Secretary of Defense, with respect to special nuclear materials, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

- (A) illegal production of nuclear weapons, or
- (B) theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in paragraph (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

- (i) illegal production of nuclear weapons, or
- (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(b) Nothing in this section shall be construed to authorize the Secretary to withhold, or to authorize the withholding of, information from the appropriate committees of the Congress.

(c) Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.

(Added Pub. L. 100-180, div. A, title XI, §1123(a), Dec. 4, 1987, 101 Stat. 1149; amended Pub. L.

101-510, div. A, title XIII, §1311(1), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 108-136, div. A, title X, §1031(a)(4), Nov. 24, 2003, 117 Stat. 1596.)

PRIOR PROVISIONS

A prior section 128 was renumbered section 421 of this title.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108-136 struck out subsec. (d) which required the Secretary to prepare an annual report detailing the Secretary’s application during the year of each regulation or order prescribed or issued under this section.

1990—Subsec. (d). Pub. L. 101-510 substituted “on an annual basis” for “on a quarterly basis”.

**§ 129. Prohibition of certain civilian personnel management constraints**

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the total force management policies and procedures established under section 129a of this title, (2) the workload required to carry out the functions and activities of the department, and (3) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after February 10, 1996, and that refers specifically to this subsection.

(b) The number of, and the amount of funds available to be paid to, indirectly funded Government employees of the Department of Defense may not be—

(1) subject to any constraint or limitation on the number of such personnel who may be employed on the last day of a fiscal year;

(2) managed on the basis of any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees; or

(3) controlled under any policy of the Secretary of a military department for control of civilian manpower resources.

(c) In this section, the term “indirectly funded Government employees” means civilian employees of the Department of Defense—

(1) who are employed by industrial-type activities, the Major Range and Test Facility Base, or commercial-type activities described in section 2208 of this title; and

(2) whose salaries and benefits are funded from sources other than appropriated funds.

(d) With respect to each budget activity within an appropriation for a fiscal year for operations and maintenance, the Secretary of Defense shall ensure that there are employed during that fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the func-

tions within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.

(e) Subsections (a), (b), and (c) apply to the Major Range and Test Facility Base (MRTFB) at the installation level.

(f)(1) Not later than February 1 of each year, the Secretary of each military department and the head of each Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the management of the civilian workforce under the jurisdiction of that official.

(2) Each report of an official under paragraph (1) shall contain the following:

(A) The official's certification (i) that the civilian workforce under the jurisdiction of the official is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees, and (ii) that, during the 12 months preceding the date on which the report is due, such workforce has not been subject to any such constraint or limitation.

(B) A description of how the civilian workforce is managed.

(C) A detailed description of the analytical tools used to determine civilian workforce requirements during the 12-month period referred to in subparagraph (A).

(Added Pub. L. 97-86, title IX, §904(a), Dec. 1, 1981, 95 Stat. 1114, §140b; renumbered §129, Pub. L. 99-433, title I, §101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended Pub. L. 99-661, div. A, title V, §533, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 102-190, div. A, title III, §312(b), Dec. 5, 1991, 105 Stat. 1335; Pub. L. 104-106, div. A, title X, §1031, Feb. 10, 1996, 110 Stat. 428; Pub. L. 104-201, div. A, title X, §1074(a)(1), title XVI, §1603, Sept. 23, 1996, 110 Stat. 2658, 2735; Pub. L. 105-85, div. A, title XI, §1101, Nov. 18, 1997, 111 Stat. 1922; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112-81, div. A, title IX, §932, Dec. 31, 2011, 125 Stat. 1543.)

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 112-81, §932(1), inserted “the total force management policies and procedures established under section 129a of this title, (2)” after “(1)” and substituted “department, and (3)” for “department and (2)”.

Subsec. (d). Pub. L. 112-81, §932(2), substituted “within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.” for “within that budget activity for which funds are provided for that fiscal year.”

Subsec. (e). Pub. L. 112-81, §932(3), struck out at end “With respect to the MRTFB structure, the term ‘funds made available’ includes both direct appropriated funds and funds provided by MRTFB customers.”

1999—Subsec. (f)(1). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1997—Subsec. (f). Pub. L. 105-85 added subsec. (f).

1996—Subsec. (a). Pub. L. 104-201, §1074(a)(1), substituted “February 10, 1996,” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996”.

Pub. L. 104-106, §1031(1), substituted “constraint or limitation in terms of man years, end strength, full-

time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 and that refers specifically to this subsection.” for “man-year constraint or limitation.”

Subsec. (b)(2). Pub. L. 104-106, §1031(2), substituted “any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees” for “any end-strength”.

Subsec. (c)(1). Pub. L. 104-201, §1603(1), inserted “, the Major Range and Test Facility Base,” after “industrial-type activities”.

Subsec. (d). Pub. L. 104-106, §1031(3), added subsec. (d).

Subsec. (e). Pub. L. 104-201, §1603(2), added subsec. (e).

1991—Subsec. (a). Pub. L. 102-190 substituted “department and (2)” for “department, (2)” and struck out “, and (3) the authorized end strength for the civilian personnel of the department for such fiscal year” at end of first sentence.

1986—Pub. L. 99-661 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Pub. L. 99-433 renumbered section 140b of this title as this section.

#### § 129a. General policy for total force management

(a) **POLICIES AND PROCEDURES.**—The Secretary of Defense shall establish policies and procedures for determining the most appropriate and cost efficient mix of military, civilian, and contractor personnel to perform the mission of the Department of Defense.

(b) **RISK MITIGATION OVER COST.**—In establishing the policies and procedures under subsection (a), the Secretary shall clearly provide that attainment of a Department of Defense workforce sufficiently sized and comprised of the appropriate mix of personnel necessary to carry out the mission of the Department and the core mission areas of the armed forces (as identified pursuant to section 118b of this title) takes precedence over cost.

(c) **DELEGATION OF RESPONSIBILITIES.**—The Secretary shall delegate responsibility for implementation of the policies and procedures established under subsection (a) as follows:

(1) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for guidance to implement such policies and procedures.

(2) The Secretaries of the military departments and the heads of the Defense Agencies shall have overall responsibility for the requirements determination, planning, programming, and budgeting for such policies and procedures.

(3) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for ensuring that the defense acquisition system, as defined in section 2545 of this title, is consistent with such policies and procedures and with implementation pursuant to paragraph (1).

(4) The Under Secretary of Defense (Comptroller) shall be responsible for ensuring that the budget for the Department of Defense is consistent with such policies and procedures. The Under Secretary shall notify the congressional defense committees of any deviations

from such policies and procedures that are recommended in the budget.

(d) **USE OF PLAN, INVENTORY, AND LIST.**—The policies and procedures established by the Secretary under subsection (a) shall specifically require the Department of Defense to use the following when making determinations regarding the appropriate workforce mix necessary to perform its mission:

- (1) The civilian strategic workforce plan (required by section 115b of this title).
- (2) The civilian positions master plan (required by section 1597(c) of this title).
- (3) The inventory of contracts for services required by section 2330a(c) of this title.
- (4) The list of activities required by the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note).

(e) **CONSIDERATIONS IN CONVERTING PERFORMANCE OF FUNCTIONS.**— If conversion of functions to performance by either Department of Defense civilian personnel or contractor personnel is considered, the Under Secretary of Defense for Personnel and Readiness shall ensure compliance with—

- (1) section 2463 of this title (relating to guidelines and procedures for use of civilian employees to perform Department of Defense functions); and
- (2) section 2461 of this title (relating to public-private competition required before conversion to contractor performance).

(f) **CONSTRUCTION WITH OTHER REQUIREMENTS.**—Nothing in this title may be construed as authorizing—

- (1) a military department or Defense Agency to directly convert a function to contractor performance without complying with section 2461 of this title;
- (2) the use of contractor personnel for functions that are inherently governmental even if there is a military or civilian personnel shortfall in the Department of Defense;
- (3) restrictions on the use by a military department or Defense Agency of contractor personnel to perform functions closely associated with inherently governmental functions, provided that—
  - (A) there are adequate resources to maintain sufficient capabilities within the Department in the functional area being considered for performance by contractor personnel; and
  - (B) there is adequate Government oversight of contractor personnel performing such functions;
- (4) the establishment of numerical goals or budgetary savings targets for the conversion of functions to performance by either Department of Defense civilian personnel or for conversion to performance by contractor personnel; or
- (5) the imposition of a civilian hiring freeze that may inhibit the implementation of the policies and procedures established under subsection (a).

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(2), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 112–81, div. A, title IX, §931(a), Dec. 31, 2011, 125 Stat. 1541.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(5) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

#### AMENDMENTS

2011—Pub. L. 112–81 amended section generally. Prior to amendment, text read as follows: “The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall—

- “(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and
- “(2) include in each manpower requirements report submitted under section 115a of this title a complete justification for converting from one form of personnel to another.”

#### STRATEGIC POLICY FOR THE RETROGRADE, RECONSTITUTION, AND REPLACEMENT OF OPERATING FORCES USED TO SUPPORT OVERSEAS CONTINGENCY OPERATIONS

Pub. L. 113–66, div. A, title III, §324, Dec. 26, 2013, 127 Stat. 733, provided that:

“(a) **ESTABLISHMENT OF POLICY.**—

“(1) **IN GENERAL.**—The Secretary of Defense shall establish a policy setting forth the programs and priorities of the Department of Defense for the retrograde, reconstitution, and replacement of units and materiel used to support overseas contingency operations. The policy shall take into account national security threats, the requirements of the combatant commands, the current readiness of the operating forces of the military departments, and risk associated with strategic depth and the time necessary to reestablish required personnel, equipment, and training readiness in such operating forces.

“(2) **ELEMENTS.**—The policy required under paragraph (1) shall include the following elements:

“(A) Establishment and assignment of responsibilities and authorities within the Department for oversight and execution of the planning, organization, and management of the programs to reestablish the readiness of redeployed operating forces.

“(B) Guidance concerning priorities, goals, objectives, timelines, and resources to reestablish the readiness of redeployed operating forces in support of national defense objectives and combatant command requirements.

“(C) Oversight reporting requirements and metrics for the evaluation of Department of Defense and military department progress on restoring the readiness of redeployed operating forces in accordance with the policy required under paragraph (1).

“(D) A framework for joint departmental reviews of military services’ annual budgets proposed for retrograde, reconstitution, or replacement activities, including an assessment of the strategic and operational risk assumed by the proposed levels of investment across the Department of Defense.

“(b) **IMPLEMENTATION PLAN.**—

“(1) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of the policy required under this section.

“(2) **ELEMENTS.**—The implementation plan required under paragraph (1) shall include the following elements:

“(A) The assignment of responsibilities and authorities for oversight and execution of the planning, organization, and management of the programs to reestablish the readiness of redeployed operating forces.



“(B) Establishment of priorities, goals, objectives, timelines, and resources to reestablish the readiness of redeployed operating forces in support of national defense objectives and combatant command requirements.

“(C) A description of how the plan will be implemented, including a schedule with milestones to meet the goals of the plan.

“(D) An estimate of the resources by military service and by year required to implement the plan, including an assessment of the risks assumed in the plan.

“(3) UPDATES.—Not later than one year after submitting the plan required under paragraph (1), and annually thereafter for two years, the Secretary of Defense shall submit to the congressional defense committees an update on progress toward meeting the goals of the plan.

“(c) COMPTROLLER GENERAL REPORT.—Not later than 120 days after the date of the enactment of this Act, and annually after the submittal of each update to the implementation plan under subsection (b), the Comptroller General of the United States shall review the implementation plan submitted under subsection (b) and the policy required by subsection (a), and submit to the congressional defense committees a report describing the findings of such review and progress made toward meeting the goals of the plan and including any additional information relating to the policy and plan that the Comptroller General determines appropriate.”

SAVINGS TO BE ACHIEVED IN CIVILIAN PERSONNEL WORKFORCE AND SERVICE CONTRACTOR WORKFORCE OF THE DEPARTMENT OF DEFENSE

Pub. L. 112-239, div. A, title IX, §955, Jan. 2, 2013, 126 Stat. 1896, provided that:

“(a) REQUIRED PLAN.—

“(1) IN GENERAL.—The Secretary of Defense shall ensure that the civilian personnel workforce and service contractor workforce of the Department of Defense are appropriately sized to support and execute the National Military Strategy, taking into account military personnel and force structure levels. Not later than 90 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall develop and begin to execute an efficiencies plan for the civilian personnel workforce and service contractor workforce of the Department of Defense.

“(2) CONSISTENCY WITH OTHER POLICIES AND PROCEDURES.—The Secretary shall ensure the plan required under this subsection is consistent with the policies and procedures required under section 129a of title 10, United States Code, as implemented under the policies issued by the Under Secretary of Defense for Personnel and Readiness for determining the most appropriate and cost-efficient mix of military, civilian, and service contractor personnel to perform the missions of the Department of Defense.

“(b) SAVINGS.—The plan required under subsection (a) shall achieve savings in the total funding for each workforce covered by such plan over the period from fiscal year 2012 through fiscal year 2017 that are not less, as a percentage of such funding, than the savings in funding for basic military personnel pay achieved from reductions in military end strengths over the same period of time.

“(c) EXCLUSIONS.—In developing and implementing the plan required by subsection (a) and achieving the savings percentages required by subsection (b), the Secretary of Defense may exclude expenses related to the performance of functions identified as core or critical to the mission of the Department, consistent with the workload analysis and risk assessments required by sections 129 and 129a of title 10, United States Code. In making a determination of core or critical functions, the Secretary shall consider at least the following:

“(1) Civilian personnel expenses for personnel as follows:

“(A) Personnel in Mission Critical Occupations, as defined by the Civilian Human Capital Strategic

Plan of the Department of Defense and the Acquisition Workforce Plan of the Department of Defense.

“(B) Personnel employed at facilities providing core logistics capabilities pursuant to section 2464 of title 10, United States Code.

“(C) Personnel in the Offices of the Inspectors General of the Department of Defense.

“(2) Service contractor expenses for personnel as follows:

“(A) Personnel performing maintenance and repair of military equipment.

“(B) Personnel providing medical services.

“(C) Personnel performing financial audit services.

“(3) Personnel expenses for personnel in the civilian personnel workforce or service contractor workforce performing such other critical functions as may be identified by the Secretary as requiring exemption in the interest of the national defense.

“(d) REPORTS.—

“(1) INITIAL REPORT.—Not later than 120 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report including a comprehensive description of the plan required by subsection (a).

“(2) STATUS REPORTS.—As part of the budget submitted by the President to Congress for each of fiscal years 2015 through 2018, the Secretary shall include a report describing the implementation of the plan during the prior fiscal year and any modifications to the plan required due to changing circumstances. Each such report shall include a summary of the savings achieved in such prior fiscal year through reductions in the military, civilian, and service contractor personnel workforces, and the number of military, civilian, and service contractor personnel reduced. In any case in which savings fall short of the annual target, the report shall include an explanation of the reasons for such shortfall.

“(3) EXCLUSIONS.—Each report under paragraphs (1) and (2) shall specifically identify any exclusion granted by the Secretary under subsection (c) in the period of time covered by the report.

“(e) LIMITATION ON TRANSFERS OF FUNCTIONS.—The Secretary shall ensure that the savings required by this section are not achieved through unjustified transfers of functions between or among the military, civilian, and service contractor personnel workforces of the Department of Defense. Nothing in this section shall be construed to preclude the Secretary from exercising authority available to the Department under sections 129a, 2330a, 2461, and 2463 of title 10, United States Code.

“(f) SENSE OF CONGRESS.—It is the sense of Congress that an amount equal to 30 percent of the amount of the reductions in appropriated funds attributable to reduced budgets for the civilian and service contractor workforces of the Department by reason of the plan required by subsection (a) should be made available for costs of assisting military personnel separated from the Armed Forces in the transition from military service.

“(g) SERVICE CONTRACTOR WORKFORCE DEFINED.—In this section, the term ‘service contractor workforce’ means contractor employees performing contract services, as defined in section 2330(c)(2) of title 10, United States Code, other than contract services that are funded out of amounts available for overseas contingency operations.

“(h) COMPTROLLER GENERAL REVIEW AND REPORT.—For each fiscal year from fiscal year 2015 through fiscal year 2018, the Comptroller General of the United States shall review the status reports submitted by the Secretary as required by subsection (d)(2) to determine whether the savings required by subsection (b) are being achieved in the civilian personnel workforce and the service contractor workforce and whether the plan required under subsection (a) is being implemented

consistent with sourcing and workforce management laws, including sections 129, 129a, 2330a, 2461, and 2463 of title 10, United States Code. The Comptroller General shall submit a report on the findings of each review to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 120 days after the end of each fiscal year covered by this subsection.”

CONVERSION OF MILITARY POSITIONS TO CIVILIAN POSITIONS

Pub. L. 104-106, div. A, title X, § 1032, Feb. 10, 1996, 110 Stat. 429, as amended by Pub. L. 104-201, div. A, title XVI, § 1601, Sept. 23, 1996, 110 Stat. 2734, directed Secretary of Defense, by Sept. 30, 1996, to convert at least 3,000 military positions to civilian positions and, not later than Mar. 31, 1996, submit to Congress a plan for the implementation of conversion.

PROHIBITION ON USE OF FUNDS TO ASSIGN SUPERVISOR'S TITLE OR GRADE BASED UPON NUMBER OF PEOPLE SUPERVISED

Pub. L. 104-61, title VIII, § 8031, Dec. 1, 1995, 109 Stat. 658, provided that: “None of the funds appropriated during the current fiscal year and hereafter, may be used by the Department of Defense to assign a supervisor's title or grade when the number of people he or she supervises is considered as a basis for this determination: *Provided*, That savings that result from this provision are represented as such in future budget proposals.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103-335, title VIII, § 8036, Sept. 30, 1994, 108 Stat. 2626.

Pub. L. 103-139, title VIII, § 8040, Nov. 11, 1993, 107 Stat. 1449.

Pub. L. 102-396, title IX, § 9053, Oct. 6, 1992, 106 Stat. 1914.

Pub. L. 102-172, title VIII, § 8055, Nov. 26, 1991, 105 Stat. 1184.

Pub. L. 101-511, title VIII, § 8063, Nov. 5, 1990, 104 Stat. 1888.

Pub. L. 101-165, title IX, § 9085, Nov. 21, 1989, 103 Stat. 1147.

Pub. L. 100-463, title VIII, § 8079, Oct. 1, 1988, 102 Stat. 2270-30.

Pub. L. 100-202, § 101(b) [title VIII, § 8105], Dec. 22, 1987, 101 Stat. 1329-43, 1329-81.

**§ 129b. Authority to procure personal services**

(a) **AUTHORITY.**—Subject to subsection (b), the Secretary of Defense and the Secretaries of the military departments may—

(1) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with section 3109 of title 5; and

(2) pay in connection with such services travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals are traveling from their homes or places of business to official duty stations and return as may be authorized by law.

(b) **CONDITIONS.**—The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if the Secretary of Defense or the Secretary of the military department concerned, as the case may be, determines that—

(1) the procurement of such services is advantageous to the United States; and

(2) such services cannot adequately be provided by the Department of Defense.

(c) **REGULATIONS.**—Procurement of the services of experts and consultants (or organizations thereof) under subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense.

(d) **ADDITIONAL AUTHORITY FOR PERSONAL SERVICES CONTRACTS.**—(1) In addition to the authority provided under subsection (a), the Secretary of Defense may enter into personal services contracts if the personal services—

(A) are to be provided by individuals outside the United States, regardless of their nationality, and are determined by the Secretary to be necessary and appropriate for supporting the activities and programs of the Department of Defense outside the United States;

(B) directly support the mission of a defense intelligence component or counter-intelligence organization of the Department of Defense; or

(C) directly support the mission of the special operations command of the Department of Defense.

(2) The contracting officer for a personal services contract under this subsection shall be responsible for ensuring that—

(A) the services to be procured are urgent or unique; and

(B) it would not be practicable for the Department to obtain such services by other means.

(3) The requirements of section 3109 of title 5 shall not apply to a contract entered into under this subsection.

(Added Pub. L. 101-510, div. A, title XIV, § 1481(b)(1), Nov. 5, 1990, 104 Stat. 1704; amended Pub. L. 102-190, div. A, title X, § 1061(a)(2), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 108-136, div. A, title VIII, § 841(a), (b)(1), Nov. 24, 2003, 117 Stat. 1552.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101-165, title IX, § 9002, Nov. 21, 1989, 103 Stat. 1129, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101-510, § 1481(b)(3).

AMENDMENTS

2003—Pub. L. 108-136, § 841(b)(1), substituted “Authority to procure personal services” for “Experts and consultants: authority to procure services of” in section catchline.

Subsec. (d). Pub. L. 108-136, § 841(a), added subsec. (d). 1991—Pub. L. 102-190 inserted “of” after “services” in section catchline.

**§ 129c. Medical personnel: limitations on reductions**

(a) **LIMITATION ON REDUCTION.**—For any fiscal year, the Secretary of Defense may not make a reduction in the number of medical personnel of the Department of Defense described in subsection (b) unless the Secretary makes a certification for that fiscal year described in subsection (c).

(b) **COVERED REDUCTIONS.**—Subsection (a) applies to a reduction in the number of medical personnel of the Department of Defense as of the end of a fiscal year to a number that is less than—

(1) 95 percent of the number of such personnel at the end of the immediately preceding fiscal year; or

(2) 90 percent of the number of such personnel at the end of the third fiscal year preceding the fiscal year.

(c) CERTIFICATION.—A certification referred to in subsection (a) with respect to reductions in medical personnel of the Department of Defense for any fiscal year is a certification by the Secretary of Defense to Congress that—

(1) the number of medical personnel being reduced is excess to the current and projected needs of the Department of Defense; and

(2) such reduction will not result in an increase in the cost of health care services provided under the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of this title.

(d) POLICY FOR IMPLEMENTING REDUCTIONS.—Whenever the Secretary of Defense directs that there be a reduction in the total number of military medical personnel of the Department of Defense, the Secretary shall require that the reduction be carried out so as to ensure that the reduction is not exclusively or disproportionately borne by any one of the armed forces and is not exclusively or disproportionately borne by either the active or the reserve components.

(e) DEFINITION.—In this section, the term “medical personnel” means—

(1) the members of the armed forces covered by the term “medical personnel” as defined in section 115a(e)(2) of this title; and

(2) the civilian personnel of the Department of Defense assigned to military medical facilities.

(Added Pub. L. 104–106, div. A, title V, §564(a)(1), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 105–85, div. A, title X, §1073(a)(4), Nov. 18, 1997, 111 Stat. 1900.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title VII, §711, Nov. 5, 1990, 104 Stat. 1582, as amended, which was set out as a note under section 115 of this title, prior to repeal by Pub. L. 104–106, §564(d)(1).

#### AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105–85 substituted “section 115a(e)(2)” for “section 115a(g)(2)”.

#### PROHIBITION ON CONVERSION OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL AND DENTAL POSITIONS

Pub. L. 110–181, div. A, title VII, §721(a)–(d), Jan. 28, 2008, 122 Stat. 198, 199, as amended by Pub. L. 111–84, div. A, title VII, §701, Oct. 28, 2009, 123 Stat. 2372, provided that:

“(a) PROHIBITION.—The Secretary of a military department may not convert any military medical or dental position to a civilian medical or dental position on or after October 1, 2007.

“(b) RESTORATION OF CERTAIN POSITIONS TO MILITARY POSITIONS.—In the case of any military medical or dental position that is converted to a civilian medical or dental position during the period beginning on October 1, 2004, and ending on September 30, 2008, if the position is not filled by a civilian by September 30, 2008, the Secretary of the military department concerned shall restore the position to a military medical or dental position that can be filled only by a member of the Armed Forces who is a health professional.

“(c) REPORT.—

“(1) REQUIREMENT.—The Secretary of Defense shall submit to the congressional defense committees

[Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on conversions made during fiscal year 2007 not later than 180 days after the enactment of this Act [Jan. 28, 2008].

“(2) MATTERS COVERED.—The report shall include the following:

“(A) The number of military medical or dental positions, by grade or band and specialty, converted to civilian medical or dental positions.

“(B) The results of a market survey in each affected area of the availability of civilian medical and dental care providers in such area in order to determine whether there were civilian medical and dental care providers available in such area adequate to fill the civilian positions created by the conversion of military medical and dental positions to civilian positions in such area.

“(C) An analysis, by affected area, showing the extent to which access to health care and cost of health care was affected in both the direct care and purchased care systems, including an assessment of the effect of any increased shifts in patient load from the direct care to the purchased care system, or any delays in receipt of care in either the direct or purchased care system because of the conversions.

“(D) The extent to which military medical and dental positions converted to civilian medical or dental positions affected recruiting and retention of uniformed medical and dental personnel.

“(E) A comparison of the full costs for the military medical and dental positions converted with the full costs for civilian medical and dental positions, including expenses such as recruiting, salary, benefits, training, and any other costs the Department identifies.

“(F) An assessment showing that the military medical or dental positions converted were in excess of the military medical and dental positions needed to meet medical and dental readiness requirements of the uniformed services, as determined jointly by all the uniformed services.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘military medical or dental position’ means a position for the performance of health care functions within the Armed Forces held by a member of the Armed Forces.

“(2) The term ‘civilian medical or dental position’ means a position for the performance of health care functions within the Department of Defense held by an employee of the Department or of a contractor of the Department.

“(3) The term ‘uniformed services’ has the meaning given that term in section 1072(1) of title 10, United States Code.

“(4) The term ‘conversion’, with respect to a military medical or dental position, means a change of the position to a civilian medical or dental position, effective as of the date of the manning authorization document of the military department making the change (through a change in designation from military to civilian in the document, the elimination of the listing of the position as a military position in the document, or through any other means indicating the change in the document or otherwise).”

#### REQUIREMENT TO CERTIFY AND REPORT ON CONVERSION OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL AND DENTAL POSITIONS

Pub. L. 109–364, div. A, title VII, §742, Oct. 17, 2006, 120 Stat. 2306, which prohibited the Secretary of a military department from converting any military medical or dental position to a civilian medical or dental position in a fiscal year until the Secretary submitted to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives with respect to that fiscal year a certification that the conversions within that department would not increase cost or decrease quality of care or access to care, was re-

pealed by Pub. L. 110-181, div. A, title VII, §721(e), Jan. 28, 2008, 122 Stat. 199.

PROHIBITION ON CONVERSIONS OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL POSITIONS UNTIL SUBMISSION OF CERTIFICATION

Pub. L. 109-163, div. A, title VII, §744, Jan. 6, 2006, 119 Stat. 3360, provided that:

“(a) PROHIBITION ON CONVERSIONS.—

“(1) SUBMISSION OF CERTIFICATION.—A Secretary of a military department may not convert any military medical or dental position to a civilian medical or dental position until the Secretary submits to the Committees on Armed Services of the Senate and the House of Representatives a certification that the conversions within that department will not increase cost or decrease quality of care or access to care. Such a certification may not be submitted before June 1, 2006.

“(2) REPORT WITH CERTIFICATION.—A Secretary submitting such a certification shall include with the certification a written report that includes—

“(A) the methodology used by the Secretary in making the determinations necessary for the certification, including the extent to which the Secretary took into consideration the findings of the Comptroller General in the report under subsection (b)(3);

“(B) the results of a market survey in each affected area of the availability of civilian medical and dental care providers in such area in order to determine whether the civilian medical and dental care providers available in such area are adequate to fill the civilian positions created by the conversion of military medical and dental positions to civilian positions in such area; and

“(C) any action taken by the Secretary in response to recommendations in the Comptroller General report under subsection (b)(3).

“(b) REQUIREMENT FOR STUDY.—

“(1) IN GENERAL.—The Comptroller General shall conduct a study on the effect of conversions of military medical and dental positions to civilian medical or dental positions on the defense health program.

“(2) MATTERS COVERED.—The study shall include the following:

“(A) The number of military medical and dental positions, by grade and specialty, planned for conversion to civilian medical or dental positions.

“(B) The number of military medical and dental positions, by grade and specialty, converted to civilian medical or dental positions since October 1, 2004.

“(C) The ability of the military health care system to fill the civilian medical and dental positions required, by specialty.

“(D) The degree to which access to health care is affected in both the direct and purchased care system, including an assessment of the effects of any increased shifts in patient load from the direct care to the purchased care system, or any delays in receipt of care in either the direct or purchased care system because of lack of direct care providers.

“(E) The degree to which changes in military manpower requirements affect recruiting and retention of uniformed medical and dental personnel.

“(F) The degree to which conversion of the military positions meets the joint medical and dental readiness requirements of the uniformed services, as determined jointly by all the uniformed services.

“(G) The effect of the conversions of military medical positions to civilian medical and dental positions on the defense health program, including costs associated with the conversions, with a comparison of the estimated costs versus the actual costs incurred by the number of conversions since October 1, 2004.

“(H) The effectiveness of the conversions in enhancing medical and dental readiness, health care efficiency, productivity, quality, and customer satisfaction.

“(3) REPORT ON STUDY.—Not later than May 1, 2006, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the results of the study under this section.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘military medical or dental position’ means a position for the performance of health care functions within the Armed Forces held by a member of the Armed Forces.

“(2) The term ‘civilian medical or dental position’ means a position for the performance of health care functions within the Department of Defense held by an employee of the Department or of a contractor of the Department.

“(3) The term ‘affected area’ means an area in which military medical or dental positions were converted to civilian medical or dental positions before October 1, 2004, or in which such conversions are scheduled to occur in the future.

“(4) The term ‘uniformed services’ has the meaning given that term in section 1072(1) of title 10, United States Code.”

SPECIAL TRANSITION RULE FOR FISCAL YEAR 1996

Pub. L. 104-106, div. A, title V, §564(b), Feb. 10, 1996, 110 Stat. 326, provided that, for purposes of applying subsec. (b)(1) of this section during fiscal year 1996, the number against which the percentage limitation of 95 percent was to be computed would be the number of medical personnel of the Department of Defense as of the end of fiscal year 1994, rather than the number as of the end of fiscal year 1995.

§ 129d. Disclosure to litigation support contractors

(a) DISCLOSURE AUTHORITY.—An officer or employee of the Department of Defense may disclose sensitive information to a litigation support contractor if—

(1) the disclosure is for the sole purpose of providing litigation support to the Government in the form of administrative, technical, or professional services during or in anticipation of litigation; and

(2) under a contract with the Government, the litigation support contractor agrees to and acknowledges—

(A) that sensitive information furnished will be accessed and used only for the purposes stated in the relevant contract;

(B) that the contractor will take all precautions necessary to prevent disclosure of the sensitive information provided to the contractor;

(C) that such sensitive information provided to the contractor under the authority of this section shall not be used by the contractor to compete against a third party for Government or non-Government contracts; and

(D) that the violation of subparagraph (A), (B), or (C) is a basis for the Government to terminate the litigation support contract of the contractor.

(b) DEFINITIONS.—In this section:

(1) The term “litigation support contractor” means a contractor (including an expert or technical consultant) under contract with the Department of Defense to provide litigation support.

(2) The term “sensitive information” means confidential commercial, financial, or proprietary information, technical data, or other privileged information.

(Added Pub. L. 112-81, div. A, title VIII, § 802(a)(1), Dec. 31, 2011, 125 Stat. 1484.)

**§ 130. Authority to withhold from public disclosure certain technical data**

(a) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420) or the Arms Export Control Act (22 U.S.C. 2751 et seq.). However, technical data may not be withheld under this section if regulations promulgated under either such Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.

(b) Regulations under this section shall be published in the Federal Register for a period of no less than 30 days for public comment before promulgation. Such regulations shall address, where appropriate, releases of technical data to allies of the United States and to qualified United States contractors, including United States contractors that are small business concerns, for use in performing United States Government contracts.

(c) In this section, the term “technical data with military or space application” means any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used, or be adapted for use, to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(Added Pub. L. 98-94, title XII, § 1217(a), Sept. 24, 1983, 97 Stat. 690, § 140c; amended Pub. L. 99-145, title XIII, § 1303(a)(3), Nov. 8, 1985, 99 Stat. 738; renumbered § 130 and amended Pub. L. 99-433, title I, §§ 101(a)(3), 110(d)(6), Oct. 1, 1986, 100 Stat. 994, 1003; Pub. L. 100-26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101-510, div. A, title XIV, § 1484(b)(1), Nov. 5, 1990, 104 Stat. 1715.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Arms Export Control Act, referred to in subsec. (a), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1990—Subsecs. (b), (c). Pub. L. 101-510 substituted “Regulations under this section” for “(1) Within 90 days after September 24, 1983, the Secretary of Defense shall propose regulations to implement this section. Such regulations” in subsec. (b) and redesignated former subsec. (b)(2) as subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100-26 inserted “the term” after “In this section.”.

1986—Pub. L. 99-433 renumbered section 140c of this title as this section and substituted “Authority” for “Secretary of Defense: authority” in section catchline.

1985—Subsec. (b)(1). Pub. L. 99-145 substituted “September 24, 1983” for “enactment of this section”.

**[§ 130a. Repealed. Pub. L. 110-181, div. A, title IX, § 901(a)(1), Jan. 28, 2008, 122 Stat. 272]**

Section, added Pub. L. 105-85, div. A, title IX, § 911(a)(1), Nov. 18, 1997, 111 Stat. 1857; amended Pub. L. 106-65, div. A, title IX, § 921(a)(1), Oct. 5, 1999, 113 Stat. 722; Pub. L. 106-398, § 1 [[div. A], title IX, § 941], Oct. 30, 2000, 114 Stat. 1654, 1654A-241; Pub. L. 108-375, div. A, title X, § 1084(d)(2), Oct. 28, 2004, 118 Stat. 2061, related to major Department of Defense headquarters activities personnel.

**§ 130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information**

(a) EXEMPTION FROM DISCLOSURE.—The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security may, notwithstanding section 552 of title 5, authorize to be withheld from disclosure to the public personally identifying information regarding—

(1) any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit; and

(2) any employee of the Department of Defense or of the Coast Guard whose duty station is with any such unit.

(b) EXCEPTIONS.—(1) The authority in subsection (a) is subject to such exceptions as the President may direct.

(2) Subsection (a) does not authorize any official to withhold, or to authorize the withholding of, information from Congress.

(c) DEFINITIONS.—In this section:

(1) The term “personally identifying information”, with respect to any person, means the person’s name, rank, duty address, and official title and information regarding the person’s pay.

(2) The term “unit” means a military organization of the armed forces designated as a unit by competent authority.

(3) The term “overseas unit” means a unit that is located outside the United States and its territories.

(4) The term “sensitive unit” means a unit that is primarily involved in training for the conduct of, or conducting, special activities or classified missions, including—

(A) a unit involved in collecting, handling, disposing, or storing of classified information and materials;

(B) a unit engaged in training—

(i) special operations units;

(ii) security group commands weapons stations; or

(iii) communications stations; and

(C) any other unit that is designated as a sensitive unit by the Secretary of Defense or, in the case of the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security.

(5) The term “routinely deployable unit” means a unit that normally deploys from its permanent home station on a periodic or rotating basis to meet peacetime operational requirements that, or to participate in scheduled training exercises that, routinely require deployments outside the United States and its territories. Such term includes a unit that is alerted for deployment outside the United States and its territories during an actual execution of a contingency plan or in support of a crisis operation.

(Added Pub. L. 106-65, div. A, title X, §1044(a), Oct. 5, 1999, 113 Stat. 761; amended Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

#### AMENDMENTS

2002—Subsecs. (a), (c)(4)(C). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

### § 130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations

(a) EXEMPTION FROM DISCLOSURE.—The national security official concerned (as defined in subsection (h)) may withhold from public disclosure otherwise required by law sensitive information of foreign governments in accordance with this section.

(b) INFORMATION ELIGIBLE FOR EXEMPTION.—For the purposes of this section, information is sensitive information of a foreign government only if the national security official concerned makes each of the following determinations with respect to the information:

(1) That the information was provided by, otherwise made available by, or produced in cooperation with, a foreign government or international organization.

(2) That the foreign government or international organization is withholding the information from public disclosure (relying for that determination on the written representation of the foreign government or international organization to that effect).

(3) That any of the following conditions are met:

(A) The foreign government or international organization requests, in writing, that the information be withheld.

(B) The information was provided or made available to the United States Government on the condition that it not be released to the public.

(C) The information is an item of information, or is in a category of information, that the national security official concerned has specified in regulations prescribed under subsection (g) as being information the release of which would have an adverse effect on the ability of the United States Government to obtain the same or similar information in the future.

(c) INFORMATION OF OTHER AGENCIES.—If the national security official concerned provides to the head of another agency sensitive information of a foreign government, as determined by that national security official under subsection (b), and informs the head of the other agency of that determination, then the head of the other agency shall withhold the information from any public disclosure unless that national security official specifically authorizes the disclosure.

(d) LIMITATIONS.—(1) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government before October 30, 2000, and more than 25 years before the request is received by an agency, the information may be withheld only as set forth in paragraph (3).

(2)(A) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government on or after the date referred to in paragraph (1), the authority to withhold the information under this section is subject to the provisions of subparagraphs (B) and (C).

(B) Information referred to in subparagraph (A) may not be withheld under this section after—

(i) the date that is specified by a foreign government or international organization in a request or expression of a condition described in paragraph (1) or (2) of subsection (b) that is made by the foreign government or international organization concerning the information; or

(ii) if there are more than one such foreign governments or international organizations, the latest date so specified by any of them.

(C) If no date is applicable under subparagraph (B) to a request referred to in subparagraph (A) and the information referred to in that subparagraph came into possession or under the control of the United States more than 10 years before the date on which the request is received by an agency, the information may be withheld under this section only as set forth in paragraph (3).

(3) Information referred to in paragraph (1) or (2)(C) may be withheld under this section in the case of a request for disclosure only if, upon the notification of each foreign government and international organization concerned in accordance with the regulations prescribed under subsection (g)(2), any such government or organization requests in writing that the information not be disclosed for an additional period stated in the request of that government or organization. After the national security official concerned considers the request of the foreign government or international organization, the official shall designate a later date as the date after which the information is not to be withheld under this section. The later date may be extended in accordance with a later request of any such foreign government or international organization under this paragraph.

(e) INFORMATION PROTECTED UNDER OTHER AUTHORITY.—This section does not apply to information or matters that are specifically required in the interest of national defense or foreign pol-

icy to be protected against unauthorized disclosure under criteria established by an Executive order and are classified, properly, at the confidential, secret, or top secret level pursuant to such Executive order.

(f) DISCLOSURES NOT AFFECTED.—Nothing in this section shall be construed to authorize any official to withhold, or to authorize the withholding of, information from the following:

(1) Congress.

(2) The Comptroller General, unless the information relates to activities that the President designates as foreign intelligence or counterintelligence activities.

(g) REGULATIONS.—(1) The national security officials referred to in subsection (h)(1) shall each prescribe regulations to carry out this section. The regulations shall include criteria for making the determinations required under subsection (b). The regulations may provide for controls on access to and use of, and special markings and specific safeguards for, a category or categories of information subject to this section.

(2) The regulations shall include procedures for notifying and consulting with each foreign government or international organization concerned about requests for disclosure of information to which this section applies.

(h) DEFINITIONS.—In this section:

(1) The term “national security official concerned” means the following:

(A) The Secretary of Defense, with respect to information of concern to the Department of Defense, as determined by the Secretary.

(B) The Secretary of Homeland Security, with respect to information of concern to the Coast Guard, as determined by the Secretary, but only while the Coast Guard is not operating as a service in the Navy.

(C) The Secretary of Energy, with respect to information concerning the national security programs of the Department of Energy, as determined by the Secretary.

(2) The term “agency” has the meaning given that term in section 552(f) of title 5.

(3) The term “international organization” means the following:

(A) A public international organization designated pursuant to section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) as being entitled to enjoy the privileges, exemptions, and immunities provided in such Act.

(B) A public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

(C) An official mission, except a United States mission, to a public international organization referred to in subparagraph (A) or (B).

(Added Pub. L. 106-398, §1 [[div. A], title X, §1073(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-277; amended Pub. L. 107-107, div. A, title X, §1048(a)(3), (c)(1), Dec. 28, 2001, 115 Stat. 1222, 1226; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

## REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (h)(3)(A), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

## AMENDMENTS

2002—Subsec. (h)(1)(B). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

2001—Subsec. (b)(3)(C). Pub. L. 107-107, §1048(a)(3), substituted “subsection (g)” for “subsection (f)”.

Subsec. (d)(1). Pub. L. 107-107, §1048(c)(1), substituted “October 30, 2000,” for “the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001”.

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

**§ 130d. Treatment under Freedom of Information Act of certain confidential information shared with State and local personnel**

Confidential business information and other sensitive but unclassified homeland security information in the possession of the Department of Defense that is shared, pursuant to section 892 of the Homeland Security Act of 2002 (6 U.S.C. 482), with State and local personnel (as defined in such section) shall not be subject to disclosure under section 552 of title 5 by virtue of the sharing of such information with such personnel.

(Added Pub. L. 109-364, div. A, title XIV, §1405(a), Oct. 17, 2006, 120 Stat. 2436.)

**§ 130e. Treatment under Freedom of Information Act of critical infrastructure security information**

(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense critical infrastructure security information from disclosure pursuant to section 552(b)(3) of title 5, upon a written determination that—

(1) the information is Department of Defense critical infrastructure security information; and

(2) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(b) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—Department of Defense critical infrastructure security information covered by a written determination under subsection (a) that is provided to a State or local government shall remain under the control of the Department of Defense.

(c) DEFINITION.—In this section, the term “Department of Defense critical infrastructure security information” means sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruc-

tion, or damage of or to Department of Defense operations, property, or facilities, including information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected systems owned or operated by or on behalf of the Department of Defense, including vulnerability assessments prepared by or on behalf of the Department of Defense, explosives safety information (including storage and handling), and other site-specific information on or relating to installation security.

(d) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management.

(e) TRANSPARENCY.—Each determination of the Secretary, or the Secretary's designee, under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, through the Office of the Director of Administration and Management.

(Added Pub. L. 112-81, div. A, title X, §1091(a), Dec. 31, 2011, 125 Stat. 1604.)

### § 130f. Congressional notification of sensitive military operations

(a) IN GENERAL.—The Secretary of Defense shall promptly submit to the congressional defense committees notice in writing of any sensitive military operation conducted under this title following such operation. Department of Defense support to operations conducted under the National Security Act of 1947 (50 U.S.C. 3001 et seq.) is addressed in the classified annex prepared to accompany the National Defense Authorization Act for Fiscal Year 2014.

(b) PROCEDURES.—(1) The Secretary of Defense shall establish and submit to the congressional defense committees procedures for complying with the requirements of subsection (a) consistent with the national security of the United States and the protection of operational integrity.

(2) The congressional defense committees shall ensure that committee procedures designed to protect from unauthorized disclosure classified information relating to national security of the United States are sufficient to protect the information that is submitted to the committees pursuant to this section.

(c) BRIEFING REQUIREMENT.—The Secretary of Defense shall periodically brief the congressional defense committees on Department of Defense personnel and equipment assigned to sensitive military operations.

(d) SENSITIVE MILITARY OPERATION DEFINED.—The term “sensitive military operation” means a lethal operation or capture operation conducted by the armed forces outside the United States and outside a theater of major hostilities pursuant to—

(1) the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note); or

(2) any other authority except—

(A) a declaration of war; or

(B) a specific statutory authorization for the use of force other than the authorization referred to in paragraph (1).

(e) EXCEPTION.—The notification requirement under subsection (a) shall not apply with respect to a sensitive military operation executed within the territory of Afghanistan pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note).

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to provide any new authority or to alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.), the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note), or any requirement under the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(Added Pub. L. 113-66, div. A, title X, §1041(a)(1), Dec. 26, 2013, 127 Stat. 856.)

#### REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsecs. (a) and (f), is act July 26, 1947, ch. 343, 61 Stat. 495, which is classified principally to chapter 44 (§3001 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The National Defense Authorization Act for Fiscal Year 2014, referred to in subsec. (a), is Pub. L. 113-66, Dec. 26, 2013, 127 Stat. 672. For complete classification of this Act to the Code, see Tables.

The War Powers Resolution, referred to in subsec. (f), is Pub. L. 93-148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

#### EFFECTIVE DATE

Pub. L. 113-66, div. A, title X, §1041(b), Dec. 26, 2013, 127 Stat. 857, provided that: “Section 130f of title 10, United States Code, as added by subsection (a), shall apply with respect to any sensitive military operation (as defined in subsection (d) of such section) executed on or after the date of the enactment of this Act [Dec. 26, 2013].”

#### DEADLINE FOR SUBMITTAL OF PROCEDURES

Pub. L. 113-66, div. A, title X, §1041(c), Dec. 26, 2013, 127 Stat. 857, provided that: “The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the procedures required under section 130f(b) of title 10, United States Code, as added by subsection (a), by not later than 60 days after the date of the enactment of this Act [Dec. 26, 2013].”

### CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

Sec.	
131.	Office of the Secretary of Defense.
132.	Deputy Secretary of Defense.
132a.	Deputy Chief Management Officer.
133.	Under Secretary of Defense for Acquisition, Technology, and Logistics.
[133a.]	Repealed.]
[133b.]	Repealed.]
134.	Under Secretary of Defense for Policy.
[134a, 134b.]	Repealed.]
135.	Under Secretary of Defense (Comptroller).
136.	Under Secretary of Defense for Personnel and Readiness.
[136a.]	Repealed.]
137.	Under Secretary of Defense for Intelligence.
137a.	Principal Deputy Under Secretaries of Defense.
138.	Assistant Secretaries of Defense.
138a.	Assistant Secretary of Defense for Logistics and Materiel Readiness.