2006—Subsec. (e). Pub. L. 109–163, § 687(c)(8)(A), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows:

''(1) A person who voluntarily terminates service before the end of the period of obligated service required under an agreement entered into under subsection (b) shall refund to the United States an amount determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for financial assistance and otherwise to achieve the goals set forth in section 2200(a) of this title.

''(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

''(3) The Secretary of Defense may waive, in whole or in part, a refund required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.''

Subsecs. (f), (g). Pub. L. 109–163, § 687(c)(8)(B), (C), redesignated subsec. (g) as (f) and struck out heading and text of former subsec. (f). Text read as follows: ''A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under subsection (e).''

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

§ 2200b. Grant program

(a) AUTHORITY.—The Secretary of Defense may provide grants of financial assistance to institutions of higher education to support the establishment, improvement, or administration of programs of education in information assurance disciplines referred to in section 2200(a) of this title.

(b) PURPOSES.—The proceeds of grants under this section may be used by an institution of higher education for the following purposes:

(1) Faculty development.
(2) Curriculum development.
(3) Laboratory improvements.
(4) Faculty research in information security.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–235.)

§ 2200c. Centers of Academic Excellence in Information Assurance Education

In the selection of a recipient for the award of a scholarship or grant under this chapter, consideration shall be given to whether—

(1) in the case of a scholarship, the institution at which the recipient pursues a degree is a Center of Academic Excellence in Information Assurance Education; and

(2) in the case of a grant, the recipient is a Center of Academic Excellence in Information Assurance Education.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

§ 2200d. Regulations

The Secretary of Defense shall prescribe regulations for the administration of this chapter.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

§ 2200e. Definitions

In this chapter:

(1) The term ''information assurance'' includes the following:

(A) Computer security.
(B) Network security.
(C) Any other information technology that the Secretary of Defense considers related to information assurance.

(2) The term ''institution of higher education'' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) The term ''Center of Academic Excellence in Information Assurance Education'' means an institution of higher education that is designated by the Director of the National Security Agency as a Center of Academic Excellence in Information Assurance Education.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

§ 2200f. Inapplicability to Coast Guard

This chapter does not apply to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

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.

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AMENDMENTS

2011—Pub. L. 111–383, div. A, title VIII, §861(b), Jan. 7, 2011, 124 Stat. 4292, added item for chapter 149.

2009—Pub. L. 111–84, div. A, title X, §1073(a)(21), Oct. 28, 2009, 123 Stat. 2473, substituted ''2551'' for ''2541'' in item for chapter 152.

2006—Pub. L. 109–364, div. A, title VIII, §816(a)(2), div. B, title XXVIII, §2851(c)(1), Oct. 17, 2006, 120 Stat. 2326, 2495, added items for chapters 144A and 173.

2003—Pub. L. 108–136, div. A, title X, §1045(a)(1), Nov. 24, 2003, 117 Stat. 1612, substituted ''2700'' for ''2701'' in item for chapter 160.

2001—Pub. L. 107–107, div. A, title IX, §911(b), Dec. 28, 2001, 115 Stat. 1196, added item for chapter 135.

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

1996—Pub. L. 104–201, div. A, title XI, §1123(a)(3), Sept. 23, 1996, 110 Stat. 2688, struck out item for chapter 167 ''Defense Mapping Agency''.

Pub. L. 104–106, div. A, title X, §1061(b)(2), Feb. 10, 1996, 110 Stat. 442, struck out item for chapter 171 ''Security and Control of Supplies''.

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

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

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

1991—Pub. L. 102–190, div. A, title VIII, §821(f), title X, §1061(a)(27)(A), Dec. 5, 1991, 105 Stat. 1432, 1474, substituted ''Manufacturing'' for ''Maufacturing'' in item for chapter 149, substituted ''Development of Dual-Use Critical Technologies'' for ''Issue to Armed Forces'' in item for chapter 150, struck out item for chapter 151 ''Issue of Serviceable Material Other Than to Armed Forces'', and added item for chapter 152.

1990—Pub. L. 101–510, div. A, title VIII, §823(b)(1), title XVIII, §1801(a)(2), Nov. 5, 1990, 104 Stat. 1602, 1757, added item for chapter 149, redesignated former item for chapter 149 as item for chapter 150, and added item for chapter 172.

1989—Pub. L. 101–189, div. A, title IX, §931(e)(2), Nov. 29, 1989, 103 Stat. 1535, substituted ''Cooperative Agreements'' for ''Acquisition and Cross-Servicing Agreements'' in item for chapter 138.

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

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

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

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

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

Pub. L. 99–433, title VI, §605(b), Oct. 1, 1986, 100 Stat. 1075a, added item for chapter 144.

1984—Pub. L. 98–525, title XII, §1241(a)(2), Oct. 19, 1984, 98 Stat. 2606, added item for chapter 142.

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

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

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

CHAPTER 131—PLANNING AND COORDINATION

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2228. Office of Corrosion Policy and Oversight.
2229. Strategic policy on prepositioning of materiel and equipment.
2229a. Annual report on prepositioned materiel and equipment.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title VIII, §883(a)(2), Nov. 25, 2015, 129 Stat. 947, which directed amendment of the analysis for ''such chapter'' by striking item 2222 and adding a new item 2222, was executed to the analysis for this chapter by adding item 2222 and striking out former item 2222 ''Defense business systems: architecture, accountability, and modernization'', to reflect the probable intent of Congress.

2014—Pub. L. 113–291, div. A, title X, §1022(a)(2), Dec. 19, 2014, 128 Stat. 3487, added item 2218a.

2011—Pub. L. 112–81, div. A, title VIII, §846(a)(2), Dec. 31, 2011, 125 Stat. 1517, added item 2216a.

Pub. L. 111–383, div. A, title VIII, §805(a)(2), Jan. 7, 2011, 124 Stat. 4259, added item 2223a.

2008—Pub. L. 110–181, div. A, title III, §§352(b), 371(f), Jan. 28, 2008, 122 Stat. 72, 81, added items 2228 and 2229a and struck out former item 2228 ''Military equipment and infrastructure: prevention and mitigation of corrosion''.

2006—Pub. L. 109–364, div. A, title III, §351(b), Oct. 17, 2006, 120 Stat. 2160, added item 2229.

2004—Pub. L. 108–375, div. A, title III, §332(a)(2), title VI, §651(f)(2), Oct. 28, 2004, 118 Stat. 1854, 1972, struck out item 2219 ''Retention of morale, welfare, and recreation funds by military installations: limitation'' and added item 2222.

2002—Pub. L. 107–314, div. A, title X, §§1004(h)(1), 1052(b)(2), 1067(a)(2), Dec. 2, 2002, 116 Stat. 2631, 2649, 2658, struck out item 2222 ''Annual financial management improvement plan'' and added items 2224a and 2228.

2001—Pub. L. 107–107, div. A, title X, §1009(b)(3)(B), Dec. 28, 2001, 115 Stat. 1209, substituted ''Annual'' for ''Biennial'' in item 2222.

2000—Pub. L. 106–398, §1 [[div. A], title VIII, §812(a)(2), title X, §§1006(a)(2), 1008(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, 1654A–247, 1654A–250, added items 2225, 2226, and 2227.

1999—Pub. L. 106–65, div. A, title X, §1043(b), Oct. 5, 1999, 113 Stat. 761, added item 2224.

1998—Pub. L. 105–261, div. A, title III, §331(a)(2), title IX, §§906(f)(1), 911(a)(2), title X, §1008(b), Oct. 17, 1998, 112 Stat. 1968, 2096, 2099, 2117, added item 2212, struck out items 2216a ''Defense Business Operations Fund'' and 2221 ''Fisher House trust funds'', and added item 2223.

1997—Pub. L. 105–85, div. A, title X, §1008(a)(2), Nov. 18, 1997, 111 Stat. 1871, added item 2222.

1996—Pub. L. 104–201, div. A, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2659, redesignated item 2216 ''Defense Business Operations Fund'' as 2216a.

Pub. L. 104–106, div. A, title III, §371(a)(2), title IX, §§912(a)(2), 914(a)(2), Feb. 10, 1996, 110 Stat. 279, 410, 412, added two items 2216 and item 2221.

1994—Pub. L. 103–355, title II, §2454(c)(3)(A), title III, §3061(b), title V, §5001(a)(2), Oct. 13, 1994, 108 Stat. 3326, 3336, 3350, substituted ''Regulations on procurement, production, warehousing, and supply distribution functions'' for ''Obligation of funds: limitation'' in item 2202, struck out item 2212 ''Contracted advisory and assistance services: accounting procedures'', and added item 2220.

Pub. L. 103–337, div. A, title III, §373(b), div. B, title XXVIII, §2804(b)(2), Oct. 5, 1994, 108 Stat. 2736, 3053, substituted ''Reimbursements'' for ''Availability of reimbursements'' in item 2205 and added item 2219.

1993—Pub. L. 103–160, div. A, title XI, §1106(a)(2), Nov. 30, 1993, 107 Stat. 1750, added item 2215.

1992—Pub. L. 102–484, div. A, title X, §1024(a)(2), Oct. 23, 1992, 106 Stat. 2488, added item 2218.

1991—Pub. L. 102–190, div. A, title III, §317(b), Dec. 5, 1991, 105 Stat. 1338, added item 2213.

1990—Pub. L. 101–510, div. A, title XIII, §1331(2), title XIV, §§1482(c)(2), 1484(i)(6), Nov. 5, 1990, 104 Stat. 1673, 1710, 1718, struck out item 2213 ''Cooperative military airlift agreements'', added item 2214, and struck out items 2215 ''Reports on unobligated balances'' and 2216 ''Annual report on budgeting for inflation''.

1988—Pub. L. 100–370, §1(d)(4), July 19, 1988, 102 Stat. 843, added items 2201, 2212, and 2217.

1986—Pub. L. 99–661, div. A, title XIII, §1307(a)(2), Nov. 14, 1986, 100 Stat. 3981, added items 2215 and 2216.

1982—Pub. L. 97–252, title XI, §1125(b), Sept. 8, 1982, 96 Stat. 758, added item 2213.

Pub. L. 97–214, §10(a)(1), July 12, 1982, 96 Stat. 174, struck out item 2212 ''Transmission of annual military construction authorization request''.

1978—Pub. L. 95–356, title VIII, §802(a)(2), Sept. 8, 1978, 92 Stat. 585, added item 2212.

1962—Pub. L. 87–651, title II, §207(b), Sept. 7, 1962, 76 Stat. 523, added items 2203 to 2211.

1958—Pub. L. 85–599, §3(c), Aug. 6, 1958, 72 Stat. 516, struck out item 2201 ''General functions of Secretary of Defense''.

STRATEGIC MANAGEMENT PLAN

Pub. L. 110–181, div. A, title IX, §904(d), (e), Jan. 28, 2008, 122 Stat. 275, as amended by Pub. L. 114–92, div. A, title X, §1079(e), Nov. 25, 2015, 129 Stat. 999, provided that:

''(d) STRATEGIC MANAGEMENT PLAN REQUIRED.—

''(1) REQUIREMENT.—The Secretary of Defense, acting through the Chief Management Officer of the Department of Defense, shall develop a strategic management plan for the Department of Defense.

''(2) MATTERS COVERED.—Such plan shall include, at a minimum, detailed descriptions of—

''(A) performance goals and measures for improving and evaluating the overall efficiency and effectiveness of the business operations of the Department of Defense and achieving an integrated management system for business support areas within the Department of Defense;

''(B) key initiatives to be undertaken by the Department of Defense to achieve the performance goals under subparagraph (A), together with related resource needs;

''(C) procedures to monitor the progress of the Department of Defense in meeting performance goals and measures under subparagraph (A);

''(D) procedures to review and approve plans and budgets for changes in business operations, including any proposed changes to policies, procedures, processes, and systems, to ensure the compatibility of such plans and budgets with the strategic management plan of the Department of Defense; and

''(E) procedures to oversee the development of, and review and approve, all budget requests for defense business systems.

''(e) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of this section and a copy of the strategic management plan required by subsection (d).''

§ 2201. Apportionment of funds: authority for exemption; excepted expenses

(a) EXEMPTION FROM APPORTIONMENT REQUIREMENT.—If the President determines such action to be necessary in the interest of national defense, the President may exempt from the provisions of section 1512 of title 31 appropriations, funds, and contract authorizations available for military functions of the Department of Defense.

(b) AIRBORNE ALERTS.—Upon a determination by the President that such action is necessary, the Secretary of Defense may provide for the cost of an airborne alert as an excepted expense under section 6301(a) and (b)(1)–(3) of title 41.

(c) MEMBERS ON ACTIVE DUTY.—Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 6301(a) and (b)(1)–(3) of title 41.

(d) NOTIFICATION TO CONGRESS.—The Secretary of Defense shall immediately notify Congress of the use of any authority under this section.

(Added Pub. L. 100–370, §1(d)(1)(A), July 19, 1988, 102 Stat. 841; amended Pub. L. 106–65, div. A, title X, §1032(a)(1), Oct. 5, 1999, 113 Stat. 751; Pub. L. 111–350, §5(b)(4), Jan. 4, 2011, 124 Stat. 3842.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, §101(b) [title VIII, §8009], Dec. 19, 1985, 99 Stat. 1185, 1204.

In two instances, the source law to be codified by the bill includes provisions that on their face require that the Department of Defense notify Congress of certain actions. These notification requirements were terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433), which terminated all recurring reporting requirements applicable to the Department of Defense except for those requirements that were specifically exempted in that section. The source law sections are sections 8009(c) and 8005(j) (proviso) of the FY86 defense appropriations Act (Public Law 99–190), enacted December 19, 1985, which would be codified as section 2201 of title 10 (by section 1(d) of the bill) and section 7313(a) of title 10 (by section 1(n) of the bill). In codifying the authorities provided the Department of Defense by these two provisions of law, the committee believes that it is appropriate to reinstate the congressional notification requirements that go with those authorities. These sections were recurring annual appropriation provisions for many years and were made permanent only months before the enactment of the 1986 Reorganization Act. It is the committee's belief that the failure to exempt these provisions from the general reports termination provision was inadvertent and notes that the notification provisions had in fact previously applied to the Department of Defense for many years. The action of the committee restores the status quo as it existed before the Reorganization Act.

PRIOR PROVISIONS

A prior section 2201, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, prescribed the general functions of the Secretary of Defense, prior to repeal by Pub. L. 85–599, §3(c), Aug. 6, 1958, 72 Stat. 516. See section 113 of this title.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350, §5(b)(4)(A), substituted ''section 6301(a) and (b)(1)–(3) of title 41'' for ''section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))''.

Subsec. (c). Pub. L. 111–350, §5(b)(4)(B), substituted ''section 6301(a) and (b)(1)–(3) of title 41'' for ''section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))''.

1999—Subsec. (d). Pub. L. 106–65 substituted ''Defense'' for ''Defense—'', struck out par. (1) designation, substituted ''this section.'' for ''this section; and'', and struck out par. (2) which read as follows: ''shall submit monthly reports to Congress on the estimated obligations incurred pursuant to subsections (b) and (c).''

§ 2202. Regulations on procurement, production, warehousing, and supply distribution functions

The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120; Pub. L. 100–180, div. A, title XII, §1202, Dec. 4, 1987, 101 Stat. 1153; Pub. L. 103–355, title III, §3061(a), Oct. 13, 1994, 108 Stat. 3336.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2202	41:162.	July 10, 1952, ch. 630, §638, 66 Stat. 537.

The words ''an officer or agency * * * may * * * only'' are substituted for the words ''no officer or agency * * * shall * * * except''. The word ''of'', before the words ''the Department'', is substituted for the words ''in or under''. The words ''under regulations prescribed'' are substituted for the words ''in accordance with regulations issued''. The words ''after the effective date of this section'' and 41:162(b) are omitted as executed. The words ''or equipment'' are omitted as covered by the definition of ''supplies'' in section 101(26) of this title.

AMENDMENTS

1994—Pub. L. 103–355 amended heading and text generally. Prior to amendment, text read as follows:

''(a) Notwithstanding any other provision of law, an officer or agency of the Department of Defense may obligate funds for procuring, producing, warehousing, or distributing supplies, or for related functions of supply management, only under regulations prescribed by the Secretary of Defense. The purpose of this section is to achieve the efficient, economical, and practical operation of an integrated supply system to meet the needs of the military departments without duplicate or overlapping operations or functions.

''(b) Except as otherwise provided by law, the availability for obligation of funds appropriated for any program, project, or activity of the Department of Defense expires at the end of the three-year period beginning on the date that such funds initially become available for obligation unless before the end of such period the Secretary of Defense enters into a contract for such program, project, or activity.''

1987—Pub. L. 100–180 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

§ 2203. Budget estimates

To account for, and report, the cost of performance of readily identifiable functional programs and activities, with segregation of operating and capital programs, budget estimates of the Department of Defense shall be prepared, presented, and justified, where practicable, and authorized programs shall be administered, in such form and manner as the Secretary of Defense, subject to the authority and direction of the President, may prescribe. As far as practicable, budget estimates and authorized programs of the military departments shall be uniform and in readily comparable form. The budget for the Department of Defense submitted to Congress for each fiscal year shall include data projecting the effect of the appropriations requested for materiel readiness requirements. The Secretary of Defense shall provide that the budget justification documents for such budget include information on the number of employees of contractors estimated to be working on contracts of the Department of Defense during the fiscal year for which the budget is submitted. Such information shall be set forth in terms of employee-years or such other measure as will be uniform and readily comparable with civilian personnel of the Department of Defense.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–295, § 1(21), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99–661, div. A, title III, § 311, Nov. 14, 1986, 100 Stat. 3851.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2203	5:172b.	July 26, 1947, ch. 343, § 403; added Aug. 10, 1949, ch. 412, § 11 (5th and 6th pars.), 63 Stat. 586.

The word ''prescribe'' is substituted for the word ''determine''. 5 U.S.C. 172b(b) is omitted as executed.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2203 (last sentence).	10:2203 (note).	July 30, 1977, Pub. L. 95–79, § 812 (last sentence), 91 Stat. 336.

The words ''for fiscal year 1979'' are omitted as executed. The words ''for each fiscal year'' are substituted for ''subsequent fiscal years'' for consistency.

AMENDMENTS

1986—Pub. L. 99–661 inserted provisions that budget justification documents include information on number of employees estimated to be working during the fiscal year, such information to be set forth in terms of employee-years or other measure as is uniform and comparable with civilian personnel of the Department of Defense.

1982—Pub. L. 97–295 inserted provision requiring that the budget for the Department of Defense submitted annually to Congress include data projecting the effect of the appropriations requested for materiel readiness requirements.

PRESIDENTIAL RECOMMENDATIONS RESPECTING MODIFICATIONS IN CRUISE MISSILE PROGRAM

Pub. L. 95–184, title II, § 203, Nov. 15, 1977, 91 Stat. 1382, provided that in authorizing funds under that Act [Pub. L. 95–184], Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in the United States cruise missile programs as the President might recommend to facilitate either negotiation or agreement in arms limitation or reduction talks.

REPORT TO CONGRESSIONAL COMMITTEES ON MATERIAL READINESS REQUIREMENTS FOR ARMED FORCES

Pub. L. 95–79, title VIII, § 812, July 30, 1977, 91 Stat. 336, as amended by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314, directed Secretary of Defense to submit to Congress, not later than February 15, 1978, a report setting forth quantifiable and measurable material readiness requirements for the Armed Forces, including the Reserve components thereof, monthly readiness status of the Armed Forces, including the reserve components thereof, during fiscal year 1977, and any changes in such requirements and status projected for fiscal years 1978 and 1979 and in the five-year defense program, and to inform Congress of any subsequent changes in the aforementioned materiel readiness requirements and the reasons for such changes.

MODIFICATIONS IN UNITED STATES STRATEGIC ARMS PROGRAMS ON RECOMMENDATION OF PRESIDENT

Pub. L. 95–79, title VIII, § 813, July 30, 1977, 91 Stat. 337, provided that in authorizing procurement under section 101 of that Act and research and development under section 201 of that Act, Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in United States strategic arms programs as the President might recommend to facilitate either negotiation or agreement in the Strategic Arms Limitation Talks.

§ 2204. Obligation of appropriations

To prevent overdrafts and deficiencies in the fiscal year for which appropriations are made, appropriations made to the Department of Defense or to a military department, and reimbursements thereto, are available for obligation and expenditure only under scheduled rates of obligation, or changes thereto, that have been approved by the Secretary of Defense. This section does not prohibit the Department of Defense from incurring a deficiency that it has been authorized by law to incur.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2204	5:172c.	July 26, 1947, ch. 343, § 404; added Aug. 10, 1949, ch. 412, § 11 (7th par.), 63 Stat. 587.

The words ''on and after the beginning of the next fiscal year following August 10, 1949,'' are omitted as executed. The last sentence is substituted for the proviso in 5 U.S.C. 172c.

§ 2205. Reimbursements

(a) AVAILABILITY OF REIMBURSEMENTS.—Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under sections 1535 and 1536 of title 31, or

other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury.

(b) FIXED RATE FOR REIMBURSEMENT FOR CERTAIN SERVICES.—The Secretary of Defense and the Secretaries of the military departments may charge a fixed rate for reimbursement of the costs of providing planning, supervision, administrative, or overhead services incident to any construction, maintenance, or repair project to real property or for providing facility services, irrespective of the appropriation financing the project or facility services.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 96–513, title V, § 511(71), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–258, § 3(b)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103–337, div. B, title XXVIII, § 2804(a), (b)(1), Oct. 5, 1994, 108 Stat. 3053.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2205	5:172g.	July 26, 1947, ch. 343, § 408; added Aug. 10, 1949, ch. 412, § 11 (23d par.), 63 Stat. 590.

5 U.S.C. 172g is restated to reflect more clearly its purpose to authorize the Department of Defense to operate as an integrated department by permitting supplies to be furnished and services to be rendered within and among agencies of the Department of Defense and provide that reimbursements therefor be credited to authorized accounts and be available for the same purpose and period as the accounts so credited. (See Senate Report No. 366, 81st Congress, pp. 23, 24.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Reimbursements'' for ''Availability of reimbursements'' as section catchline, designated existing provisions as subsec. (a) and inserted subsec. heading, and added subsec. (b).

1982—Pub. L. 97–258 substituted ''sections 1535 and 1536 of title 31'' for ''the Act of March 4, 1915 (31 U.S.C. 686)''.

1980—Pub. L. 96–513 substituted ''the Act of March 4, 1915 (31 U.S.C. 686)'' for ''section 686 of title 31''.

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.

§ 2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense

As far as authorized by the Secretary of Defense, a disbursing official of a military department may, out of available advances, make disbursements to cover obligations in connection with any function, power, or duty of another department or agency of the Department of Defense and charge those disbursements on vouchers, to the appropriate appropriation of that department or agency. Disbursements so made shall be adjusted in settling the accounts of the disbursing official.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2206	5:172h. 5:171n(a) (as applicable to 5:172h).	July 26, 1947, ch. 343, § 409; added Aug. 10, 1949, ch. 412, § 11 (24th par.), 63 Stat. 590. July 26, 1947, ch. 343, § 308(a) (as applicable to § 409), 61 Stat. 509.

The word ''agency'' is substituted for the word ''organization''. The last sentence is substituted for the proviso in 5 U.S.C. 172h.

AMENDMENTS

1982—Pub. L. 97–258 substituted ''official'' for ''officer'' wherever appearing.

§ 2207. Expenditure of appropriations: limitation

(a) Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(b) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 104–106, div. A, title VIII, § 801, Feb. 10, 1996, 110 Stat. 389; Pub. L. 111–350, § 5(b)(5), Jan. 4, 2011, 124 Stat. 3842.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2207	5:174d.	June 30, 1954, ch. 432, § 719, 68 Stat. 353.

The following substitutions are made: ''spent'' for ''expended''; ''United States'' for ''Government''; ''if a

contract is terminated under clause (1)'' for ''that in the event any such contract is so terminated''; and ''has . . . that it would have had if'' for ''shall be entitled . . . to pursue . . . as it could pursue in the event of''. The word ''official'' is inserted for clarity. The words ''entered into after June 30, 1954'' are omitted as executed.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350 substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))''.

1996—Pub. L. 104–106 designated existing provisions as subsec. (a) and added subsec. (b).

§ 2208. Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to—

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of—

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment; and

(2) services or work performed;

including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 4543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if—

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than $250,000:

(A) An unspecified minor military construction project under section 2805(c) of this title.

(B) Automatic data processing equipment or software.

(C) Any other equipment.

(D) Any other capital improvement.

(*l*)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

(A) The reasons for the advance billing.

(B) An analysis of the effects of the advance billing on military readiness.

(C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)—

(A) during a period of war or national emergency; or

(B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed $1,000,000,000.

(4) In this subsection:

(A) The term ''advance billing'', with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term ''customer'' means a requisitioning component or agency.

(m) CAPITAL ASSET SUBACCOUNTS.—Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) SEPARATE ACCOUNTING, REPORTING, AND AUDITING OF FUNDS AND ACTIVITIES.—The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(*o*) CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH THE FUND.—(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) PROCEDURES FOR ACCUMULATION OF FUNDS.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) ANNUAL REPORTS AND BUDGET.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(r) NOTIFICATION OF TRANSFERS.—(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

(s) LIMITATION ON CESSATION OR SUSPENSION OF DISTRIBUTION OF FUNDS FOR CERTAIN WORKLOAD.—(1) Except as provided in paragraph (2), the Secretary of Defense or the Secretary of a military department is not authorized—

(A) to suspend the employment of indirectly funded Government employees of the Department of Defense who are paid for out of working-capital funds by ceasing or suspending the distribution of such funds; or

(B) to cease or suspend the distribution of funds from a working-capital fund for a current project undertaken to carry out the functions or activities of the Department.

(2) Paragraph (1) shall not apply with respect to a working-capital fund if—

(A) the working-capital fund is insolvent; or

(B) there are insufficient funds in the working-capital fund to pay labor costs for the current project concerned.

(3) The Secretary of Defense or the Secretary of a military department may waive the limitation in paragraph (1) if such Secretary determines that the waiver is in the national security interests of the United States.

(4) This subsection shall not be construed to provide for the exclusion of any particular category of employees of the Department of Defense from furlough due to absence of or inadequate funding.

(t) MARKET FLUCTUATION ACCOUNT.—(1) From amounts available for Working Capital Fund, Defense, the Secretary shall reserve up to $1,000,000,000, to remain available without fiscal year limitation, for petroleum market price fluctuations. Such amounts may only be disbursed if the Secretary determines such a disbursement is necessary to absorb volatile market changes in fuel prices without affecting the standard price charged for fuel.

(2) A budget request for the anticipated costs of fuel may not take into account the availability of funds reserved under paragraph (1).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 521; amended Pub. L. 97–295, § 1(22), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title XII, § 1204(a), Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title III, § 305, Oct. 19, 1984, 98 Stat. 2513; Pub. L. 100–26, § 7(d)(2), Apr. 21, 1987, 101 Stat. 280; Pub. L. 101–510, div. A, title VIII, § 801, title XIII, § 1301(6), Nov. 5, 1990, 104 Stat. 1588, 1668; Pub. L. 102–172, title VIII, § 8137, Nov. 26, 1991, 105 Stat. 1212; Pub. L. 102–484, div. A, title III, § 374, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103–160, div. A, title I, § 158(b), Nov. 30, 1993, 107 Stat. 1582; Pub. L. 105–85, div. A, title X, § 1011(a), (b), Nov. 18, 1997, 111 Stat. 1873; Pub. L. 105–261, div. A, title X, §§ 1007(e)(1), 1008(a), Oct. 17, 1998, 112 Stat. 2115; Pub. L. 105–262, title VIII, § 8146(d)(1), Oct. 17, 1998, 112 Stat. 2340; Pub. L. 106–65, div. A, title III, §§ 331(a)(1), 332, title X, § 1066(a)(16), Oct. 5, 1999, 113 Stat. 566, 567, 771; Pub. L. 106–398, § 1 [[div. A], title III, § 341(f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64; Pub. L. 108–375, div. A, title X, § 1009, Oct. 28, 2004, 118 Stat. 2037; Pub. L. 111–383, div. A, title XIV, § 1403, Jan. 7, 2011, 124 Stat. 4410; Pub. L. 112–81, div. B, title XXVIII, § 2802(c)(1), Dec. 31, 2011, 125 Stat. 1684; Pub. L. 114–92, div. A, title XIV, §§ 1421, 1422, Nov. 25, 2015, 129 Stat. 1083, 1084.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2208(a)	5:172d(a).	July 26, 1947, ch. 343, § 405; added Aug. 10, 1949, ch. 412, § 11 (8th through 15th pars.), 63 Stat. 587.
2208(b)	5:172d(b).	
2208(c)	5:172d(c) (less 2d sentence).	
2208(d)	5:172d(d).	
2208(e)	5:172d(e)	
2208(f)	5:172d(f).	
2208(g)	5:172d(h).	
2208(h)	5:172d(g).	
2208(i)	5:172d(c) (2d sentence).	

In subsection (a)(1), (c)(1), (f), (g), and (h), the words ''stores, . . . materials, and equipment'' are omitted as covered by the word ''supplies'', as defined in section 101(26) of title 10.

In subsection (c), the word ''used'' is substituted for the word ''consumed''. The words ''and costs of using equipment'' are inserted to reflect an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, February 2, 1960.

In subsection (d), the first sentence (less 1st 18 words) of 5 U.S.C. 172d(d) is omitted as executed.

In subsection (h), the following substitutions are made: ''prescribe'' for ''issue''; and ''persons'' for ''purchasers or users''. The word ''shall'' is substituted for the words ''is authorized to'' in the first sentence and for the word ''may'' in the last sentence to reflect the opinion of the Assistant General Counsel (Fiscal Matters), October 2, 1959, that the source law requires the action in question.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2208(h) (3d sentence).	10:2208 (note).	Dec. 21, 1979, Pub. L. 96–154, § 767, 93 Stat. 1163.

The word ''hereafter'' is omitted as executed.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (m) to (q) of this section were contained in section 2216a of this title prior to repeal by Pub. L. 105–261, § 1008(b).

AMENDMENTS

2015—Subsec. (s). Pub. L. 114–92, § 1421, added subsec. (s).

Subsec. (t). Pub. L. 114–92, § 1422, added subsec. (t).

2011—Subsec. (c)(1). Pub. L. 111–383, § 1403(1), inserted before semicolon '', including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability,

maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment''.

Subsec. (k)(2). Pub. L. 111–383, §1403(2), substituted ''$250,000'' for ''$100,000'' in introductory provisions.

Subsec. (k)(2)(A). Pub. L. 112–81, §2802(c)(1)(A), substituted ''section 2805(c)'' for ''section 2805(c)(1)''.

Subsec. (*o*)(2)(A). Pub. L. 112–81, §2802(c)(1)(B), substituted ''section 2805(c)'' for ''section 2805(c)(1)''.

2004—Subsec. (r). Pub. L. 108–375 added subsec. (r).

2000—Subsec. (j)(1). Pub. L. 106–398 substituted ''contract, and the solicitation'' for ''contract; and'' at end of subpar. (A) and all that follows through ''(B) the solicitation'', substituted ''; or'' for period after ''private firms'', and added a new subpar. (B).

1999—Subsec. (j). Pub. L. 106–65, §§331(a)(1), 332, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted '', remanufacturing, and engineering'' for ''or remanufacturing'' in introductory provisions, inserted ''or a subcontract under a Department of Defense contract'' before the semicolon in subpar. (A), substituted ''solicitation for the contract or subcontract'' for ''Department of Defense solicitation for such contract'' in subpar. (B), and added par. (2).

Subsec. (*l*)(2)(A). Pub. L. 106–65, §1066(a)(16), inserted ''of'' after ''during a period''.

1998—Subsec. (*l*)(3), (4). Pub. L. 105–261, §1007(e)(1), and Pub. L. 105–262 amended subsec. (*l*) identically, adding par. (3) and redesignating former par. (3) as (4).

Subsecs. (m) to (q). Pub. L. 105–261, §1008(a), added subsecs. (m) to (q).

1997—Subsec. (k). Pub. L. 105–85, §1011(a), added subsec. (k) and struck out former subsec. (k) which read as follows: ''The Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.''

Subsec. (*l*). Pub. L. 105–85, §1011(b), added subsec. (*l*).

1993—Subsec. (i). Pub. L. 103–160 amended subsec. (i) generally. Prior to amendment, subsec. (i) required that regulations under subsec. (h) authorize working-capital funded Army industrial facilities to sell manufactured articles and services to persons outside the Department of Defense in specified cases.

1992—Subsec. (j). Pub. L. 102–484 substituted ''The Secretary of a military department may authorize a working capital funded industrial facility of that department'' for ''The Secretary of the Army may authorize a working capital funded Army industrial facility''.

1991—Subsecs. (j), (k). Pub. L. 102–172 added subsec. (j) and redesignated former subsec. (j) as (k).

1990—Subsec. (i)(1). Pub. L. 101–510, §801, added par. (1), redesignated par. (3) as (2), and struck out former pars. (1) and (2) which read as follows:

''(1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if—

''(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

''(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

''(C) the article is not readily available from a commercial source in the United States; and

''(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

''(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser.''

Subsec. (k). Pub. L. 101–510, §1301(6), struck out subsec. (k) which read as follows: ''Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.''

1987—Subsec. (i)(3). Pub. L. 100–26 inserted ''(22 U.S.C. 2778)'' after ''Arms Export Control Act''.

1984—Subsecs. (i) to (k). Pub. L. 98–525 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1983—Subsec. (d). Pub. L. 98–94 substituted ''In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law'' for ''If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose''.

1982—Subsec. (h). Pub. L. 97–295 inserted provision that supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title X, §1007(e)(2), Oct. 17, 1998, 112 Stat. 2115, and Pub. L. 105–262, title VIII, §8146(d)(2), Oct. 17, 1998, 112 Stat. 2340, provided that: ''Section 2208(*l*)(3) of such title, as added by paragraph (1), applies to fiscal years after fiscal year 1999.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title XII, §1204(b), Sept. 24, 1983, 97 Stat. 683, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to appropriations for fiscal years beginning after September 30, 1984.''

PILOT PROGRAM FOR ACQUISITION OF COMMERCIAL SATELLITE COMMUNICATION SERVICES

Pub. L. 113–291, div. A, title XVI, §1605, Dec. 19, 2014, 128 Stat. 3623, as amended by Pub. L. 114–92, div. A, title XVI, §1612, Nov. 25, 2015, 129 Stat. 1103, provided that:

''(a) PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense shall develop and carry out a pilot program to effectively and efficiently acquire commercial satellite communications services to meet the requirements of the military departments, Defense Agencies, and combatant commanders.

''(2) FUNDING.—Of the funds authorized to be appropriated for any of fiscal years 2015 through 2020 for the Department of Defense for the acquisition of satellite communications, not more than $50,000,000 may be obligated or expended for such pilot program during such a fiscal year.

''(3) CERTAIN AUTHORITIES.—In carrying out the pilot program under paragraph (1), the Secretary may not use the authorities provided in sections 2208(k) and 2210(b) of title 10, United States Code.

''(4) METHODS.—In carrying out the pilot program under paragraph (1), the Secretary may use a variety of methods authorized by law to effectively and efficiently acquire commercial satellite communications services, including by carrying out multiple pathfinder activities under the pilot program.

''(b) GOALS.—In developing and carrying out the pilot program under subsection (a)(1), the Secretary shall ensure that the pilot program—

''(1) provides a cost-effective and strategic method to acquire commercial satellite communications services;

''(2) incentivizes private-sector participation and investment in technologies to meet future require-

ments of the Department of Defense with respect to commercial satellite communications services;

''(3) takes into account the potential for a surge or other change in the demand of the Department for commercial satellite communications services in response to global or regional events;

''(4) ensures the ability of the Secretary to control and account for the cost of programs and work performed under the pilot program; and

''(5) demonstrates the potential to achieve order-of-magnitude improvements in satellite communications capability.

''(c) DURATION.—The pilot program under subsection (a)(1) shall terminate on October 1, 2020.

''(d) REPORTS AND BRIEFINGS.—

''(1) INITIAL REPORT.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

''(A) a plan and schedule to carry out the pilot program under subsection (a)(1); and

''(B) a description of the appropriate metrics established by the Secretary to meet the goals of the pilot program.

''(2) BRIEFING.—At the same time as the President submits to Congress the budget pursuant to section 1105 of title 31, for each of fiscal years 2017 through 2020, the Secretary shall provide to the congressional defense committees briefing on the pilot program.

''(3) FINAL REPORT.—Not later than December 1, 2020, the Secretary shall submit to the congressional defense committees a report on the pilot program under subsection (a)(1). The report shall include—

''(A) an assessment of the pilot program and whether the pilot program effectively and efficiently acquires commercial satellite communications services to meet the requirements of the military departments, Defense Agencies, and combatant commanders; and

''(B) a description of—

''(i) any contract entered into under the pilot program, the funding used under such contract, and the efficiencies realized under such contract;

''(ii) the advantages and challenges of using the pilot program;

''(iii) any additional authorities the Secretary determines necessary to acquire commercial satellite communications services as described in subsection (a)(1); and

''(iv) any recommendations of the Secretary with respect to improving or extending the pilot program.''

ADVANCE BILLING FOR FISCAL YEAR 2006

Pub. L. 109–234, title I, §1206, June 15, 2006, 120 Stat. 430, provided in part that: ''Notwithstanding 10 U.S.C. 2208(*l*), the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in fiscal year 2006 shall not exceed $1,200,000,000''.

ADVANCE BILLING FOR FISCAL YEAR 2005

Pub. L. 109–13, div. A, title I, §1005, May 11, 2005, 119 Stat. 243, provided that for fiscal year 2005, the limitation under subsec. (*l*)(3) of this section on the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in a fiscal year would be applied by substituting ''$1,500,000,000'' for ''$1,000,000,000''.

OVERSIGHT OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103–337, div. A, title III, §311(b)–(e), Oct. 5, 1994, 108 Stat. 2708, which related to purchase from other sources, limitation on inclusion of certain costs in DBOF charges, procedures for accumulation of funds, and annual reports and budget, was repealed and restated in section 2216a(d)(2)(B), (f) to (h)(3) of this title by Pub. L. 104–106, div. A, title III, §371(a)(1), (b)(1), Feb. 10, 1996, 110 Stat. 277–279.

Pub. L. 103–337, div. A, title III, §311(f), (g), Oct. 5, 1994, 108 Stat. 2709, required Secretary of Defense to submit to congressional defense committees, not later than Feb. 1, 1995, a report on progress made in implementing the Defense Business Operations Fund Improvement Plan, dated September 1993, and required Comptroller General to monitor and evaluate the Department of Defense implementation of the Plan and to report to congressional defense committees not later than Mar. 1, 1995.

CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103–160, div. A, title III, §333(a), (b), Nov. 30, 1993, 107 Stat. 1621, which provided that charges for goods and services provided through Defense Business Operations Fund were to include amounts necessary to recover full costs of development, implementation, operation, and maintenance of systems supporting wholesale supply and maintenance activities of Department of Defense and use of military personnel in provision of goods and services, and were not to include amounts necessary to recover costs of military construction project other than minor construction project financed by Defense Business Operations Fund pursuant to section 2805(c)(1) of this title, and which required full cost of operation of Defense Finance Accounting Service to be financed within Defense Business Operations Fund through charges for goods and services provided through Fund, was repealed and restated in section 2216a(d)(1)(A), (C), (2)(A) of this title by Pub. L. 104–106, div. A, title III, §371(a)(1), (b)(2), Feb. 10, 1996, 110 Stat. 277–279.

CAPITAL ASSET SUBACCOUNT

Pub. L. 102–484, div. A, title III, §342, Oct. 23, 1992, 106 Stat. 2376, as amended by Pub. L. 103–160, div. A, title III, §333(c), Nov. 30, 1993, 107 Stat. 1622, which provided that charges for goods and services provided through the Defense Business Operations Fund include amounts for depreciation of capital assets which were to be credited to a separate capital asset subaccount in the Fund, authorized Secretary of Defense to award contracts for capital assets of the Fund in advance of availability of funds in the subaccount, required Secretary to submit annual reports to congressional defense committees, authorized appropriations to the Fund for fiscal years 1993 and 1994, and defined terms, was repealed and restated in section 2216a(d)(1)(B), (e), (h)(4), and (i) of this title by Pub. L. 104–106, div. A, title III, §371(a)(1), (b)(3), Feb. 10, 1996, 110 Stat. 277–279.

LIMITATIONS ON USE OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102–190, div. A, title III, §316, Dec. 5, 1991, 105 Stat. 1338, as amended by Pub. L. 102–484, div. A, title III, §341, Oct. 23, 1992, 106 Stat. 2374; Pub. L. 103–160, div. A, title III, §§331, 332, Nov. 30, 1993, 107 Stat. 1620; Pub. L. 103–337, div. A, title III, §311(a), Oct. 5, 1994, 108 Stat. 2708, which authorized Secretary of Defense to manage performance of certain working-capital funds established under this section, the Defense Finance and Accounting Service, the Defense Industrial Plan Equipment Center, the Defense Commissary Agency, the Defense Technical Information Service, the Defense Reutilization and Marketing Service, and certain activities funded through use of working-capital fund established under this section, directed Secretary to maintain separate accounting, reporting, and auditing of such funds and activities, required Secretary to submit to congressional defense committees, by not later than 30 days after Nov. 30, 1993, a comprehensive management plan and, by not later than Feb. 1, 1994, a progress report on plan's implementation, and directed Comptroller General to monitor and evaluate the plan and submit to congressional defense committees, not later than Mar. 1, 1994, a report, was repealed and restated in

section 2216a(a)–(c) of this title by Pub. L. 104–106, div. A, title III, §371(a)(1), (b)(4), Feb. 10, 1996, 110 Stat. 277, 279.

DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102–172, title VIII, §8121, Nov. 26, 1991, 105 Stat. 1204, which established on the books of the Treasury a fund entitled the ''Defense Business Operations Fund'' to be operated as a working capital fund under the provisions of this section and to include certain existing organizations including the Defense Finance and Accounting Service, the Defense Commissary Agency, the Defense Technical Information Center, the Defense Reutilization and Marketing Service, and the Defense Industrial Plant Equipment Service, directed transfer of assets and balances of those organizations to the Fund, provided for budgeting and accounting of charges for supplies and services provided by the Fund, and directed that capital asset charges collected be credited to a subaccount of the Fund, was repealed by Pub. L. 104–106, div. A, title III, §371(b)(5), Feb. 10, 1996, 110 Stat. 280.

SALE OF INVENTORIES FOR PERFORMANCE OF CONTRACTS WITH DEFENSE DEPARTMENT

Pub. L. 96–154, title VII, §767, Dec. 21, 1979, 93 Stat. 1163, which had provided that supplies available in inventories financed by working capital funds established pursuant to this section could, on and after Dec. 21, 1979, be sold to contractors for use in performing contracts with the Department of Defense, was repealed and restated in subsec. (h) of this section by Pub. L. 97–295, §§1(22), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1315.

§ 2209. Management funds

(a) To conduct economically and efficiently the operations of the Department of Defense that are financed by at least two appropriations but whose costs cannot be immediately distributed and charged to those appropriations, there is the Army Management Fund, the Navy Management Fund, and the Air Force Management Fund, each within its respective department and under the direction of the Secretary of that department. Each such fund shall consist of a corpus of $1,000,000 and such amounts as may be appropriated thereto from time to time. An account for an operation that is to be financed by such a fund may be established only with the approval of the Secretary of Defense.

(b) Under such regulations as the Secretary of Defense may prescribe, expenditures may be made from a management fund for material (other than for stock), personal services, and services under contract. However, obligation may not be incurred against that fund if it is not chargeable to funds available under an appropriation of the department concerned or funds of another department or agency of the Department of Defense. The fund shall be promptly reimbursed from those funds for expenditures made from it.

(c) Notwithstanding any other provision of law, advances, by check or warrant, or reimbursements, may be made from available appropriations to a management fund on the basis of the estimated cost of a project. As adequate data becomes available, the estimated cost shall be revised and necessary adjustments made. Final adjustment shall be made with the appropriate funds for the fiscal year in which the advances or reimbursements are made. Except as otherwise provided by law, amounts advanced to management funds are available for obligation only during the fiscal year in which they are advanced.

(Added Pub. L. 87–651, title II, §207(a), Sept. 7, 1962, 76 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2209(a)	5:172e(a), (b).	July 3, 1942, ch. 484; restated Aug. 10, 1949, ch. 412, §11 (16th through 19th pars.), 63 Stat. 588.
2209(b)	5:172e(c) (last sentence).	
2209(c)	5:172e(c) (less last sentence).	
	5:172e(d).	

In subsection (a), the second sentence is substituted for the second sentence of 5 U.S.C. 172e(a) and the first sentence (less last 21 words) of 5 U.S.C. 172e(b) which are omitted as unnecessary.

In subsection (c), the 13th through 33d words of 5 U.S.C. 172e(d) are omitted as surplusage.

§ 2210. Proceeds of sales of supplies: credit to appropriations

(a)(1) A working-capital fund established pursuant to section 2208 of this title may retain so much of the proceeds of disposals of property referred to in paragraph (2) as is necessary to recover the expenses incurred by the fund in disposing of such property. Proceeds from the sale or disposal of such property in excess of amounts necessary to recover the expenses may be credited to current applicable appropriations of the Department of Defense.

(2) Paragraph (1) applies to disposals of supplies, material, equipment, and other personal property that were not financed by stock funds established under section 2208 of this title.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of Defense, with the approval of the President, may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year.

(Added Pub. L. 87–651, title II, §207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96–513, title V, §511(72), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 105–261, div. A, title X, §1009, Oct. 17, 1998, 112 Stat. 2117.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2210(a)	5:172d–1 (less proviso).	Aug. 1, 1953, ch. 305, §645, 67 Stat. 357.
2210(b)	5:172d–1 (proviso).	

In section (a), the words ''proceeds of the disposal'' are substituted for the words ''moneys arising from the disposition''.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–261 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies that are not financed by stock funds established under section 2208 of this title.''

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.

§ 2211. Reimbursement for equipment, material, or services furnished members of the United Nations

Amounts paid by members of the United Nations for equipment or materials furnished, or services performed, in joint military operations shall be credited to appropriate appropriations of the Department of Defense in the manner authorized by section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d)).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96–513, title V, § 511(73), Dec. 12, 1980, 94 Stat. 2926.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2211	5:171m–1.	Jan. 6, 1951, ch. 1213, § 703, 64 Stat. 1235.

The reference to section 2392(d) of title 22 is substituted for the reference to section 1574(b) of that title to reflect section 542(b) of the Act of August 26, 1954, ch. 937 (68 Stat. 861) and section 642(a)(2) and (b) of the Act of September 4, 1961, Pub. L. 87–195 (75 Stat. 460).

AMENDMENTS

1980—Pub. L. 96–513 substituted ''section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d))'' for ''section 2392(d) of title 22''.

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.

§ 2212. Obligations for contract services: reporting in budget object classes

(a) LIMITATION ON REPORTING IN MISCELLANEOUS SERVICES OBJECT CLASS.—The Secretary of Defense shall ensure that, in reporting to the Office of Management and Budget (pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates)) obligations of the Department of Defense for any period of time for contract services, no more than 15 percent of the total amount of obligations so reported is reported in the miscellaneous services object class.

(b) DEFINITION OF REPORTING CATEGORIES FOR ADVISORY AND ASSISTANCE SERVICES.—In carrying out section 1105(g) of title 31 for the Department of Defense (and in determining what services are to be reported to the Office of Management and Budget in the advisory and assistance services object class), the Secretary of Defense shall apply to the terms used for the definition of ''advisory and assistance services'' in paragraph (2)(A) of that section the following meanings (subject to the authorized exemptions):

(1) MANAGEMENT AND PROFESSIONAL SUPPORT SERVICES.—The term ''management and professional support services'' (used in clause (i) of section 1105(g)(2)(A) of title 31) means services that provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems. Those services—

(A) are closely related to the basic responsibilities and mission of the using organization; and

(B) include efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative or technical support for conferences and training programs.

(2) STUDIES, ANALYSES, AND EVALUATIONS.—The term ''studies, analyses, and evaluations'' (used in clause (ii) of section 1105(g)(2)(A) of title 31) means services that provide organized, analytic assessments to understand or evaluate complex issues to improve policy development, decisionmaking, management, or administration and that result in documents containing data or leading to conclusions or recommendations. Those services may include databases, models, methodologies, and related software created in support of a study, analysis, or evaluation.

(3) ENGINEERING AND TECHNICAL SERVICES.—The term ''engineering and technical services'' (used in clause (iii) of section 1105(g)(2)(A) of title 31) means services that take the form of advice, assistance, training, or hands-on training necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness.

(c) PROPER CLASSIFICATION OF ADVISORY AND ASSISTANCE SERVICES.—Before the submission to the Office of Management and Budget of the proposed Department of Defense budget for inclusion in the President's budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall conduct a review of Department of Defense services expected to be performed as contract services during the fiscal year for which that budget is to be submitted in order to ensure that those services that are advisory and assistance services (as defined in accordance with subsection (b)) are in fact properly classified, in accordance with that subsection, in the advisory and assistance services object class.

(d) REPORT TO CONGRESS.—The Secretary shall submit to Congress each year, not later than 30 days after the date on which the budget for the next fiscal year is submitted pursuant to section 1105 of title 31, a report containing the information derived from the review under subsection (c).

(e) ASSESSMENT BY COMPTROLLER GENERAL.—(1) The Comptroller General shall conduct a review of the report of the Secretary of Defense under subsection (d) each year and shall—

(A) assess the methodology used by the Secretary in obtaining the information submitted to Congress in that report; and

(B) assess the information submitted to Congress in that report.

(2) Not later than 120 days after the date on which the Secretary submits to Congress the report required under subsection (d) for any year, the Comptroller General shall submit to Congress the Comptroller General's report containing the results of the review for that year under paragraph (1).

(f) DEFINITIONS.—In this section:

(1) The term ''contract services'' means all services that are reported to the Office of Management and Budget pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates) in budget object classes that are designated in the Object Class 25 series.

(2) The term ''advisory and assistance services object class'' means those contract services constituting the budget object class that is denominated ''Advisory and Assistance Service'' and designated (as of October 17, 1998) as Object Class 25.1 (or any similar object class established after October 17, 1998, for the reporting of obligations for advisory and assistance contract services).

(3) The term ''miscellaneous services object class'' means those contract services constituting the budget object class that is denominated ''Other Services (services not otherwise specified in the 25 series)'' and designated (as of October 17, 1998) as Object Class 25.2 (or any similar object class established after October 17, 1998, for the reporting of obligations for miscellaneous or unspecified contract services).

(4) The term ''authorized exemptions'' means those exemptions authorized (as of October 17, 1998) under Department of Defense Directive 4205.2, captioned ''Acquiring and Managing Contracted Advisory and Assistance Services (CAAS)'' and issued by the Under Secretary of Defense for Acquisition and Technology on February 10, 1992, such exemptions being set forth in Enclosure 3 to that directive (captioned ''CAAS Exemptions'').

(Added Pub. L. 105–261, div. A, title IX, §911(a)(1), Oct. 17, 1998, 112 Stat. 2097; amended Pub. L. 106–65, div. A, title X, §1066(a)(17), Oct. 5, 1999, 113 Stat. 771.)

PRIOR PROVISIONS

A prior section 2212, added Pub. L. 100–370, §1(d)(2)(A), July 19, 1988, 102 Stat. 842, directed Secretary of Defense to maintain within each military department an accounting procedure to aid in identification and control of expenditures for contracted advisory and assistance services, prior to repeal by Pub. L. 103–355, title II, §2454(c)(1), Oct. 13, 1994, 108 Stat. 3326.

Another prior section 2212, added Pub. L. 95–356, title VIII, §802(a)(1), Sept. 8, 1978, 92 Stat. 585; amended Pub. L. 97–258, §3(b)(5), Sept. 18, 1982, 96 Stat. 1063, related to transmission of annual military construction authorization request, prior to repeal by Pub. L. 97–214, §7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2859 of this title.

AMENDMENTS

1999—Subsec. (f)(2), (3). Pub. L. 106–65 substituted ''as of October 17, 1998'' for ''as of the date of the enactment of this section'' and ''after October 17, 1998,'' for ''after the date of the enactment of this section''.

Subsec. (f)(4). Pub. L. 106–65, §1066(a)(17)(B), substituted ''as of October 17, 1998'' for ''as of the date of the enactment of this section''.

CHANGE OF NAME

Reference to Under Secretary of Defense for Acquisition and Technology deemed to refer to Under Secretary of Defense for Acquisition, Technology, and Logistics, pursuant to section 911(a)(1) of Pub. L. 106–65, set out as a note under section 133 of this title.

TRANSITION

Pub. L. 105–261, div. A, title IX, §911(b), Oct. 17, 1998, 112 Stat. 2099, provided that for the budget for fiscal year 2000, and the reporting of information to the Office of Management and Budget in connection with the preparation of that budget, this section would be applied by substituting ''30 percent'' in subsec. (a) for ''15 percent''.

§ 2213. Limitation on acquisition of excess supplies

(a) TWO-YEAR SUPPLY.—The Secretary of Defense may not incur any obligation against a stock fund of the Department of Defense for the acquisition of any item of supply if that acquisition is likely to result in an on-hand inventory (excluding war reserves) of that item of supply in excess of two years of operating stocks.

(b) EXCEPTIONS.—The head of a procuring activity may authorize the acquisition of an item of supply in excess of the limitation contained in subsection (a) if that activity head determines in writing—

(1) that the acquisition is necessary to achieve an economical order quantity and will not result in an on-hand inventory (excluding war reserves) in excess of three years of operating stocks and that the need for the item is unlikely to decline during the period for which the acquisition is made; or

(2) that the acquisition is necessary for purposes of maintaining the industrial base or for other reasons of national security.

(Added Pub. L. 102–190, div. A, title III, §317(a), Dec. 5, 1991, 105 Stat. 1338.)

PRIOR PROVISIONS

A prior section 2213 was renumbered section 2350c of this title.

§ 2214. Transfer of funds: procedure and limitations

(a) PROCEDURE FOR TRANSFER OF FUNDS.—Whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction) between such funds or appropriations (or any subdivision thereof), amounts transferred under such authority shall be merged with and be available for the same purposes and for the same time period as the fund or appropriations to which transferred.

(b) LIMITATIONS ON PROGRAMS FOR WHICH AUTHORITY MAY BE USED.—Such authority to transfer amounts—

(1) may not be used except to provide funds for a higher priority item, based on unforeseen military requirements, than the items for which the funds were originally appropriated; and

(2) may not be used if the item to which the funds would be transferred is an item for which Congress has denied funds.

(c) NOTICE TO CONGRESS.—The Secretary of Defense shall promptly notify the Congress of each transfer made under such authority to transfer amounts.

(d) LIMITATIONS ON REQUESTS TO CONGRESS FOR REPROGRAMMINGS.—Neither the Secretary of De-

fense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds—

(1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or

(2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

(Added Pub. L. 101–510, div. A, title XIV, § 1482(c)(1), Nov. 5, 1990, 104 Stat. 1709.)

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101–510, set out as an Effective Date of 1990 Amendment note under section 119 of this title.

§ 2215. Transfer of funds to other departments and agencies: limitation

Funds available for military functions of the Department of Defense may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the congressional defense committees a certification that making those funds available to such other department or agency is in the national security interest of the United States.

(Added Pub. L. 103–160, div. A, title XI, § 1106(a)(1), Nov. 30, 1993, 107 Stat. 1750; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(14), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–375, div. A, title X, § 1084(b)(1), Oct. 28, 2004, 118 Stat. 2060.)

PRIOR PROVISIONS

A prior section 2215, added Pub. L. 99–661, div. A, title XIII, § 1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to reports on unobligated balances, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1301(7), Nov. 5, 1990, 104 Stat. 1668.

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title XVI, § 1604, Nov. 29, 1989, 103 Stat. 1598, which was set out as a note under section 1531 of Title 31, Money and Finance, prior to repeal by Pub. L. 103–160, § 1106(b).

AMENDMENTS

2004—Pub. L. 108–375 struck out subsec. (a) designation and heading before ''Funds available'', substituted ''congressional defense committees'' for ''congressional committees specified in subsection (b)'', and struck out heading and text of subsec. (b). Text of subsec. (b) read as follows: ''The committees referred to in subsection (a) are—

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

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

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–106 designated existing provisions as subsec. (a), inserted heading, substituted ''to the congressional committees specified in subsection (b)'' for ''to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives'', and added subsec. (b).

§ 2216. Defense Modernization Account

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the ''Defense Modernization Account''.

(b) FUNDS AVAILABLE FOR ACCOUNT.—The Defense Modernization Account shall consist of the following:

(1) Amounts appropriated to the Defense Modernization Account for the costs of commencing projects described in subsection (d)(1), and amounts reimbursed to the Defense Modernization Account under subsection (c)(1)(B)(iii) out of savings derived from such projects.

(2) Amounts transferred to the Defense Modernization Account under subsection (c).

(c) TRANSFERS TO ACCOUNT.—(1)(A) Upon a determination by the Secretary of a military department or the Secretary of Defense with respect to Defense-wide appropriations accounts of the availability and source of funds described in subparagraph (B), that Secretary may transfer to the Defense Modernization Account during any fiscal year any amount of funds available to the Secretary described in that subparagraph. Such funds may be transferred to that account only after the Secretary concerned notifies the congressional defense committees in writing of the amount and source of the proposed transfer.

(B) This subsection applies to the following funds available to the Secretary concerned:

(i) Unexpired funds in appropriations accounts that are available for procurement and that, as a result of economies, efficiencies, and other savings achieved in carrying out a particular procurement, are excess to the requirements of that procurement.

(ii) Unexpired funds that are available during the final 30 days of a fiscal year for support of installations and facilities and that, as a result of economies, efficiencies, and other savings, are excess to the requirements for support of installations and facilities.

(iii) Unexpired funds in appropriations accounts that are available for procurement or operation and maintenance of a system, if and to the extent that savings are achieved for such accounts through reductions in life cycle costs of such system that result from one or more projects undertaken with respect to such systems with funds made available from the Defense Modernization Account under subsection (b)(1).

(C) Any transfer under subparagraph (A) shall be made under regulations prescribed by the Secretary of Defense.

(2) Funds referred to in paragraph (1), other than funds referred to in subparagraph (B)(iii) of such paragraph, may not be transferred to the Defense Modernization Account if—

(A) the funds are necessary for programs, projects, and activities that, as determined by the Secretary, have a higher priority than the purposes for which the funds would be available if transferred to that account; or

(B) the balance of funds in the account, after transfer of funds to the account, would exceed $1,000,000,000.

(3) Amounts credited to the Defense Modernization Account shall remain available for transfer until the end of the third fiscal year that follows the fiscal year in which the amounts are credited to the account.

(4) The period of availability of funds for expenditure provided for in sections 1551 and 1552 of title 31 may not be extended by transfer into the Defense Modernization Account.

(d) AUTHORIZED USE OF FUNDS.—Funds in the Defense Modernization Account may be used for the following purposes:

(1) For paying the costs of commencing any project that, in accordance with criteria prescribed by the Secretary of Defense, is undertaken by the Secretary of a military department or the head of a Defense Agency or other element of the Department of Defense to reduce the life cycle cost of a new or existing system.

(2) For increasing, subject to subsection (e), the quantity of items and services procured under a procurement program in order to achieve a more efficient production or delivery rate.

(3) For research, development, test, and evaluation and for procurement necessary for modernization of an existing system or of a system being procured under an ongoing procurement program.

(e) LIMITATIONS.—(1) Funds in the Defense Modernization Account may not be used to increase the quantity of an item or services procured under a particular procurement program to the extent that doing so would—

(A) result in procurement of a total quantity of items or services in excess of—

(i) a specific limitation provided by law on the quantity of the items or services that may be procured; or

(ii) the requirement for the items or services as approved by the Joint Requirements Oversight Council and reported to Congress by the Secretary of Defense; or

(B) result in an obligation or expenditure of funds in excess of a specific limitation provided by law on the amount that may be obligated or expended, respectively, for that procurement program.

(2) Funds in the Defense Modernization Account may not be used for a purpose or program for which Congress has not authorized appropriations.

(3) Funds may not be transferred from the Defense Modernization Account in any year for the purpose of—

(A) making an expenditure for which there is no corresponding obligation; or

(B) making an expenditure that would satisfy an unliquidated or unrecorded obligation arising in a prior fiscal year.

(f) TRANSFER OF FUNDS.—(1) The Secretary of Defense may transfer funds in the Defense Modernization Account to appropriations available for purposes set forth in subsection (d).

(2) Funds in the Defense Modernization Account may not be transferred under paragraph (1) until 30 days after the date on which the Secretary concerned notifies the congressional defense committees in writing of the amount and purpose of the proposed transfer.

(3) The total amount of transfers from the Defense Modernization Account during any fiscal year under this subsection may not exceed $500,000,000.

(g) AVAILABILITY OF FUNDS BY APPROPRIATION.—In addition to transfers under subsection (f), funds in the Defense Modernization Account may be made available for purposes set forth in subsection (d) in accordance with the provisions of appropriations Acts, but only to the extent authorized in an Act other than an appropriations Act.

(h) SECRETARY TO ACT THROUGH COMPTROLLER.—(1) The Secretary of Defense shall carry out this section through the Under Secretary of Defense (Comptroller), who shall be authorized to implement this section through the issuance of any necessary regulations, policies, and procedures after consultation with the General Counsel and Inspector General of the Department of Defense.

(2) The regulations prescribed under paragraph (1) shall, at a minimum, provide for—

(A) the submission of proposals by the Secretaries concerned or heads of Defense Agencies or other elements of the Department of Defense to the Comptroller for the use of Defense Modernization Account funds for purposes set forth in subsection (d);

(B) the use of a competitive process for the evaluation of such proposals and the selection of programs, projects, and activities to be funded out of the Defense Modernization Account from among those proposed for such funding; and

(C) the calculation of—

(i) the savings to be derived from projects described in subsection (d)(1) that are to be funded out of the Defense Modernization Account; and

(ii) the amounts to be reimbursed to the Defense Modernization Account out of such savings pursuant to subsection (c)(1)(B)(iii).

(i) DEFINITIONS.—In this section:

(1) The term ''Secretary concerned'' includes the Secretary of Defense with respect to Defense-wide appropriations accounts.

(2) The term ''unexpired funds'' means funds appropriated for a definite period that remain available for obligation.

(j) EXPIRATION OF AUTHORITY AND ACCOUNT.—(1) The authority under subsection (c) to transfer funds into the Defense Modernization Account terminates at the close of September 30, 2006.

(2) Three years after the termination date specified in paragraph (1), the Defense Modernization Account shall be closed and any remaining balance in the account shall be canceled and thereafter shall not be available for any purpose.

(Added Pub. L. 104–106, div. A, title IX, §912(a)(1), Feb. 10, 1996, 110 Stat. 407; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §§1008(a)–(f)(1), 1043(b)(8), Nov. 24, 2003, 117 Stat.

1586, 1587, 1611; Pub. L. 109–364, div. A, title X, §1071(a)(16), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 113–66, div. A, title X, §1084(a)(2), Dec. 26, 2013, 127 Stat. 871.)

CODIFICATION

Another section 2216 was renumbered section 2216a of this title and subsequently repealed.

PRIOR PROVISIONS

A prior section 2216, added Pub. L. 99–661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to annual reports on budgeting for inflation, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1301(8), Nov. 5, 1990, 104 Stat. 1668.

AMENDMENTS

2013—Subsecs. (i) to (k). Pub. L. 113–66 redesignated subsecs. (j) and (k) as (i) and (j), respectively, and struck out former subsec. (i) which related to an annual report submitted by the Secretary of Defense to the congressional defense committees and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

2006—Subsec. (b)(1). Pub. L. 109–364 substituted ''subsection (c)(1)(B)(iii)'' for ''subsections (c)(1)(B)(iii)''.

2003—Subsec. (b). Pub. L. 108–136, §1008(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–136, §1008(a)(1), (2), redesignated subsec. (b) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ''Funds transferred to the Defense Modernization Account from funds appropriated for a military department, Defense Agency, or other element of the Department of Defense shall be available in accordance with subsections (f) and (g) only for transfer to funds available for that military department, Defense Agency, or other element.''

Subsec. (c)(1)(B)(iii). Pub. L. 108–136, §1008(c)(1), added cl. (iii).

Subsec. (c)(2). Pub. L. 108–136, §1008(c)(2), inserted '', other than funds referred to in subparagraph (B)(iii) of such paragraph,'' after ''Funds referred to in paragraph (1)''.

Subsec. (d). Pub. L. 108–136, §1008(b), substituted ''in the Defense Modernization Account'' for ''available from the Defense Modernization Account pursuant to subsection (f) or (g)'' in introductory provisions, added par. (1), and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (h). Pub. L. 108–136, §1008(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 108–136, §1008(e)(1), substituted ''Annual Report'' for ''Quarterly Reports'' in heading.

Subsec. (i)(1). Pub. L. 108–136, §1008(e)(1), (2), substituted ''fiscal year'' for ''calendar quarter'' in introductory provisions and ''fiscal year'' for ''quarter'' in subpars. (A) to (C).

Subsec. (j)(3). Pub. L. 108–136, §1043(b)(8), struck out par. (3) which read as follows: ''The term 'congressional defense committees' means—

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

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

Subsec. (k). Pub. L. 108–136, §1008(f)(1), added subsec. (k).

1999—Subsec. (j)(3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE

Pub. L. 104–106, div. A, title IX, §912(b), Feb. 10, 1996, 110 Stat. 410, provided that: ''Section 2216 of title 10, United States Code (as added by subsection (a)), shall apply only to funds appropriated for fiscal years after fiscal year 1995.''

EXPIRATION OF AUTHORITY AND ACCOUNT

Pub. L. 104–106, div. A, title IX, §912(c), Feb. 10, 1996, 110 Stat. 410, as amended by Pub. L. 107–314, div. A, title VIII, §825(a)(1), Dec. 2, 2002, 116 Stat. 2615, provided that authority under section 2216(b) of this title to transfer funds into Defense Modernization Account terminated at close of Sept. 30, 2002, and the Account was to be closed three years later, prior to repeal by Pub. L. 108–136, div. A, title X, §1008(f)(2), Nov. 24, 2003, 117 Stat. 1587.

GAO REVIEWS

Pub. L. 104–106, div. A, title IX, §912(d), Feb. 10, 1996, 110 Stat. 410, required Comptroller General of the United States to conduct two reviews of the administration of the Defense Modernization Account, prior to repeal by Pub. L. 107–314, div. A, title VIII, §825(a)(2), Dec. 2, 2002, 116 Stat. 2615.

§ 2216a. Rapidly meeting urgent needs: Joint Urgent Operational Needs Fund

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the ''Joint Urgent Operational Needs Fund'' (in this section referred to as the ''Fund'').

(b) ELEMENTS.—The Fund shall consist of the following:

(1) Amounts appropriated to the Fund.

(2) Amounts transferred to the Fund.

(3) Any other amounts made available to the Fund by law.

(c) USE OF FUNDS.—(1) Amounts in the Fund shall be available to the Secretary of Defense for capabilities that are determined by the Secretary, pursuant to the review process required by section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2302 note), to be suitable for rapid fielding in response to urgent operational needs.

(2) The Secretary shall establish a merit-based process for identifying equipment, supplies, services, training, and facilities suitable for funding through the Fund.

(3) Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section pursuant to a congressional earmark, as defined in clause 9 of Rule XXI of the Rules of the House of Representatives, or a congressionally directed spending item, as defined in paragraph 5 of Rule XLIV of the Standing Rules of the Senate.

(d) TRANSFER AUTHORITY.—(1) Amounts in the Fund may be transferred by the Secretary of Defense from the Fund to any of the following accounts of the Department of Defense to accomplish the purpose stated in subsection (c):

(A) Operation and maintenance accounts.

(B) Procurement accounts.

(C) Research, development, test, and evaluation accounts.

(2) Upon determination by the Secretary that all or part of the amounts transferred from the Fund under paragraph (1) are not necessary for the purpose for which transferred, such amounts may be transferred back to the Fund.

(3) The transfer of an amount to an account under the authority in paragraph (1) shall be deemed to increase the amount authorized for such account by an amount equal to the amount so transferred.

(4) The transfer authority provided by paragraphs (1) and (2) is in addition to any other transfer authority available to the Department of Defense by law.

(e) SUNSET.—The authority to make expenditures or transfers from the Fund shall expire on September 30, 2018.

(Added Pub. L. 112–81, div. A, title VIII, §846(a)(1), Dec. 31, 2011, 125 Stat. 1516; amended Pub. L. 112–239, div. A, title X, §1076(e)(2), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113–291, div. A, title VIII, §860, Dec. 19, 2014, 128 Stat. 3461.)

REFERENCES IN TEXT

Section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, referred to in subsec. (c)(1), is section 804(b) of Pub. L. 111–383, which is set out as a note under section 2302 of this title.

PRIOR PROVISIONS

A prior section 2216a, added Pub. L. 104–106, div. A, title III, §371(a)(1), Feb. 10, 1996, 110 Stat. 277, §2216; renumbered §2216a and amended Pub. L. 104–201, div. A, title III, §§363(c), 364, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2493, 2494, 2659, related to Defense Business Operations Fund, prior to repeal by Pub. L. 105–261, div. A, title X, §1008(b), Oct. 17, 1998, 112 Stat. 2117.

AMENDMENTS

2014—Subsec. (e). Pub. L. 113–291 substituted ''September 30, 2018'' for ''September 30, 2015''.

2013—Subsec. (e). Pub. L. 112–239 substituted ''on September 30, 2015.'' for ''on the last day of the third fiscal year that begins after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012.''

LIMITATION ON COMMENCEMENT OF EXPENDITURES FROM FUND

Pub. L. 112–81, div. A, title VIII, §846(b), Dec. 31, 2011, 125 Stat. 1517, provided that: ''No expenditure may be made from the Joint Urgent Operational Needs Fund established by section 2216a of title 10, United States Code (as added by subsection (a)), until the Secretary of Defense certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the Secretary has developed and implemented an expedited review process in compliance with the requirements of section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4256; 10 U.S.C. 2302 note).''

§ 2217. Comparable budgeting for common procurement weapon systems

(a) MATTERS TO BE INCLUDED IN ANNUAL DEFENSE BUDGETS.—In preparing the defense budget for any fiscal year, the Secretary of Defense shall—

(1) specifically identify each common procurement weapon system included in the budget;

(2) take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system; and

(3) identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems.

(b) COMPTROLLER.—The Secretary shall carry out this section through the Under Secretary of Defense (Comptroller).

(c) DEFINITIONS.—In this section:

(1) The term ''defense budget'' means the budget of the Department of Defense included in the President's budget submitted to Congress under section 1105 of title 31 for a fiscal year.

(2) The term ''common procurement weapon system'' means a weapon system for which two or more of the Army, Navy, Air Force, and Marine Corps request procurement funds in a defense budget.

(Added Pub. L. 100–370, §1(d)(3)(A), July 19, 1988, 102 Stat. 843; amended Pub. L. 104–106, div. A, title XV, §1503(a)(20), Feb. 10, 1996, 110 Stat. 512.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–500, §101(c) [title X, §955], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, and Pub. L. 99–591, §101(c) [title X, §955], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, §955, Nov. 14, 1986, 100 Stat. 3953, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

§ 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''National Defense Sealift Fund''.

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744),[1] and for the costs of acquisition of

[1] See References in Text note below.

vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 57101–57104 and chapter 573 of title 46.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101–510 (104 Stat. 1683).

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).[1]

(j) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as ''ROS–4 status'' in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(k) DEFINITIONS.—In this section:

(1) The term ''Fund'' means the National Defense Sealift Fund established by subsection (a).

(2) The term ''Department of Defense sealift vessel'' means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101–510 (104 Stat. 1683).

(B) Any other auxiliary vessel that was procured or chartered with specific authorization in law for the vessel, or class of vessels, to be funded in the National Defense Sealift Fund.

(3) The term ''national defense sealift vessel'' means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).[1]

(4) The term ''head of an agency'' has the meaning given that term in section 2302(1) of this title.

(Added Pub. L. 102–484, div. A, title X, §1024(a)(1), Oct. 23, 1992, 106 Stat. 2486; amended Pub. L. 102–396, title V, Oct. 6, 1992, 106 Stat. 1896; Pub. L. 104–106, div. A, title X, §1014(a), title XV, §1502(a)(15), Feb. 10, 1996, 110 Stat. 423, 503; Pub. L. 106–65, div. A, title X, §§1014(b), 1015, 1067(1), Oct. 5, 1999, 113 Stat. 742, 743, 774; Pub. L. 106–398, §1 [[div. A], title X, §1011], Oct. 30, 2000, 114 Stat. 1654, 1654A–251; Pub. L. 107–107, div. A, title X, §1048(e)(9), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 108–136, div. A, title X, §1043(b)(9), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 109–163, div. A, title X, §1018(d), Jan. 6, 2006, 119 Stat. 3426; Pub. L. 109–304, §17(a)(2), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 110–417, [div. A], title XIV, §1407, Oct. 14, 2008, 122 Stat. 4647.)

REFERENCES IN TEXT

Section 11 of the Merchant Ship Sales Act of 1946, referred to in subsecs. (c)(1)(E), (i), and (k)(3)(B), was classified to section 1744 of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as section 4405 of Title 50.

Section 1424 of Public Law 101–510, referred to in subsecs. (d)(3), (f)(2), and (k)(2)(A), is section 1424 of the National Defense Authorization Act for Fiscal Year 1991, which is set out as a note under section 7291 of this title.

CODIFICATION

Pub. L. 102–396, title V, Oct. 6, 1992, 106 Stat. 1896, provided that section 1024 of the National Defense Authorization Act for Fiscal Year 1993 [H.R. 5006, Pub. L. 102–484], as it passed the Senate on Oct. 3, 1992, shall be amended in subsection 2218(c)(2) proposed for inclusion in this chapter by deleting all after ''expended only'' down to and including ''appropriations Act'' and inserting in lieu thereof ''in amounts authorized by law''. It further provided that for purposes of that amendment, Pub. L. 102–396 shall be treated as having been enacted after Pub. L. 102–484, regardless of the actual dates of enactment. The date of Oct. 3, 1992, referred to as the date the Senate passed the National Defense Authorization Act for Fiscal Year 1993, apparently is based on an order adopted by the Senate on Oct. 3, 1992 [Cong. Rec., vol. 138, p. 30919] providing that when the conference report on the National Defense Authorization Act for Fiscal Year 1993 was received by the Senate from the House of Representatives it would be deemed to have been agreed to. On Oct. 5, 1992, the Senate received the conference report from the House, and it was considered adopted pursuant to that order [Cong. Rec., vol. 138, p. 31565].

AMENDMENTS

2008—Subsecs. (j), (k). Pub. L. 110–417, §1407(1), redesignated subsecs. (k) and (*l*) as (j) and (k), respectively, and struck out heading and text of former subsec. (j). Text read as follows: ''Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1)(A), (B), (C), and (D) for any purpose under subsection (c)(1).''

Subsec. (k)(2)(B) to (I). Pub. L. 110–417, §1407(2), added subpar. (B) and struck out former subpars. (B) to (I) which read as follows:

''(B) A maritime prepositioning ship.

''(C) An afloat prepositioning ship.

''(D) An aviation maintenance support ship.

''(E) A hospital ship.

''(F) A strategic sealift ship.

''(G) A combat logistics force ship.

''(H) A maritime prepositioned ship.

''(I) Any other auxiliary support vessel.''

Subsec. (*l*). Pub. L. 110–417, § 1407(1), redesignated subsec. (*l*) as (k).

2006—Subsec. (d)(2). Pub. L. 109–304 substituted ''sections 57101–57104 and chapter 573 of title 46'' for ''sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund''.

Subsec. (f)(1). Pub. L. 109–163 substituted ''A vessel built in a foreign ship yard may not be'' for ''Not more than a total of five vessels built in foreign ship yards may be'' and inserted '', unless specifically authorized by law'' before period at end.

2003—Subsec. (*l*)(4), (5). Pub. L. 108–136 redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''The term 'congressional defense committees' means—

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

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

2001—Subsec. (d)(1). Pub. L. 107–107 struck out ''for fiscal years after fiscal year 1993'' after ''Department of Defense'' in introductory provisions.

2000—Subsec. (k)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1011(1)], inserted at end ''As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.''

Subsec. (k)(2)(E). Pub. L. 106–398, § 1 [[div. A], title X, § 1011(2)], added subpar. (E).

Subsec. (k)(6). Pub. L. 106–398, § 1 [[div. A], title X, § 1011(3)], added par. (6).

1999—Subsec. (k). Pub. L. 106–65, § 1015(a)(2), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(2). Pub. L. 106–65, § 1014(b), substituted ''that is any of the following:'' for ''that is—'' in introductory provisions, substituted ''A'' for ''a'' and a period for the semicolon in subpars. (A) and (B), ''An'' for ''an'' and a period for the semicolon in subpar. (C), ''An'' for ''an'' and a period for ''; or'' in subpar. (D), and ''A'' for ''a'' in subpar. (E), and added subpars. (F) to (I).

Subsec. (*l*). Pub. L. 106–65, § 1015(a)(1), redesignated subsec. (k) as (*l*).

Subsec. (*l*)(4)(B). Pub. L. 106–65, § 1067(1), substituted ''Committee on Armed Services'' for ''Committee on National Security''.

Subsec. (*l*)(5). Pub. L. 106–65, § 1015(b), added par. (5).

1996—Subsec. (c)(1). Pub. L. 104–106, § 1014(a)(1)(A), substituted ''only for the following purposes:'' for ''only for—''.

Subsec. (c)(1)(A). Pub. L. 104–106, § 1014(a)(1)(B), (C), substituted ''Construction'' for ''construction'' and ''vessels.'' for ''vessels;''.

Subsec. (c)(1)(B). Pub. L. 104–106, § 1014(a)(1)(B), (C), substituted ''Operation'' for ''operation'' and ''purposes.'' for ''purposes;''.

Subsec. (c)(1)(C). Pub. L. 104–106, § 1014(a)(1)(B), (D), substituted ''Installation'' for ''installation'' and ''States.'' for ''States; and''.

Subsec. (c)(1)(D). Pub. L. 104–106, § 1014(a)(1)(B), substituted ''Research'' for ''research''.

Subsec. (c)(1)(E). Pub. L. 104–106, § 1014(a)(1)(E), added subpar. (E).

Subsec. (i). Pub. L. 104–106, § 1014(a)(2), inserted ''(other than subsection (c)(1)(E))'' after ''Nothing in this section''.

Subsec. (j). Pub. L. 104–106, § 1502(a)(15)(A), substituted ''the congressional defense committees'' for ''the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives''.

Subsec. (k)(4). Pub. L. 104–106, § 1502(a)(15)(B), added par. (4).

1992—Subsec. (c)(2). Pub. L. 102–396 substituted ''in amounts authorized by law'' for ''for programs, projects, and activities and only in amounts authorized in, or otherwise permitted under, an Act other than an appropriations Act''. See Codification note above.

§ 2218a. National Sea-Based Deterrence Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''National Sea-Based Deterrence Fund''.

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the Fund shall be available for obligation and expenditure only for construction (including design of vessels), purchase, alteration, and conversion of national sea-based deterrence vessels.

(2) Funds in the Fund may not be used for a purpose or program unless the purpose or program is authorized by law.

(d) DEPOSITS.—There shall be deposited in the Fund all funds appropriated to the Department of Defense for construction (including design of vessels), purchase, alteration, and conversion of national sea-based deterrence vessels.

(e) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the Fund pursuant to subsection (d) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(f) AUTHORITY TO ENTER INTO ECONOMIC ORDER QUANTITY CONTRACTS.—(1) The Secretary of the Navy may use funds deposited in the Fund to enter into contracts known as ''economic order quantity contracts'' with private shipyards and other commercial or government entities to achieve economic efficiencies based on production economies for major components or subsystems. The authority under this subsection extends to the procurement of parts, components, and systems (including weapon systems) common with and required for other nuclear powered vessels under joint economic order quantity contracts.

(2) A contract entered into under paragraph (1) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose, and that total liability to the Government for termination of any contract entered into shall be limited to the total amount of funding obligated at time of termination.

(g) AUTHORITY TO BEGIN MANUFACTURING AND FABRICATION EFFORTS PRIOR TO SHIP AUTHORIZATION.—(1) The Secretary of the Navy may use funds deposited into the Fund to enter into contracts for advance construction of national sea-based deterrence vessels to support achieving cost savings through workload management, manufacturing efficiencies, or workforce stability, or to phase fabrication activities within shipyard and manage sub-tier manufacturer capacity.

(2) A contract entered into under paragraph (1) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose, and that total liability to the Government for termination of any contract entered into shall be limited to the total amount of funding obligated at time of termination.

(h) AUTHORITY TO USE INCREMENTAL FUNDING TO ENTER INTO CONTRACTS FOR CERTAIN ITEMS.—(1) The Secretary of the Navy may use funds deposited into the Fund to enter into incrementally funded contracts for advance procurement of high value, long lead time items for nuclear powered vessels to better support construction schedules and achieve cost savings through schedule reductions and properly phased installment payments.

(2) A contract entered into under paragraph (1) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose, and that total liability to the Government for termination of any contract entered into shall be limited to the total amount of funding obligated at time of termination.

(i) BUDGET REQUESTS.—Budget requests submitted to Congress for the Fund shall separately identify the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national sea-based deterrence vessels.

(j) DEFINITIONS.—In this section:

(1) The term ''Fund'' means the National Sea-Based Deterrence Fund established by subsection (a).

(2) The term ''national sea-based deterrence vessel'' means any vessel owned, operated, or controlled by the Department of Defense that carries operational intercontinental ballistic missiles.

(Added Pub. L. 113–291, div. A, title X, §1022(a)(1), Dec. 19, 2014, 128 Stat. 3486; amended Pub. L. 114–92, div. A, title X, §1022(a), Nov. 25, 2015, 129 Stat. 965.)

AMENDMENTS

2015—Subsecs. (f) to (j). Pub. L. 114–92 added subsecs. (f) to (h) and redesignated former subsecs. (f) and (g) as (i) and (j), respectively.

[§ 2219. Renumbered § 2491c]

§ 2220. Performance based management: acquisition programs

(a) ESTABLISHMENT OF GOALS.—The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense and for each phase of the acquisition cycle of such programs.

(b) EVALUATION OF COST GOALS.—The Under Secretary of Defense (Comptroller) shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

(Added Pub. L. 103–355, title V, §5001(a)(1), Oct. 13, 1994, 108 Stat. 3349; amended Pub. L. 104–106, div. A, title XV, §1503(a)(20), div. D, title XLIII, §4321(b)(1), Feb. 10, 1996, 110 Stat. 512, 671; Pub. L. 105–85, div. A, title VIII, §841(a), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 107–314, div. A, title X, §1041(a)(8), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, §1041(a)(8)(B), (C), struck out par. (1) designation and redesignated par. (2) as subsec. (b).

Subsec. (b). Pub. L. 107–314, §1041(a)(8)(A), (C), redesignated subsec. (a)(2) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this title an assessment of whether major acquisition programs of the Department of Defense are achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a) and whether the average period for converting emerging technology into operational capability has decreased by 50 percent or more from the average period required for such conversion as of October 13, 1994. The Secretary shall use data from existing management systems in making the assessment.''

Subsec. (c). Pub. L. 107–314, §1041(a)(8)(A), struck out heading and text of subsec. (c). Text read as follows: ''Whenever the Secretary of Defense, in the assessment required by subsection (b), determines that major defense acquisition programs of the Department of Defense are not achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a), the Secretary shall ensure that there is a timely review of major defense acquisition programs and other programs as appropriate. In conducting the review, the Secretary shall—

''(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

''(2) identify suitable actions to be taken, including termination, with respect to such programs.''

1997—Subsec. (b). Pub. L. 105–85 substituted ''whether major acquisition programs'' for ''whether major and nonmajor acquisition programs''.

1996—Subsec. (a)(2). Pub. L. 104–106, §1503(a)(20), substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

Subsec. (b). Pub. L. 104–106, §4321(b)(1), substituted ''October 13, 1994'' for ''the date of the enactment of the Federal Acquisition Streamlining Act of 1994''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(1) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

PILOT PROGRAMS FOR TESTING PROGRAM MANAGER PERFORMANCE OF PRODUCT SUPPORT OVERSIGHT RESPONSIBILITIES FOR LIFE CYCLE OF ACQUISITION PROGRAMS

Pub. L. 105–261, div. A, title VIII, §816, Oct. 17, 1998, 112 Stat. 2088, provided that:

''(a) DESIGNATION OF PILOT PROGRAMS.—The Secretary of Defense, acting through the Secretaries of the military departments, shall designate 10 acquisition programs of the military departments as pilot programs on program manager responsibility for product support.

''(b) RESPONSIBILITIES OF PROGRAM MANAGERS.—The program manager for each acquisition program designated as a pilot program under this section shall have the responsibility for ensuring that the product support functions for the program are properly carried out over the entire life cycle of the program.

''(c) REPORT.—Not later than February 1, 1999, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the pilot programs. The report shall contain the following:

''(1) A description of the acquisition programs designated as pilot programs under subsection (a).

''(2) For each such acquisition program, the specific management actions taken to ensure that the program manager has the responsibility for oversight of the performance of the product support functions.

''(3) Any proposed change to law, policy, regulation, or organization that the Secretary considers desirable, and determines feasible to implement, for en-

suring that the program managers are fully responsible under the pilot programs for the performance of all such responsibilities.''

ENHANCED SYSTEM OF PERFORMANCE INCENTIVES

Pub. L. 103–355, title V, § 5001(b), Oct. 13, 1994, 108 Stat. 3350, provided that: ''Within one year after the date of the enactment of this Act [Oct. 13, 1994], the Secretary of Defense shall review the incentives and personnel actions available to the Secretary of Defense for encouraging excellence in the management of defense acquisition programs and provide an enhanced system of incentives to facilitate the achievement of goals approved or defined pursuant to section 2220(a) of title 10, United States Code. The enhanced system of incentives shall, to the maximum extent consistent with applicable law—

''(1) relate pay to performance (including the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, as added by subsection (a)); and

''(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, United States Code, as added by subsection (a).''

RECOMMENDED LEGISLATION

Pub. L. 103–355, title V, § 5001(c), Oct. 13, 1994, 108 Stat. 3350, directed the Secretary of Defense, not later than one year after Oct 13, 1994, to submit to Congress any recommended legislation that the Secretary considered necessary to carry out this section and otherwise to facilitate and enhance management of Department of Defense acquisition programs on the basis of performance.

[§ 2221. Repealed. Pub. L. 105–261, div. A, title IX, § 906(f)(1), Oct. 17, 1998, 112 Stat. 2096]

Section, added Pub. L. 104–106, div. A, title IX, § 914(a)(1), Feb. 10, 1996, 110 Stat. 412; amended Pub. L. 104–201, div. A, title X, § 1008(a), Sept. 23, 1996, 110 Stat. 2633; Pub. L. 105–85, div. A, title X, § 1006(a), Nov. 18, 1997, 111 Stat. 1869; Pub. L. 105–261, div. A, title X, § 1069(b)(2), Oct. 17, 1998, 112 Stat. 2136, related to Fisher House trust funds. See section 2493 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 17, 1998, see section 906(f)(3) of Pub. L. 105–261, set out as an Effective Date of 1998 Amendment note under section 1321 of Title 31, Money and Finance.

§ 2222. Defense business systems: business process reengineering; enterprise architecture; management

(a) DEFENSE BUSINESS PROCESSES GENERALLY.—The Secretary of Defense shall ensure that defense business processes are reviewed, and as appropriate revised, through business process reengineering to match best commercial practices, to the maximum extent practicable, so as to minimize customization of commercial business systems.

(b) DEFENSE BUSINESS SYSTEMS GENERALLY.—The Secretary of Defense shall ensure that each covered defense business system developed, deployed, and operated by the Department of Defense—

(1) supports efficient business processes that have been reviewed, and as appropriate revised, through business process reengineering;

(2) is integrated into a comprehensive defense business enterprise architecture;

(3) is managed in a manner that provides visibility into, and traceability of, expenditures for the system; and

(4) uses an acquisition and sustainment strategy that prioritizes the use of commercial software and business practices.

(c) ISSUANCE OF GUIDANCE.—

(1) SECRETARY OF DEFENSE GUIDANCE.—The Secretary shall issue guidance to provide for the coordination of, and decision making for, the planning, programming, and control of investments in covered defense business systems.

(2) SUPPORTING GUIDANCE.—The Secretary shall direct the Deputy Chief Management Officer of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Chief Information Officer, and the Chief Management Officer of each of the military departments to issue and maintain supporting guidance, as appropriate and within their respective areas of responsibility, for the guidance of the Secretary issued under paragraph (1).

(d) GUIDANCE ELEMENTS.—The guidance issued under subsection (c)(1) shall include the following elements:

(1) Policy to ensure that the business processes of the Department of Defense are continuously reviewed and revised—

(A) to implement the most streamlined and efficient business processes practicable; and

(B) eliminate[1] or reduce the need to tailor commercial off-the-shelf systems to meet or incorporate requirements or interfaces that are unique to the Department of Defense.

(2) A process to establish requirements for covered defense business systems.

(3) Mechanisms for the planning and control of investments in covered defense business systems, including a process for the collection and review of programming and budgeting information for covered defense business systems.

(4) Policy requiring the periodic review of covered defense business systems that have been fully deployed, by portfolio, to ensure that investments in such portfolios are appropriate.

(5) Policy to ensure full consideration of sustainability and technological refreshment requirements, and the appropriate use of open architectures.

(6) Policy to ensure that best acquisition and systems engineering practices are used in the procurement and deployment of commercial systems, modified commercial systems, and defense-unique systems to meet Department of Defense missions.

(e) DEFENSE BUSINESS ENTERPRISE ARCHITECTURE.—

(1) BLUEPRINT.—The Secretary, working through the Deputy Chief Management Officer of the Department of Defense, shall develop

[1] So in original. Probably should be preceded by ''to''.

and maintain a blueprint to guide the development of integrated business processes within the Department of Defense. Such blueprint shall be known as the ''defense business enterprise architecture''.

(2) PURPOSE.—The defense business enterprise architecture shall be sufficiently defined to effectively guide implementation of interoperable defense business system solutions and shall be consistent with the policies and procedures established by the Director of the Office of Management and Budget.

(3) ELEMENTS.—The defense business enterprise architecture shall—

(A) include policies, procedures, business data standards, business performance measures, and business information requirements that apply uniformly throughout the Department of Defense; and

(B) enable the Department of Defense to—

(i) comply with all applicable law, including Federal accounting, financial management, and reporting requirements;

(ii) routinely produce verifiable, timely, accurate, and reliable business and financial information for management purposes;

(iii) integrate budget, accounting, and program information and systems; and

(iv) identify whether each existing business system is a part of the business systems environment outlined by the defense business enterprise architecture, will become a part of that environment with appropriate modifications, or is not a part of that environment.

(4) INTEGRATION INTO INFORMATION TECHNOLOGY ARCHITECTURE.—(A) The defense business enterprise architecture shall be integrated into the information technology enterprise architecture required under subparagraph (B).

(B) The Chief Information Officer of the Department of Defense shall develop an information technology enterprise architecture. The architecture shall describe a plan for improving the information technology and computing infrastructure of the Department of Defense, including for each of the major business processes conducted by the Department of Defense.

(f) DEFENSE BUSINESS COUNCIL.—

(1) REQUIREMENT FOR COUNCIL.—The Secretary shall establish a Defense Business Council to provide advice to the Secretary on developing the defense business enterprise architecture, reengineering the Department's business processes, developing and deploying defense business systems, and developing requirements for defense business systems. The Council shall be chaired by the Deputy Chief Management Officer and the Chief Information Officer of the Department of Defense.

(2) MEMBERSHIP.—The membership of the Council shall include the following:

(A) The Chief Management Officers of the military departments, or their designees.

(B) The following officials of the Department of Defense, or their designees:

(i) The Under Secretary of Defense for Acquisition, Technology, and Logistics with respect to acquisition, logistics, and installations management processes.

(ii) The Under Secretary of Defense (Comptroller) with respect to financial management and planning and budgeting processes.

(iii) The Under Secretary of Defense for Personnel and Readiness with respect to human resources management processes.

(g) APPROVALS REQUIRED FOR DEVELOPMENT.—

(1) INITIAL APPROVAL REQUIRED.—The Secretary shall ensure that a covered defense business system program cannot proceed into development (or, if no development is required, into production or fielding) unless the appropriate approval official (as specified in paragraph (2)) determines that—

(A) the system has been, or is being, reengineered to be as streamlined and efficient as practicable, and the implementation of the system will maximize the elimination of unique software requirements and unique interfaces;

(B) the system and business system portfolio are or will be in compliance with the defense business enterprise architecture developed pursuant to subsection (e) or will be in compliance as a result of modifications planned;

(C) the system has valid, achievable requirements and a viable plan for implementing those requirements (including, as appropriate, market research, business process reengineering, and prototyping activities);

(D) the system has an acquisition strategy designed to eliminate or reduce the need to tailor commercial off-the-shelf systems to meet unique requirements, incorporate unique requirements, or incorporate unique interfaces to the maximum extent practicable; and

(E) is[2] in compliance with the Department's auditability requirements.

(2) APPROPRIATE OFFICIAL.—For purposes of paragraph (1), the appropriate approval official with respect to a covered defense business system is the following:

(A) Except as may be provided in subparagraph (C), in the case of a priority defense business system, the Deputy Chief Management Officer of the Department of Defense.

(B) Except as may be provided in subparagraph (C), for any defense business system other than a priority defense business system—

(i) in the case of a system of a military department, the Chief Management Officer of that military department; and

(ii) in the case of a system of a Defense Agency or Department of Defense Field Activity, or a system that will support the business process of more than one military department or Defense Agency or Department of Defense Field Activity, the Deputy Chief Management Officer of the Department of Defense.

(C) In the case of any defense business system, such official other than the applicable

[2] So in original. Probably should be preceded by ''the system''.

official under subparagraph (A) or (B) as the Secretary designates for such purpose.

(3) ANNUAL CERTIFICATION.—For any fiscal year in which funds are expended for development or sustainment pursuant to a covered defense business system program, the appropriate approval official shall review the system and certify, certify with conditions, or decline to certify, as the case may be, that it continues to satisfy the requirements of paragraph (1). If the approval official determines that certification cannot be granted, the approval official shall notify the milestone decision authority for the program and provide a recommendation for corrective action.

(4) OBLIGATION OF FUNDS IN VIOLATION OF REQUIREMENTS.—The obligation of Department of Defense funds for a covered defense business system program that has not been certified in accordance with paragraph (3) is a violation of section 1341(a)(1)(A) of title 31.

(h) RESPONSIBILITY OF MILESTONE DECISION AUTHORITY.—The milestone decision authority for a covered defense business system program shall be responsible for the acquisition of such system and shall ensure that acquisition process approvals are not considered for such system until the relevant certifications and approvals have been made under this section.

(i) DEFINITIONS.—In this section:

(1)(A) DEFENSE BUSINESS SYSTEM.—The term ''defense business system'' means an information system that is operated by, for, or on behalf of the Department of Defense, including any of the following:

(i) A financial system.

(ii) A financial data feeder system.

(iii) A contracting system.

(iv) A logistics system.

(v) A planning and budgeting system.

(vi) An installations management system.

(vii) A human resources management system.

(viii) A training and readiness system.

(B) The term does not include—

(i) a national security system; or

(ii) an information system used exclusively by and within the defense commissary system or the exchange system or other instrumentality of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces using nonappropriated funds.

(2) COVERED DEFENSE BUSINESS SYSTEM.—The term ''covered defense business system'' means a defense business system that is expected to have a total amount of budget authority, over the period of the current future-years defense program submitted to Congress under section 221 of this title, in excess of $50,000,000.

(3) BUSINESS SYSTEM PORTFOLIO.—The term ''business system portfolio'' means all business systems performing functions closely related to the functions performed or to be performed by a covered defense business system.

(4) COVERED DEFENSE BUSINESS SYSTEM PROGRAM.—The term ''covered defense business system program'' means a defense acquisition program to develop and field a covered defense business system or an increment of a covered defense business system.

(5) PRIORITY DEFENSE BUSINESS SYSTEM PROGRAM[3].—The term ''priority defense business system''[3] means a defense business system that is—

(A) expected to have a total amount of budget authority over the period of the current future-years defense program submitted to Congress under section 221 of this title in excess of $250,000,000; or

(B) designated by the Deputy Chief Management Officer of the Department of Defense as a priority defense business system, based on specific program analyses of factors including complexity, scope, and technical risk, and after notification to Congress of such designation.

(6) ENTERPRISE ARCHITECTURE.—The term ''enterprise architecture'' has the meaning given that term in section 3601(4) of title 44.

(7) INFORMATION SYSTEM.—The term ''information system'' has the meaning given that term in section 11101 of title 40, United States Code.

(8) NATIONAL SECURITY SYSTEM.—The term ''national security system'' has the meaning given that term in section 3552(b)(6)(A) of title 44.

(9) BUSINESS PROCESS MAPPING.—The term ''business process mapping'' means a procedure in which the steps in a business process are clarified and documented in both written form and in a flow chart.

(Added Pub. L. 108–375, div. A, title III, § 332(a)(1), Oct. 28, 2004, 118 Stat. 1851; amended Pub. L. 109–364, div. A, title IX, § 906(a), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 110–417, [div. A], title III, § 351, Oct. 14, 2008, 122 Stat. 4425; Pub. L. 111–84, div. A, title X, § 1072(a), Oct. 28, 2009, 123 Stat. 2470; Pub. L. 111–383, div. A, title X, § 1075(b)(29), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112–81, div. A, title IX, § 901, Dec. 31, 2011, 125 Stat. 1527; Pub. L. 112–239, div. A, title IX, § 906, Jan. 2, 2013, 126 Stat. 1869; Pub. L. 113–66, div. A, title IX, § 901, Dec. 26, 2013, 127 Stat. 815; Pub. L. 113–283, § 2(e)(5)(A), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 113–291, div. A, title VIII, § 803, title IX, § 901(d), (k)(3), title X, § 1071(f)(16), Dec. 19, 2014, 128 Stat. 3427, 3463, 3468, 3511; Pub. L. 114–92, div. A, title VIII, § 883(a)(1), title X, § 1081(a)(7), Nov. 25, 2015, 129 Stat. 942, 1001.)

AMENDMENT OF SECTION

Pub. L. 113–291, div. A, title IX, § 901(k)(3), Dec. 19, 2014, 128 Stat. 3468, provided that, effective Feb. 1, 2017, this section, as it existed prior to the general amendment by Pub. L. 114–92 (enacted Nov. 25, 2015), was to be amended—

(1) in subsections (c)(2)(E), (f)(1)(D), (f)(1)(E), (f)(2)(E), and (g)(1), by striking ''the Deputy Chief Management Officer of the Department of Defense'' and inserting ''the Under Secretary of Defense for Business Management and Information'' wherever appearing; and

(2) in subsection (g)(3)(A), by striking ''Deputy Chief Management Officer'' the first place

[3] So in original. The heading does not match the defined term.

appearing and inserting ''Under Secretary of Defense for Business Management and Information'' and by striking ''Deputy Chief Management Officer'' the second, third, and fourth places appearing and inserting ''Under Secretary''.

PRIOR PROVISIONS

A prior section 2222, added Pub. L. 105–85, div. A, title X, §1008(a)(1), Nov. 18, 1997, 111 Stat. 1870; amended Pub. L. 107–107, div. A, title X, §1009(b)(1)–(3)(A), Dec. 28, 2001, 115 Stat. 1208, 1209, required Secretary of Defense to submit to Congress an annual strategic plan for improvement of financial management within Department of Defense and specified statements and matters to be included in the plan, prior to repeal by Pub. L. 107–314, div. A, title X, §1004(h)(1), Dec. 2, 2002, 116 Stat. 2631.

AMENDMENTS

2015—Pub. L. 114–92, §883(a)(1), amended section generally. Prior to amendment, section related to architecture, accountability, and modernization of defense business systems.

Subsec. (j)(5). Pub. L. 114–92, §1081(a)(7), substituted ''section 3552(b)(6)'' for ''section 3552(b)(5)''. Amendment was executed prior to amendment by Pub. L. 114–92, §883(a)(1), see above, pursuant to section 1081(e) of Pub. L. 114–92, set out as a note under section 101 of this title.

2014—Subsec. (a). Pub. L. 113–291, §901(d)(1), inserted ''and'' at end of par. (1), substituted period for ''; and'' at end of par. (2), and struck out par. (3) which read as follows: ''the certification of the investment review board under paragraph (2) has been approved by the Defense Business Systems Management Committee established by section 186 of this title.''

Subsec. (a)(1)(A). Pub. L. 113–291, §803(b)(1), inserted '', including business process mapping,'' after ''re-engineering efforts''.

Subsec. (c)(1). Pub. L. 113–291, §901(d)(2), substituted ''investment review board established under subsection (g)'' for ''Defense Business Systems Management Committee'' in introductory provisions.

Subsec. (g)(1). Pub. L. 113–291, §901(d)(3)(A), struck out '', not later than March 15, 2012,'' before ''to establish an investment review board''.

Subsec. (g)(2)(C). Pub. L. 113–291, §901(d)(3)(B), substituted ''the investment review'' for ''each investment review'' in introductory provisions.

Subsec. (g)(2)(F). Pub. L. 113–291, §901(d)(3)(C), struck out ''and the Defense Business Systems Management Committee, as required by section 186(c) of this title,'' after ''Secretary of Defense''.

Subsec. (g)(3). Pub. L. 113–291, §1071(f)(16), struck out ''(A)'' after ''(3)''.

Subsec. (j)(1). Pub. L. 113–291, §803(a), designated existing provisions as subpar. (A), struck out '', other than a national security system,'' after ''information system'', and added subpar. (B).

Subsec. (j)(5). Pub. L. 113–283 substituted ''section 3552(b)(5)'' for ''section 3542(b)(2)''.

Subsec. (j)(6). Pub. L. 113–291, §803(b)(2), added par. (6).

2013—Subsec. (e)(1). Pub. L. 113–66, §901(1), substituted ''target defense business systems computing environment described in subsection (d)(3)'' for ''defense business enterprise architecture''.

Subsec. (e)(2). Pub. L. 113–66, §901(2), substituted ''that will be phased out of the defense business systems computing environment within three years after review and certification as 'legacy systems' by the investment management process established under subsection (g)'' for ''existing as of September 30, 2011 (known as 'legacy systems') that will not be part of the defense business enterprise architecture'' and struck out ''that provides for reducing the use of those legacy systems in phases'' before period at end.

Subsec. (e)(3). Pub. L. 113–66, §901(3), substituted ''existing systems that are part of the target defense business systems computing environment'' for ''legacy systems (referred to in subparagraph (B)) that will be a part of the target defense business systems computing environment described in subsection (d)(3)''.

Subsec. (g)(3). Pub. L. 112–239 added par. (3).

2011—Pub. L. 112–81 amended section generally. Prior to amendment, section related to architecture, accountability, and modernization of defense business systems.

Subsec. (a). Pub. L. 111–383 substituted ''Funds'' for ''Effective October 1, 2005, funds''.

2009—Subsec. (a). Pub. L. 111–84, §1072(a)(1)(A), (B), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (a)(2)(A). Pub. L. 111–84, §1072(a)(1)(C), added subpar. (A) and struck out former subpar. (A), which read as follows: ''is in compliance with the enterprise architecture developed under subsection (c);''.

Subsec. (a)(3). Pub. L. 111–84, §1072(a)(1)(D), substituted ''the certification by the approval authority and the determination by the chief management officer are'' for ''the certification by the approval authority is''.

Subsec. (f). Pub. L. 111–84, §1072(a)(2), designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), in subpar. (E) substituted ''subparagraphs (A) through (D)'' for ''paragraphs (1) through (4)'', and added par. (2).

2008—Subsec. (i). Pub. L. 110–417 substituted ''2013'' for ''2009'' in introductory provisions.

2006—Subsec. (j)(6). Pub. L. 109–364 substituted ''in section 3542(b)(2) of title 44'' for ''in section 2315 of this title''.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title IX, §901(k)(3), Dec. 19, 2014, 128 Stat. 3468, provided that the amendment made by section 901(k)(3) is effective on the effective date specified in section 901(a)(1) of Pub. L. 113–291, which is Feb. 1, 2017.

DEADLINE FOR GUIDANCE ON COVERED DEFENSE BUSINESS SYSTEMS

Pub. L. 114–92, div. A, title VIII, §883(b), Nov. 25, 2015, 129 Stat. 947, provided that: ''The guidance required by subsection (c)(1) of section 2222 of title 10, United States Code, as amended by subsection (a)(1), shall be issued not later than December 31, 2016.''

COMPTROLLER GENERAL ASSESSMENT REQUIREMENT

Pub. L. 114–92, div. A, title VIII, §883(d)(1), Nov. 25, 2015, 129 Stat. 947, provided that: ''In each odd-numbered year, the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an assessment of the extent to which the actions taken by the Department of Defense comply with the requirements of section 2222 of title 10, United States Code.''

ACCOUNTING STANDARDS TO VALUE CERTAIN PROPERTY, PLANT, AND EQUIPMENT ITEMS

Pub. L. 114–92, div. A, title X, §1002, Nov. 25, 2015, 129 Stat. 960, provided that:

''(a) REQUIREMENT FOR CERTAIN ACCOUNTING STANDARDS.—The Secretary of Defense shall work in coordination with the Federal Accounting Standards Advisory Board to establish accounting standards to value large and unordinary general property, plant, and equipment items.

''(b) DEADLINE.—The accounting standards required by subsection (a) shall be established by not later than September 30, 2017, and be available for use for the full audit on the financial statements of the Department of Defense for fiscal year 2018, as required by section 1003(a) of the National Defense Authorization Act for

Fiscal Year 2014 (Public Law 113–66; 127 Stat. 842; 10 U.S.C. 2222 note).''

ANNUAL AUDIT OF FINANCIAL STATEMENTS OF DEPARTMENT OF DEFENSE COMPONENTS BY INDEPENDENT EXTERNAL AUDITORS

Pub. L. 114–92, div. A, title X, §1005, Nov. 25, 2015, 129 Stat. 961, provided that:

''(a) AUDITS REQUIRED.—For purposes of satisfying the requirement under section 3521(e) of title 31, United States Code, for audits of financial statements of Department of Defense components identified by the Director of the Office of Management and Budget under section 3515(c) of such title, the Inspector General of the Department of Defense shall obtain each year audits of the financial statements of each such component by an independent external auditor.

''(b) SELECTION OF AUDITORS.—The selection of independent external auditors for purposes of subsection (a) shall be based, among other appropriate criteria, on their qualifications, independence, and capacity to conduct audits described in subsection (a) in accordance with applicable generally accepted government auditing standards. The Inspector General shall participate in the selection of the independent external auditors.

''(c) MONITORING AUDITS.—The Inspector General shall monitor the conduct of all audits by independent external auditors under subsection (a).

''(d) REPORTS ON AUDITS.—

''(1) IN GENERAL.—The Inspector General shall require the independent external auditors conducting audits under subsection (a) to submit a report on their audits each year to—

''(A) the Under Secretary of Defense (Comptroller) as the Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31, United States Code;

''(B) the Controller of the Office of Federal Financial Management in the Office of Management and Budget; and

''(C) the appropriate committees of Congress.

''(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

''(e) RELATIONSHIP TO EXISTING LAW.—The requirements of this section—

''(1) shall be implemented in a manner that is consistent with the requirements of section 1008 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 113 note);

''(2) shall not be construed to alter the requirement under section 3521(e) of title 31, United States Code, that the financial statements of the Department of Defense as a whole be audited by the Inspector General or by an independent external auditor, as determined by the Inspector General; and

''(3) shall not be construed to limit or alter the authorities of the Comptroller General of the United States under section 3521(g) of title 31, United States Code.''

DEADLINE FOR ESTABLISHMENT OF INVESTMENT REVIEW BOARD AND INVESTMENT MANAGEMENT PROCESS

Pub. L. 113–291, div. A, title IX, §901(e), Dec. 19, 2014, 128 Stat. 3464, provided that: ''The investment review board and investment management process required by [former] section 2222(g) of title 10, United States Code, as amended by subsection (d)(3), shall be established not later than March 15, 2015.''

AUDIT OF DEPARTMENT OF DEFENSE FISCAL YEAR 2018 FINANCIAL STATEMENTS

Pub. L. 113–66, div. A, title X, §1003(a), Dec. 26, 2013, 127 Stat. 842, provided that: ''In addition to the requirement under section 1003(a)(2)(A)(ii) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2222 note) that the Financial Improvement and Audit Readiness Plan describe specific actions to be taken and the costs associated with ensuring that the financial statements of the Department of Defense are validated as ready for audit by not later than September 30, 2017, upon the conclusion of fiscal year 2018, the Secretary of Defense shall ensure that a full audit is performed on the financial statements of the Department of Defense for such fiscal year. The Secretary shall submit to Congress the results of that audit by not later than March 31, 2019.''

REVIEW OF OBLIGATION AND EXPENDITURE THRESHOLDS

Pub. L. 111–383, div. A, title VIII, §882, Jan. 7, 2011, 124 Stat. 4308, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469, provided that:

''(a) PROCESS REVIEW.—Not later than one year after the date of the enactment of this Act [Jan. 7, 2011], the Chief Management Officer of the Department of Defense, in coordination with the Chief Management Officer of each military department, the Director of the Office of Performance Assessment and Root Cause Analysis, the Under Secretary of Defense (Comptroller), and the Comptrollers of the military departments, shall complete a comprehensive review of the use and value of obligation and expenditure benchmarks and propose new benchmarks or processes for tracking financial performance, including, as appropriate—

''(1) increased reliance on individual obligation and expenditure plans for measuring program financial performance;

''(2) mechanisms to improve funding stability and to increase the predictability of the release of funding for obligation and expenditure; and

''(3) streamlined mechanisms for a program manager to submit an appeal for funding changes and to have such appeal evaluated promptly.

''(b) TRAINING.—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense (Comptroller) shall ensure that, as part of the training required for program managers and business managers, an emphasis is placed on obligating and expending appropriated funds in a manner that achieves the best value for the Government and that the purpose and limitations of obligation and expenditure benchmarks are made clear.

''(c) REPORT.—The Deputy Chief Management Officer of the Department of Defense shall include a report on the results of the review under this section in the next update of the strategic management plan transmitted to the Committees on Armed Services of the Senate and the House of Representatives under section 904(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 275; 10 U.S.C. note prec. 2201) after the completion of the review.''

[Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469, provided that, effective after Feb. 1, 2017, any reference to the Deputy Chief Management Officer of the Department of Defense shall be deemed to refer to the Under Secretary of Defense for Business Management and Information. See section 901(n)(1) of Pub. L. 113–291, set out as a References note under section 131 of this title.]

AUDIT READINESS OF FINANCIAL STATEMENTS OF THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title X, §1005(b), Jan. 2, 2013, 126 Stat. 1904, provided that:

''(1) IN GENERAL.—The Chief Management Officer of the Department of Defense and the Chief Management Officers of each of the military departments shall ensure that plans to achieve an auditable statement of budgetary resources of the Department of Defense by September 30, 2014, include appropriate steps to minimize one-time fixes and manual work-arounds, are sustainable and affordable, and will not delay full auditability of financial statements.

''(2) ADDITIONAL ELEMENTS IN FIAR PLAN REPORT.—Each semi-annual report on the Financial Improve-

ment and Audit Readiness Plan of the Department of Defense submitted by the Under Secretary of Defense (Comptroller) under section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note) during the period beginning on the date of the enactment of this Act [Jan. 2, 2013] and ending on September 30, 2014, shall include the following:

''(A) A description of the actions taken by the military departments pursuant to paragraph (1).

''(B) A determination by the Chief Management Officer of each military department whether or not such military department is able to achieve an auditable statement of budgetary resources by September 30, 2014, without an unaffordable or unsustainable level of one-time fixes and manual work-arounds and without delaying the full auditability of the financial statements of such military department.

''(C) If the Chief Management Officer of a military department determines under subparagraph (B) that the military department is not able to achieve an auditable statement of budgetary resources by September 30, 2014, as described in that subparagraph—

''(i) an explanation why the military department is unable to meet the deadline;

''(ii) an alternative deadline by which the military department will achieve an auditable statement of budgetary resources; and

''(iii) a description of the plan of the military department for meeting the alternative deadline.''

Pub. L. 112–81, div. A, title X, §1003, Dec. 31, 2011, 125 Stat. 1555, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469, provided that:

''(a) PLANNING REQUIREMENT.—

''(1) IN GENERAL.—The report to be issued pursuant to section 1003(b) of the National Defense Authorization Act for 2010 (Public Law 111–84; 123 Stat. 2440; 10 U.S.C. 2222 note) and provided by not later than May 15, 2012, shall include a plan, including interim objectives and a schedule of milestones for each military department and for the defense agencies, to support the goal established by the Secretary of Defense that the statement of budgetary resources is validated for audit by not later than September 30, 2014. Consistent with the requirements of such section, the plan shall include process and control improvements and business systems modernization efforts necessary for the Department of Defense to consistently prepare timely, reliable, and complete financial management information.

''(2) SEMIANNUAL UPDATES.—The reports to be issued pursuant to such section after the report described in paragraph (1) shall update the plan required by such paragraph and explain how the Department has progressed toward meeting the milestones established in the plan.

''(b) INCLUSION OF SUBORDINATE ACTIVITIES FOR INTERIM MILESTONES.—For each interim milestone established pursuant to section 881 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4306; 10 U.S.C. 2222 note), the Under Secretary of Defense (Comptroller), in consultation with the Deputy Chief Management Officer of the Department of Defense, the Secretaries of the military departments, and the heads of the defense agencies and defense field activities, shall include a detailed description of the subordinate activities necessary to accomplish each interim milestone, including—

''(1) a justification of the time required for each activity;

''(2) metrics identifying the progress made within each activity; and

''(3) mitigating strategies for milestone timeframe slippages.

''(c) REPORT REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall submit to Congress a report relating to the Financial Improvement and Audit Readiness Plan of the Department of Defense submitted in accordance with section 1003 of the National Defense Authorization Act for 2010 (Public Law 111–84; 123 Stat. 2440 [2439]; 10 U.S.C. 2222 note) and section 881 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 121 Stat. 4306; 10 U.S.C. 2222 note).

''(2) MATTERS COVERED.—The report shall include a corrective action plan for any identified weaknesses or deficiencies in the execution of the Financial Improvement and Audit Readiness Plan. The corrective action plan shall—

''(A) identify near- and long-term measures for resolving any such weaknesses or deficiencies;

''(B) assign responsibilities within the Department of Defense to implement such measures;

''(C) specify implementation steps for such measures; and

''(D) provide timeframes for implementation of such measures.''

[Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469, provided that, effective after Feb. 1, 2017, any reference to the Deputy Chief Management Officer of the Department of Defense shall be deemed to refer to the Under Secretary of Defense for Business Management and Information. See section 901(n)(1) of Pub. L. 113–291, set out as a References note under section 131 of this title.]

Pub. L. 111–383, div. A, title VIII, §881, Jan. 7, 2011, 124 Stat. 4306, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469, provided that:

''(a) INTERIM MILESTONES.—

''(1) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act [Jan. 7, 2011], the Under Secretary of Defense (Comptroller), in consultation with the Deputy Chief Management Officer of the Department of Defense, the secretaries of the military departments, and the heads of the defense agencies and defense field activities, shall establish interim milestones for achieving audit readiness of the financial statements of the Department of Defense, consistent with the requirements of section 1003 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note).

''(2) MATTERS INCLUDED.—The interim milestones established pursuant to paragraph (1) shall include, at a minimum, for each military department and for the defense agencies and defense field activities—

''(A) an interim milestone for achieving audit readiness for each major element of the statement of budgetary resources, including civilian pay, military pay, supply orders, contracts, and funds balance with the Treasury; and

''(B) an interim milestone for addressing the existence and completeness of each major category of Department of Defense assets, including military equipment, real property, inventory, and operating material and supplies.

''(3) DESCRIPTION IN SEMIANNUAL REPORTS.—The Under Secretary shall describe each interim milestone established pursuant to paragraph (1) in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note). Each subsequent semiannual report submitted pursuant to section 1003(b) shall explain how the Department has progressed toward meeting such interim milestones.

''(b) VALUATION OF DEPARTMENT OF DEFENSE ASSETS.—

''(1) REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall, in consultation with other appropriate Federal agencies and officials—

''(A) examine the costs and benefits of alternative approaches to the valuation of Department of Defense assets;

''(B) select an approach to such valuation that is consistent with principles of sound financial management and the conservation of taxpayer resources; and

''(C) begin the preparation of a business case analysis supporting the selected approach.

''(2) The Under Secretary shall include information on the alternatives considered, the selected approach, and the business case analysis supporting that approach in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note).

''(c) REMEDIAL ACTIONS REQUIRED.—In the event that the Department of Defense, or any component of the Department of Defense, is unable to meet an interim milestone established pursuant to subsection (a), the Under Secretary of Defense (Comptroller) shall—

''(1) develop a remediation plan to ensure that—

''(A) the component will meet the interim milestone no more than one year after the originally scheduled date; and

''(B) the component's failure to meet the interim milestone will not have an adverse impact on the Department's ability to carry out the plan under section 1003(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note); and

''(2) include in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note)—

''(A) a statement of the reasons why the Department of Defense, or component of the Department of Defense, will be unable to meet such interim milestone;

''(B) the revised completion date for meeting such interim milestone; and

''(C) a description of the actions that have been taken and are planned to be taken by the Department of Defense, or component of the Department of Defense, to meet such interim milestone.

''(d) INCENTIVES FOR ACHIEVING AUDITABILITY.—

''(1) REVIEW REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall review options for providing appropriate incentives to the military departments, Defense Agencies, and defense field activities to ensure that financial statements are validated as ready for audit earlier than September 30, 2017.

''(2) OPTIONS REVIEWED.—The review performed pursuant to paragraph (1) shall consider changes in policy that reflect the increased confidence that can be placed in auditable financial statements, and shall include, at a minimum, consideration of the following options:

''(A) Consistent with the need to fund urgent warfighter requirements and operational needs, priority in the release of appropriated funds.

''(B) Relief from the frequency of financial reporting in cases in which such reporting is not required by law.

''(C) Relief from departmental obligation and expenditure thresholds to the extent that such thresholds establish requirements more restrictive than those required by law.

''(D) Increases in thresholds for reprogramming of funds.

''(E) Personnel management incentives for the financial and business management workforce.

''(F) Such other measures as the Under Secretary considers appropriate.

''(3) REPORT.—The Under Secretary shall include a discussion of the review performed pursuant to paragraph (1) in the next semiannual report pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note) and for each option considered pursuant to paragraph (2) shall include—

''(A) an assessment of the extent to which the implementation of the option—

''(i) would be consistent with the efficient operation of the Department of Defense and the effective funding of essential Department of Defense programs and activities; and

''(ii) would contribute to the achievement of Department of Defense goals to prepare auditable financial statements; and

''(B) a recommendation on whether such option should be adopted, a schedule for implementing the option if adoption is recommended, or a reason for not recommending the option if adoption is not recommended.''

[Pub. L. 113–291, div. A, title IX, § 901(n)(1), Dec. 19, 2014, 128 Stat. 3469, provided that, effective after Feb. 1, 2017, any reference to the Deputy Chief Management Officer of the Department of Defense shall be deemed to refer to the Under Secretary of Defense for Business Management and Information. See section 901(n)(1) of Pub. L. 113–291, set out as a References note under section 131 of this title.]

Pub. L. 111–84, div. A, title X, § 1003, Oct. 28, 2009, 123 Stat. 2439, as amended by Pub. L. 112–239, div. A, title X, § 1005(a), Jan. 2, 2013, 126 Stat. 1904; Pub. L. 113–66, div. A, title X, § 1003(b), Dec. 26, 2013, 127 Stat. 842, provided that:

''(a) FINANCIAL IMPROVEMENT AUDIT READINESS PLAN.—

''(1) IN GENERAL.—The Chief Management Officer of the Department of Defense shall, in consultation with the Under Secretary of Defense (Comptroller), develop and maintain a plan to be known as the 'Financial Improvement and Audit Readiness Plan'.

''(2) ELEMENTS.—The plan required by paragraph (1) shall—

''(A) describe specific actions to be taken and the costs associated with—

''(i) correcting the financial management deficiencies that impair the ability of the Department of Defense to prepare timely, reliable, and complete financial management information;

''(ii) ensuring the financial statements of the Department of Defense are validated as ready for audit by not later than September 30, 2017, and the statement of budgetary resources of the Department of Defense is validated as ready for audit by not later than September 30, 2014; and

''(iii) ensuring the audit of the financial statements of the Department of Defense for fiscal year 2018 occurs by not later than March 31, 2019.

''(B) systematically tie the actions described under subparagraph (A) to process and control improvements and business systems modernization efforts described in the business enterprise architecture and transition plan required by section 2222 of title 10, United States Code;

''(C) prioritize—

''(i) improving the budgetary information of the Department of Defense, in order to achieve an unqualified audit opinion on the Department's statements of budgetary resources; and

''(ii) as a secondary goal, improving the accuracy and reliability of management information on the Department's mission-critical assets (military and general equipment, real property, inventory, and operating materials and supplies) and validating its accuracy through existence and completeness audits; and

''(D) include interim goals, including—

''(i) the objective of ensuring that the financial statement of each of the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency is validated as ready for audit: and

''(ii) a schedule setting forth milestones for elements of the military departments and financial statements of the military departments to be made ready for audit as part of the progress required to meet the objectives established pursuant to clause (i) of this subparagraph and clause (ii) of subparagraph (A) of this paragraph.

''(b) SEMI-ANNUAL REPORTS ON FINANCIAL IMPROVEMENT AND AUDIT READINESS PLAN.—

''(1) IN GENERAL.—Not later than May 15 and November 15 each year, the Under Secretary of Defense

(Comptroller) shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the status of the implementation by the Department of Defense of the Financial Improvement and Audit Readiness Plan required by subsection (a).

''(2) ELEMENTS.—Each report under paragraph (1) shall include, at a minimum—

''(A) an overview of the steps the Department has taken or plans to take to meet the objectives specified in subsection (a)(2)(A), including progress toward achieving the interim goals and milestone schedule established pursuant to subsection (a)(2)(D); and

''(B) a description of any impediments identified in the efforts of the Department to meet such objectives, and of the actions the Department has taken or plans to take to address such impediments.

''(3) ADDITIONAL ISSUES TO BE ADDRESSED IN FIRST REPORT.—The first report submitted under paragraph (1) after the date of the enactment of this Act [Oct. 28, 2009] shall address, in addition to the elements required by paragraph (2), the actions taken or to be taken by the Department as follows:

''(A) To develop standardized guidance for financial improvement plans by components of the Department.

''(B) To establish a baseline of financial management capabilities and weaknesses at the component level of the Department.

''(C) To provide results-oriented metrics for measuring and reporting quantifiable results toward addressing financial management deficiencies.

''(D) To define the oversight roles of the Chief Management Officer of the Department of Defense, the chief management officers of the military departments, and other appropriate elements of the Department to ensure that the requirements of the Financial Improvement and Audit Readiness Plan are carried out.

''(E) To assign accountability for carrying out specific elements of the Financial Improvement and Audit Readiness Plan to appropriate officials and organizations at the component level of the Department.

''(F) To develop mechanisms to track budgets and expenditures for the implementation of the requirements of the Financial Improvement and Audit Readiness Plan.

''(G) To develop a mechanism to conduct audits of the military intelligence programs and agencies and to submit audited financial statements for such agencies to Congress in a classified manner.

''(c) RELATIONSHIP TO EXISTING LAW.—The requirements of this section shall be implemented in a manner that is consistent with the requirements of section 1008 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1204; 10 U.S.C. 2222 [113] note).''

BUSINESS PROCESS REENGINEERING EFFORTS; ONGOING PROGRAMS

Pub. L. 111–84, div. A, title X, §1072(b), Oct. 28, 2009, 123 Stat. 2471, provided that:

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the appropriate chief management officer for each defense business system modernization approved by the Defense Business Systems Management Committee before the date of the enactment of this Act that will have a total cost in excess of $100,000,000 shall review such defense business system modernization to determine whether or not appropriate business process reengineering efforts have been undertaken to ensure that—

''(A) the business process to be supported by such defense business system modernization will be as streamlined and efficient as practicable; and

''(B) the need to tailor commercial-off-the-shelf systems to meet unique requirements or incorporate unique interfaces has been eliminated or reduced to the maximum extent practicable.

''(2) ACTION ON FINDING OF LACK OF REENGINEERING EFFORTS.—If the appropriate chief management officer determines that appropriate business process reengineering efforts have not been undertaken with regard to a defense business system modernization as described in paragraph (1), that chief management officer—

''(A) shall develop a plan to undertake business process reengineering efforts with respect to the defense business system modernization; and

''(B) may direct that the defense business system modernization be restructured or terminated, if necessary to meet the requirements of paragraph (1).

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'appropriate chief management officer', with respect to a defense business system modernization, has the meaning given that term in paragraph (2) of [former] subsection (f) of section 2222 of title 10, United States Code (as amended by subsection (a)(2) of this section).

''(B) The term 'defense business system modernization' has the meaning given that term in [former] subsection (j)(3) of section 2222 of title 10, United States Code.''

BUSINESS TRANSFORMATION INITIATIVES FOR THE MILITARY DEPARTMENTS

Pub. L. 110–417, [div. A], title IX, §908, Oct. 14, 2008, 122 Stat. 4569, provided that:

''(a) IN GENERAL.—The Secretary of each military department shall, acting through the Chief Management Officer of such military department, carry out an initiative for the business transformation of such military department.

''(b) OBJECTIVES.—The objectives of the business transformation initiative of a military department under this section shall include, at a minimum, the following:

''(1) The development of a comprehensive business transformation plan, with measurable performance goals and objectives, to achieve an integrated management system for the business operations of the military department.

''(2) The development of a well-defined enterprise-wide business systems architecture and transition plan encompassing end-to-end business processes and capable of providing accurately and timely information in support of business decisions of the military department.

''(3) The implementation of the business transformation plan developed pursuant to paragraph (1) and the business systems architecture and transition plan developed pursuant to paragraph (2).

''(c) BUSINESS TRANSFORMATION OFFICES.—

''(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of each military department shall establish within such military department an office (to be known as the 'Office of Business Transformation' of such military department) to assist the Chief Management Officer of such military department in carrying out the initiative required by this section for such military department.

''(2) HEAD.—The Office of Business Transformation of a military department under this subsection shall be headed by a Director of Business Transformation, who shall be appointed by the Chief Management Officer of the military department, in consultation with the Director of the Business Transformation Agency of the Department of Defense, from among individuals with significant experience managing large-scale organizations or business transformation efforts.

''(3) SUPERVISION.—The Director of Business Transformation of a military department under paragraph (2) shall report directly to the Chief Management Officer of the military department, subject to policy guidance from the Director of the Business Transformation Agency of the Department of Defense.

''(4) AUTHORITY.—In carrying out the initiative required by this section for a military department, the

Director of Business Transformation of the military department under paragraph (2) shall have the authority to require elements of the military department to carry out actions that are within the purpose and scope of the initiative.

''(d) RESPONSIBILITIES OF BUSINESS TRANSFORMATION OFFICES.—The Office of Business Transformation of a military department established pursuant to subsection (b) may be responsible for the following:

''(1) Transforming the budget, finance, accounting, and human resource operations of the military department in a manner that is consistent with the business transformation plan developed pursuant to subsection (b)(1).

''(2) Eliminating or replacing financial management systems of the military department that are inconsistent with the business systems architecture and transition plan developed pursuant to subsection (b)(2).

''(3) Ensuring that the business transformation plan and the business systems architecture and transition plan are implemented in a manner that is aggressive, realistic, and accurately measured.

''(4) Such other responsibilities as the Secretary of that military department determines are appropriate.

''(e) REQUIRED ELEMENTS.—In carrying out the initiative required by this section for a military department, the Chief Management Officer and the Director of Business Transformation of the military department shall ensure that each element of the initiative is consistent with—

''(1) the requirements of the Business Enterprise Architecture and Transition Plan developed by the Secretary of Defense pursuant to section 2222 of title 10, United States Code;

''(2) the Standard Financial Information Structure of the Department of Defense;

''(3) the Federal Financial Management Improvement Act of 1996 [section 101(f) [title VIII] of title I of div. A of Pub. L. 104–208, 31 U.S.C. 3512 note] (and the amendments made by that Act); and

''(4) other applicable requirements of law and regulation.

''(f) REPORTS ON IMPLEMENTATION.—

''(1) INITIAL REPORTS.—Not later than nine months after the date of the enactment of this Act [Oct. 14, 2008], the Chief Management Officer of each military department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken, and on the actions planned to be taken, by such military department to implement the requirements of this section.

''(2) UPDATES.—Not later than March 1 of each of 2010, 2011, and 2012, the Chief Management Officer of each military department shall submit to the congressional defense committees a current update of the report submitted by such Chief Management Officer under paragraph (1).''

FINANCIAL MANAGEMENT TRANSFORMATION INITIATIVE FOR THE DEFENSE AGENCIES

Pub. L. 110–181, div. A, title X, § 1005, Jan. 28, 2008, 122 Stat. 301, provided that:

''(a) FINANCIAL MANAGEMENT TRANSFORMATION INITIATIVE.—

''(1) IN GENERAL.—The Director of the Business Transformation Agency of the Department of Defense shall carry out an initiative for financial management transformation in the Defense Agencies. The initiative shall be known as the 'Defense Agencies Initiative' (in this section referred to as the 'Initiative').

''(2) SCOPE OF AUTHORITY.—In carrying out the Initiative, the Director of the Business Transformation Agency may require the heads of the Defense Agencies to carry out actions that are within the purpose and scope of the Initiative.

''(b) PURPOSES.—The purposes of Initiative shall be as follows:

''(1) To eliminate or replace financial management systems of the Defense Agencies that are duplicative, redundant, or fail to comply with the standards set forth in subsection (d).

''(2) To transform the budget, finance, and accounting operations of the Defense Agencies to enable the Defense Agencies to achieve accurate and reliable financial information needed to support financial accountability and effective and efficient management decisions.

''(c) REQUIRED ELEMENTS.—The Initiative shall include, to the maximum extent practicable—

''(1) the utilization of commercial, off-the-shelf technologies and web-based solutions;

''(2) a standardized technical environment and an open and accessible architecture; and

''(3) the implementation of common business processes, shared services, and common data structures.

''(d) STANDARDS.—In carrying out the Initiative, the Director of the Business Transformation Agency shall ensure that the Initiative is consistent with—

''(1) the requirements of the Business Enterprise Architecture and Transition Plan developed pursuant to section 2222 of title 10, United States Code;

''(2) the Standard Financial Information Structure of the Department of Defense;

''(3) the Federal Financial Management Improvement Act of 1996 [section 101(f) [title VIII] of title I of div. A of Pub. L. 104–208, 31 U.S.C. 3512 note] (and the amendments made by that Act); and

''(4) other applicable requirements of law and regulation.

''(e) SCOPE.—The Initiative shall be designed to provide, at a minimum, capabilities in the major process areas for both general fund and working capital fund operations of the Defense Agencies as follows:

''(1) Budget formulation.

''(2) Budget to report, including general ledger and trial balance.

''(3) Procure to pay, including commitments, obligations, and accounts payable.

''(4) Order to fulfill, including billing and accounts receivable.

''(5) Cost accounting.

''(6) Acquire to retire (account management).

''(7) Time and attendance and employee entitlement.

''(8) Grants financial management.

''(f) CONSULTATION.—In carrying out subsections (d) and (e), the Director of the Business Transformation Agency shall consult with the Comptroller of the Department of Defense [now Under Secretary of Defense (Comptroller)] to ensure that any financial management systems developed for the Defense Agencies, and any changes to the budget, finance, and accounting operations of the Defense Agencies, are consistent with the financial standards and requirements of the Department of Defense.

''(g) PROGRAM CONTROL.—In carrying out the Initiative, the Director of the Business Transformation Agency shall establish—

''(1) a board (to be known as the 'Configuration Control Board') to manage scope and cost changes to the Initiative; and

''(2) a program management office (to be known as the 'Program Management Office') to control and enforce assumptions made in the acquisition plan, the cost estimate, and the system integration contract for the Initiative, as directed by the Configuration Control Board.

''(h) PLAN ON DEVELOPMENT AND IMPLEMENTATION OF INITIATIVE.—Not later than six months after the date of the enactment of this Act [Jan. 28, 2008], the Director of the Business Transformation Agency shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the development and implementation of the Initiative. The plan

shall provide for the implementation of an initial capability under the Initiative as follows:

''(1) In at least one Defense Agency by not later than eight months after the date of the enactment of this Act.

''(2) In not less than five Defense Agencies by not later than 18 months after the date of the enactment of this Act.''

LIMITATION ON FINANCIAL MANAGEMENT IMPROVEMENT AND AUDIT INITIATIVES WITHIN THE DEPARTMENT OF DEFENSE

Pub. L. 109–364, div. A, title III, § 321, Oct. 17, 2006, 120 Stat. 2144, as amended by Pub. L. 111–383, div. A, title X, § 1075(g)(1), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) LIMITATION.—The Secretary of Defense may not obligate or expend any funds for the purpose of any financial management improvement activity relating to the preparation, processing, or auditing of financial statements until the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a written determination that each activity proposed to be funded is—

''(1) consistent with the financial management improvement plan of the Department of Defense required by section 376(a)(1) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3213); and

''(2) likely to improve internal controls or otherwise result in sustained improvements in the ability of the Department to produce timely, reliable, and complete financial management information.

''(b) EXCEPTION.—The limitation in subsection (a) shall not apply to an activity directed exclusively at assessing the adequacy of internal controls and remediating any inadequacy identified pursuant to such assessment.''

TIME-CERTAIN DEVELOPMENT FOR DEPARTMENT OF DEFENSE INFORMATION TECHNOLOGY BUSINESS SYSTEMS

Pub. L. 109–364, div. A, title VIII, § 811, Oct. 17, 2006, 120 Stat. 2316, which provided limitations for Milestone A approval and initial operational capability regarding certain Department of Defense information technology business systems, was repealed by Pub. L. 114–92, div. A, title VIII, § 883(c), Nov. 25, 2015, 129 Stat. 947.

§ 2223. Information technology: additional responsibilities of Chief Information Officers

(a) ADDITIONAL RESPONSIBILITIES OF CHIEF INFORMATION OFFICER OF DEPARTMENT OF DEFENSE.—In addition to the responsibilities provided for in chapter 35 of title 44 and in section 11315 of title 40, the Chief Information Officer of the Department of Defense shall—

(1) review and provide recommendations to the Secretary of Defense on Department of Defense budget requests for information technology and national security systems;

(2) ensure the interoperability of information technology and national security systems throughout the Department of Defense;

(3) ensure that information technology and national security systems standards that will apply throughout the Department of Defense are prescribed;

(4) provide for the elimination of duplicate information technology and national security systems within and between the military departments and Defense Agencies; and

(5) maintain a consolidated inventory of Department of Defense mission critical and mission essential information systems, identify interfaces between those systems and other information systems, and develop and maintain contingency plans for responding to a disruption in the operation of any of those information systems.

(b) ADDITIONAL RESPONSIBILITIES OF CHIEF INFORMATION OFFICER OF MILITARY DEPARTMENTS.—In addition to the responsibilities provided for in chapter 35 of title 44 and in section 11315 of title 40, the Chief Information Officer of a military department, with respect to the military department concerned, shall—

(1) review budget requests for all information technology and national security systems;

(2) ensure that information technology and national security systems are in compliance with standards of the Government and the Department of Defense;

(3) ensure that information technology and national security systems are interoperable with other relevant information technology and national security systems of the Government and the Department of Defense; and

(4) coordinate with the Joint Staff with respect to information technology and national security systems.

(c) DEFINITIONS.—In this section:

(1) The term ''Chief Information Officer'' means the senior official designated by the Secretary of Defense or a Secretary of a military department pursuant to section 3506 of title 44.

(2) The term ''information technology'' has the meaning given that term by section 11101 of title 40.

(3) The term ''national security system'' has the meaning given that term by section 3552(b)(6) of title 44.

(Added Pub. L. 105–261, div. A, title III, § 331(a)(1), Oct. 17, 1998, 112 Stat. 1967; amended Pub. L. 106–398, § 1 [[div. A], title VIII, § 811(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–210; Pub. L. 107–217, § 3(b)(1), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 109–364, div. A, title IX, § 906(b), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 113–283, § 2(e)(5)(B), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 114–92, div. A, title X, § 1081(a)(7), Nov. 25, 2015, 129 Stat. 1001.)

AMENDMENTS

2015—Subsec. (c)(3). Pub. L. 114–92 substituted ''section 3552(b)(6)'' for ''section 3552(b)(5)''.

2014—Subsec. (c)(3). Pub. L. 113–283 substituted ''section 3552(b)(5)'' for ''section 3542(b)(2)''.

2006—Subsec. (c)(3). Pub. L. 109–364 substituted ''section 3542(b)(2) of title 44'' for ''section 11103 of title 40''.

2002—Subsecs. (a), (b). Pub. L. 107–217, § 3(b)(1)(A), (B), substituted ''section 11315 of title 40'' for ''section 5125 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 107–217, § 3(b)(1)(C), substituted ''section 11101 of title 40'' for ''section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401)''.

Subsec. (c)(3). Pub. L. 107–217, § 3(b)(1)(D), substituted ''section 11103 of title 40'' for ''section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452)''.

2000—Subsec. (a)(5). Pub. L. 106–398 added par. (5).

EFFECTIVE DATE

Pub. L. 105–261, div. A, title III, § 331(b), Oct. 17, 1998, 112 Stat. 1968, provided that: ''Section 2223 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1998.''

ADDITIONAL REQUIREMENTS RELATING TO THE SOFTWARE LICENSES OF THE DEPARTMENT OF DEFENSE

Pub. L. 113–66, div. A, title IX, § 935, Dec. 26, 2013, 127 Stat. 833, provided that:

''(a) UPDATED PLAN.—

''(1) UPDATE.—The Chief Information Officer of the Department of the Defense shall, in consultation with the chief information officers of the military departments and the Defense Agencies, update the plan for the inventory of selected software licenses of the Department of Defense required under section 937 of the National Defense Authorization Act for 2013 [probably means the National Defense Authorization Act for Fiscal Year 2013] (Public Law 112–239; 10 U.S.C. 2223 note) to include a plan for the inventory of all software licenses of the Department of Defense for which a military department spends more than $5,000,000 annually on any individual title, including a comparison of licenses purchased with licenses in use.

''(2) ELEMENTS.—The update required under paragraph (1) shall—

''(A) include plans for implementing an automated solution capable of reporting the software license compliance position of the Department and providing a verified audit trail, or an audit trail otherwise produced and verified by an independent third party;

''(B) include details on the process and business systems necessary to regularly perform reviews, a procedure for validating and reporting deregistering and registering new software, and a mechanism and plan to relay that information to the appropriate chief information officer; and

''(C) a proposed timeline for implementation of the updated plan in accordance with paragraph (3).

''(3) SUBMISSION.—Not later than September 30, 2015, the Chief Information Officer of the Department of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the updated plan required under paragraph (1).

''(b) PERFORMANCE PLAN.—If the Chief Information Officer of the Department of Defense determines through the implementation of the process and business systems in the updated plan required by subsection (a) that the number of software licenses of the Department for an individual title for which a military department spends greater than $5,000,000 annually exceeds the needs of the Department for such software licenses, or the inventory discloses that there is a discrepancy between the number of software licenses purchased and those in actual use, the Chief Information Officer of the Department of Defense shall implement a plan to bring the number of such software licenses into balance with the needs of the Department and the terms of any relevant contract.''

COLLECTION AND ANALYSIS OF NETWORK FLOW DATA

Pub. L. 112–239, div. A, title IX, § 935, Jan. 2, 2013, 126 Stat. 1886, provided that:

''(a) DEVELOPMENT OF TECHNOLOGIES.—The Chief Information Officer of the Department of Defense may, in coordination with the Under Secretary of Defense for Policy and the Under Secretary of Defense for Intelligence and acting through the Director of the Defense Information Systems Agency, use the available funding and research activities and capabilities of the Community Data Center of the Defense Information Systems Agency to develop and demonstrate collection, processing, and storage technologies for network flow data that—

''(1) are potentially scalable to the volume used by Tier 1 Internet Service Providers to collect and analyze the flow data across their networks;

''(2) will substantially reduce the cost and complexity of capturing and analyzing high volumes of flow data; and

''(3) support the capability—

''(A) to detect and identify cyber security threats, networks of compromised computers, and command and control sites used for managing illicit cyber operations and receiving information from compromised computers;

''(B) to track illicit cyber operations for attribution of the source; and

''(C) to provide early warning and attack assessment of offensive cyber operations.

''(b) COORDINATION.—Any research and development required in the development of the technologies described in subsection (a) shall be conducted in cooperation with the heads of other appropriate departments and agencies of the Federal Government and, whenever feasible, Tier 1 Internet Service Providers and other managed security service providers.''

COMPETITION FOR LARGE-SCALE SOFTWARE DATABASE AND DATA ANALYSIS TOOLS

Pub. L. 112–239, div. A, title IX, § 936, Jan. 2, 2013, 126 Stat. 1886, provided that:

''(a) ANALYSIS.—

''(1) REQUIREMENT.—The Secretary of Defense, acting through the Chief Information Officer of the Department of Defense, shall conduct an analysis of large-scale software database tools and large-scale software data analysis tools that could be used to meet current and future Department of Defense needs for large-scale data analytics.

''(2) ELEMENTS.—The analysis required under paragraph (1) shall include—

''(A) an analysis of the technical requirements and needs for large-scale software database and data analysis tools, including prioritization of key technical features needed by the Department of Defense; and

''(B) an assessment of the available sources from Government and commercial sources to meet such needs, including an assessment by the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy to ensure sufficiency and diversity of potential commercial sources.

''(3) SUBMISSION.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Chief Information Officer shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the results of the analysis required under paragraph (1).

''(b) COMPETITION REQUIRED.—

''(1) IN GENERAL.—If, following the analysis required under subsection (a), the Chief Information Officer of the Department of Defense identifies needs for software systems or large-scale software database or data analysis tools, the Department shall acquire such systems or such tools based on market research and using competitive procedures in accordance with applicable law and the Defense Federal Acquisition Regulation Supplement.

''(2) NOTIFICATION.—If the Chief Information Officer elects to acquire large-scale software database or data analysis tools using procedures other than competitive procedures, the Chief Information Officer and the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit a written notification to the congressional defense committees on a quarterly basis until September 30, 2018, that describes the acquisition involved, the date the decision was made, and the rationale for not using competitive procedures.''

SOFTWARE LICENSES OF THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title IX, § 937, Jan. 2, 2013, 126 Stat. 1887, provided that:

''(a) PLAN FOR INVENTORY OF LICENSES.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Chief Information Officer of the Department of the

[sic] Defense shall, in consultation with the chief information officers of the military departments and the Defense Agencies, issue a plan for the inventory of selected software licenses of the Department of Defense, including a comparison of licenses purchased with licenses installed.

''(2) SELECTED SOFTWARE LICENSES.—The Chief Information Officer shall determine the software licenses to be treated as selected software licenses of the Department for purposes of this section. The licenses shall be determined so as to maximize the return on investment in the inventory conducted pursuant to the plan required by paragraph (1).

''(3) PLAN ELEMENTS.—The plan under paragraph (1) shall include the following:

''(A) An identification and explanation of the software licenses determined by the Chief Information Officer under paragraph (2) to be selected software licenses for purposes of this section, and a summary outline of the software licenses determined not to be selected software licenses for such purposes.

''(B) Means to assess the needs of the Department and the components of the Department for selected software licenses during the two fiscal years following the date of the issuance of the plan.

''(C) Means by which the Department can achieve the greatest possible economies of scale and cost savings in the procurement, use, and optimization of selected software licenses.

''(b) PERFORMANCE PLAN.—If the Chief Information Officer determines through the inventory conducted pursuant to the plan required by subsection (a) that the number of selected software licenses of the Department and the components of the Department exceeds the needs of the Department for such software licenses, the Secretary of Defense shall implement a plan to bring the number of such software licenses into balance with the needs of the Department.''

OZONE WIDGET FRAMEWORK

Pub. L. 112–81, div. A, title IX, §924, Dec. 31, 2011, 125 Stat. 1539, provided that:

''(a) MECHANISM FOR INTERNET PUBLICATION OF INFORMATION FOR DEVELOPMENT OF ANALYSIS TOOLS AND APPLICATIONS.—The Chief Information Officer of the Department of Defense, acting through the Director of the Defense Information Systems Agency, shall implement a mechanism to publish and maintain on the public Internet the application programming interface specifications, a developer's toolkit, source code, and such other information on, and resources for, the Ozone Widget Framework (OWF) as the Chief Information Officer considers necessary to permit individuals and companies to develop, integrate, and test analysis tools and applications for use by the Department of Defense and the elements of the intelligence community.

''(b) PROCESS FOR VOLUNTARY CONTRIBUTION OF IMPROVEMENTS BY PRIVATE SECTOR.—In addition to the requirement under subsection (a), the Chief Information Officer shall also establish a process by which private individuals and companies may voluntarily contribute the following:

''(1) Improvements to the source code and documentation for the Ozone Widget Framework.

''(2) Alternative or compatible implementations of the published application programming interface specifications for the Framework.

''(c) ENCOURAGEMENT OF USE AND DEVELOPMENT.—The Chief Information Officer shall, whenever practicable, encourage and foster the use, support, development, and enhancement of the Ozone Widget Framework by the computer industry and commercial information technology vendors, including the development of tools that are compatible with the Framework.''

CONTINUOUS MONITORING OF DEPARTMENT OF DEFENSE INFORMATION SYSTEMS FOR CYBERSECURITY

Pub. L. 111–383, div. A, title IX, §931, Jan. 7, 2011, 124 Stat. 4334, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall direct the Chief Information Officer of the Department of Defense to work, in coordination with the Chief Information Officers of the military departments and the Defense Agencies and with senior cybersecurity and information assurance officials within the Department of Defense and otherwise within the Federal Government, to achieve, to the extent practicable, the following:

''(1) The continuous prioritization of the policies, principles, standards, and guidelines developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) based upon the evolving threat of information security incidents with respect to national security systems, the vulnerability of such systems to such incidents, and the consequences of information security incidents involving such systems.

''(2) The automation of continuous monitoring of the effectiveness of the information security policies, procedures, and practices within the information infrastructure of the Department of Defense, and the compliance of that infrastructure with such policies, procedures, and practices, including automation of—

''(A) management, operational, and technical controls of every information system identified in the inventory required under section 3505(c) of title 44, United States Code; and

''(B) management, operational, and technical controls relied on for evaluations under [former] section 3545 of title 44, United States Code [see now 44 U.S.C. 3555].

''(b) DEFINITIONS.—In this section:

''(1) The term 'information security incident' means an occurrence that—

''(A) actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information such system processes, stores, or transmits; or

''(B) constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies with respect to an information system.

''(2) The term 'information infrastructure' means the underlying framework, equipment, and software that an information system and related assets rely on to process, transmit, receive, or store information electronically.

''(3) The term 'national security system' has the meaning given that term in [former] section 3542(b)(2) of title 44, United States Code [see now 44 U.S.C. 3552(b)(6)].''

§ 2223a. Information technology acquisition planning and oversight requirements

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.

(b) PROGRAM COMPONENTS.—The program established under subsection (a) shall include—

(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned value management, and risk management;

(2) the development of appropriate metrics that can be implemented and monitored on a real-time basis for performance measurement of—

(A) processes and development status of investments in major automated information system programs;

(B) continuous process improvement of such programs; and

(C) achievement of program and investment outcomes;

(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education in the planning, acquisition, execution, management, and oversight of information technology systems;

(4) a process to ensure sufficient resources and infrastructure capacity for test and evaluation of information technology systems;

(5) a process to ensure that military departments and Defense Agencies adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments; and

(6) a process under which an appropriate Department of Defense official may intervene or terminate the funding of an information technology investment if the investment is at risk of not achieving major project milestones.

(Added Pub. L. 111–383, div. A, title VIII, § 805(a)(1), Jan. 7, 2011, 124 Stat. 4259.)

GUIDANCE ON ACQUISITION OF BUSINESS SYSTEMS

Pub. L. 114–92, div. A, title VIII, § 883(e), Nov. 25, 2015, 129 Stat. 947, provided that: ''The Secretary of Defense shall issue guidance for major automated information systems acquisition programs to promote the use of best acquisition, contracting, requirement development, systems engineering, program management, and sustainment practices, including—

''(1) ensuring that an acquisition program baseline has been established within two years after program initiation;

''(2) ensuring that program requirements have not changed in a manner that increases acquisition costs or delays the schedule, without sufficient cause and only after maximum efforts to reengineer business processes prior to changing requirements;

''(3) policies to evaluate commercial off-the-shelf business systems for security, resilience, reliability, interoperability, and integration with existing interrelated systems where such system integration and interoperability are essential to Department of Defense operations;

''(4) policies to work with commercial off-the-shelf business system developers and owners in adapting systems for Department of Defense use;

''(5) policies to perform Department of Defense legacy system audits to determine which systems are related to or rely upon the system to be replaced or integrated with commercial off-the-shelf business systems;

''(6) policies to perform full backup of systems that will be changed or replaced by the installation of commercial off-the-shelf business systems prior to installation and deployment to ensure reconstitution of the system to a functioning state should it become necessary;

''(7) policies to engage the research and development activities and laboratories of the Department of Defense to improve acquisition outcomes; and

''(8) policies to refine and improve developmental and operational testing of business processes that are supported by the major automated information systems.''

MODULAR OPEN SYSTEMS APPROACHES IN ACQUISITION PROGRAMS

Pub. L. 113–291, div. A, title VIII, § 801, Dec. 19, 2014, 128 Stat. 3425, provided that:

''(a) PLAN FOR MODULAR OPEN SYSTEMS APPROACH THROUGH DEVELOPMENT AND ADOPTION OF STANDARDS AND ARCHITECTURES.—Not later than January 1, 2016, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives detailing a plan to develop standards and define architectures necessary to enable open systems approaches in the key mission areas of the Department of Defense with respect to which the Under Secretary determines that such standards and architectures would be feasible and cost effective.

''(b) CONSIDERATION OF MODULAR OPEN SYSTEMS APPROACHES.—

''(1) Review of acquisition guidance.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall review current acquisition guidance, and modify such guidance as necessary, to—

''(A) ensure that acquisition programs include open systems approaches in the product design and acquisition of information technology systems to the maximum extent practicable; and

''(B) for any information technology system not using an open systems approach, ensure that written justification is provided in the contract file for the system detailing why an open systems approach was not used.

''(2) ELEMENTS.—The review required in paragraph (1) shall—

''(A) consider whether the guidance includes appropriate exceptions for the acquisition of—

''(i) commercial items; and

''(ii) solutions addressing urgent operational needs;

''(B) determine the extent to which open systems approaches should be addressed in analysis of alternatives, acquisition strategies, system engineering plans, and life cycle sustainment plans; and

''(C) ensure that increments of acquisition programs consider the extent to which the increment will implement open systems approaches as a whole.

''(3) DEADLINE FOR REVIEW.—The review required in this subsection shall be completed no later than 180 days after the date of the enactment of this Act [Dec. 19, 2014].

''(c) TREATMENT OF ONGOING AND LEGACY PROGRAMS.—

''(1) REPORT REQUIREMENT.—Not later than one year after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report covering the matters specified in paragraph (2).

''(2) MATTERS COVERED.—Subject to paragraph (3), the report required in this subsection shall—

''(A) identify all information technology systems that are in development, production, or deployed status as of the date of the enactment of this Act, that are or were major defense acquisition programs or major automated information systems, and that are not using an open systems approach;

''(B) identify gaps in standards and architectures necessary to enable open systems approaches in the key mission areas of the Department of Defense, as determined pursuant to the plan submitted under subsection (a); and

''(C) outline a process for potential conversion to an open systems approach for each information technology system identified under subparagraph (A).

''(3) LIMITATIONS.—The report required in this subsection shall not include information technology systems—

''(A) having a planned increment before fiscal year 2021 that will result in conversion to an open systems approach; and

''(B) that will be in operation for fewer than 15 years after the date of the enactment of this Act.

''(d) DEFINITIONS.—In this section:

''(1) INFORMATION TECHNOLOGY.—The term 'information technology' has the meaning given the term in section 11101(6) of title 40, United States Code.

''(2) OPEN SYSTEMS APPROACH.—The term 'open systems approach' means, with respect to an information technology system, an integrated business and technical strategy that—

''(A) employs a modular design and uses widely supported and consensus-based standards for key interfaces;

''(B) is subjected to successful validation and verification tests to ensure key interfaces comply with widely supported and consensus-based standards; and

''(C) uses a system architecture that allows components to be added, modified, replaced, removed, or supported by different vendors throughout the lifecycle of the system to afford opportunities for enhanced competition and innovation while yielding—

''(i) significant cost and schedule savings; and

''(ii) increased interoperability.''

OPERATIONAL METRICS FOR JOINT INFORMATION ENVIRONMENT AND SUPPORTING ACTIVITIES

Pub. L. 113–291, div. A, title VIII, §854, Dec. 19, 2014, 128 Stat. 3459, provided that:

''(a) GUIDANCE.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense, acting through the Chief Information Officer of the Department of Defense, shall issue guidance for measuring the operational effectiveness and efficiency of the Joint Information Environment within the military departments, Defense Agencies, and combatant commands. The guidance shall include a definition of specific metrics for data collection, and a requirement for each military department, Defense Agency, and combatant command to regularly collect and assess data on such operational effectiveness and efficiency and report the results to such Chief Information Officer on a regular basis.

''(b) BASELINE ARCHITECTURE.—The Chief Information Officer of the Department of Defense shall identify a baseline architecture for the Joint Information Environment by identifying and reporting to the Secretary of Defense any information technology programs or other investments that support that architecture.

''(c) JOINT INFORMATION ENVIRONMENT DEFINED.—In this section, the term 'Joint Information Environment' means the initiative of the Department of Defense to modernize the information technology networks and systems within the Department.''

SUPERVISION OF THE ACQUISITION OF CLOUD COMPUTING CAPABILITIES

Pub. L. 113–66, div. A, title IX, §938, Dec. 26, 2013, 127 Stat. 835, provided that:

''(a) SUPERVISION.—

''(1) IN GENERAL.—The Secretary of Defense shall, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense for Intelligence, the Chief Information Officer of the Department of Defense, and the Chairman of the Joint Requirements Oversight Council, supervise the following:

''(A) Review, development, modification, and approval of requirements for cloud computing solutions for data analysis and storage by the Armed Forces and the Defense Agencies, including requirements for cross-domain, enterprise-wide discovery and correlation of data stored in cloud and non-cloud computing databases, relational and non-relational databases, and hybrid databases.

''(B) Review, development, modification, approval, and implementation of plans for the competitive acquisition of cloud computing systems or services to meet requirements described in subparagraph (A), including plans for the transition from current computing systems to systems or services acquired.

''(C) Development and implementation of plans to ensure that the cloud systems or services acquired pursuant to subparagraph (B) are interoperable and universally accessible and usable through attribute-based access controls.

''(D) Integration of plans under subparagraphs (B) and (C) with enterprise-wide plans of the Armed Forces and the Department of Defense for the Joint Information Environment and the Defense Intelligence Information Environment.

''(2) DIRECTION.—The Secretary shall provide direction to the Armed Forces and the Defense Agencies on the matters covered by paragraph (1) by not later than March 15, 2014.

''(b) INTEGRATION WITH INTELLIGENCE COMMUNITY EFFORTS.—The Secretary shall coordinate with the Director of National Intelligence to ensure that activities under this section are integrated with the Intelligence Community Information Technology Enterprise in order to achieve interoperability, information sharing, and other efficiencies.

''(c) LIMITATION.—The requirements of subparagraphs (B), (C), and (D) of subsection (a)(1) shall not apply to a contract for the acquisition of cloud computing capabilities in an amount less than $1,000,000.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter or affect the authorities or responsibilities of the Director of National Intelligence under section 102A of the National Security Act of 1947 (50 U.S.C. 3024).''

DATA SERVERS AND CENTERS

Pub. L. 112–81, div. B, title XXVIII, §2867, Dec. 31, 2011, 125 Stat. 1704, as amended by Pub. L. 112–239, div. B, title XXVIII, §2853, Jan. 2, 2013, 126 Stat. 2161, provided that:

''(a) LIMITATIONS ON OBLIGATION OF FUNDS.—

''(1) LIMITATIONS.—

''(A) BEFORE PERFORMANCE PLAN.—During the period beginning on the date of the enactment of this Act [Dec. 31, 2011] and ending on May 1, 2012, a department, agency, or component of the Department of Defense may not obligate funds for a data server farm or data center unless approved by the Chief Information Officer of the Department of Defense or the Chief Information Officer of a component of the Department to whom the Chief Information Officer of the Department has specifically delegated such approval authority.

''(B) UNDER PERFORMANCE PLAN.—After May 1, 2012, a department, agency, or component of the Department may not obligate funds for a data center, or any information systems technology used therein, unless that obligation is in accordance with the performance plan required by subsection (b) and is approved as described in subparagraph (A).

''(2) REQUIREMENTS FOR APPROVALS.—

''(A) BEFORE PERFORMANCE PLAN.—An approval of the obligation of funds may not be granted under paragraph (1)(A) unless the official granting the approval determines, in writing, that existing resources of the agency, component, or element concerned cannot affordably or practically be used or modified to meet the requirements to be met through the obligation of funds.

''(B) UNDER PERFORMANCE PLAN.—An approval of the obligation of funds may not be granted under paragraph (1)(B) unless the official granting the approval determines that—

''(i) existing resources of the Department do not meet the operation requirements to be met through the obligation of funds; and

''(ii) the proposed obligation is in accordance with the performance standards and measures established by the Chief Information Officer of the Department under subsection (b).

''(3) REPORTS.—Not later than 30 days after the end of each calendar quarter, each Chief Information Officer of a component of the Department who grants an approval under paragraph (1) during such calendar quarter shall submit to the Chief Information Officer of the Department a report on the approval or approvals so granted during such calendar quarter.

''(b) PERFORMANCE PLAN FOR REDUCTION OF RESOURCES REQUIRED FOR DATA SERVERS AND CENTERS.—

''(1) COMPONENT PLANS.—

''(A) IN GENERAL.—Not later than January 15, 2012, the Secretaries of the military departments and the heads of the Defense Agencies shall each submit to the Chief Information Officer of the Department a plan for the department or agency concerned to achieve the following:

''(i) A reduction in the square feet of floor space devoted to information systems technologies, attendant support technologies, and operations within data centers.

''(ii) A reduction in the use of all utilities necessary to power and cool information systems technologies and data centers.

''(iii) An increase in multi-organizational utilization of data centers, information systems technologies, and associated resources.

''(iv) A reduction in the investment for capital infrastructure or equipment required to support data centers as measured in cost per megawatt of data storage.

''(v) A reduction in the number of commercial and government developed applications running on data servers and within data centers.

''(vi) A reduction in the number of government and vendor provided full-time equivalent personnel, and in the cost of labor, associated with the operation of data servers and data centers.

''(B) SPECIFICATION OF REQUIRED ELEMENTS.—The Chief Information Officer of the Department shall specify the particular performance standards and measures and implementation elements to be included in the plans submitted under this paragraph, including specific goals and schedules for achieving the matters specified in subparagraph (A).

''(2) DEFENSE-WIDE PLAN.—

''(A) IN GENERAL.—Not later than April 1, 2012, the Chief Information Officer of the Department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a performance plan for a reduction in the resources required for data centers and information systems technologies Department-wide. The plan shall be based upon and incorporate appropriate elements of the plans submitted under paragraph (1).

''(B) ELEMENTS.—The performance plan required under this paragraph shall include the following:

''(i) A Department-wide performance plan for achieving the matters specified in paragraph (1)(A), including performance standards and measures for data centers and information systems technologies, goals and schedules for achieving such matters, and an estimate of cost savings anticipated through implementation of the plan.

''(ii) A Department-wide strategy for each of the following:

''(I) Desktop, laptop, and mobile device virtualization.

''(II) Transitioning to cloud computing.

''(III) Migration of Defense data and government-provided services from Department-owned and operated data centers to cloud computing services generally available within the private sector that provide a better capability at a lower cost with the same or greater degree of security.

''(IV) Utilization of private sector-managed security services for data centers and cloud computing services.

''(V) A finite set of metrics to accurately and transparently report on data center infrastructure (space, power and cooling): age, cost, capacity, usage, energy efficiency and utilization, accompanied with the aggregate data for each data center site in use by the Department in excess of 100 kilowatts of information technology power demand.

''(VI) Transitioning to just-in-time delivery of Department-owned data center infrastructure (space, power and cooling) through use of modular data center technology and integrated data center infrastructure management software.

''(3) RESPONSIBILITY.—The Chief Information Officer of the Department shall discharge the responsibility for establishing performance standards and measures for data centers and information systems technologies for purposes of this subsection. Such responsibility may not be delegated.

''(c) EXCEPTIONS.—

''(1) INTELLIGENCE COMPONENTS.—The Chief Information Officer of the Department and the Chief Information Officer of the Intelligence Community may jointly exempt from the applicability of this section such intelligence components of the Department of Defense (and the programs and activities thereof) that are funded through the National Intelligence Program (NIP) as the Chief Information Officers consider appropriate.

''(2) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION PROGRAMS.—The Chief Information Officer of the Department may exempt from the applicability of this section research, development, test, and evaluation programs that use authorization of appropriations for the High Performance Computing Modernization Program (Program Element 0603461A) if the Chief Information Officer determines that the exemption is in the best interest of national security.

''(d) REPORTS ON COST SAVINGS.—

''(1) IN GENERAL.—Not later than March 1 of each fiscal year, and ending in fiscal year 2016, the Chief Information Officer of the Department shall submit to the appropriate committees of Congress a report on the cost savings, cost reductions, cost avoidances, and performance gains achieved, and anticipated to be achieved, as of the date of such report as a result of activities undertaken under this section.

''(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

''(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.''

§ 2224. Defense Information Assurance Program

(a) DEFENSE INFORMATION ASSURANCE PROGRAM.—The Secretary of Defense shall carry out a program, to be known as the ''Defense Information Assurance Program'', to protect and defend Department of Defense information, information systems, and information networks that are critical to the Department and the armed forces during day-to-day operations and operations in times of crisis.

(b) OBJECTIVES OF THE PROGRAM.—The objectives of the program shall be to provide continuously for the availability, integrity, authentication, confidentiality, nonrepudiation, and rapid restitution of information and information systems that are essential elements of the Defense Information Infrastructure.

(c) PROGRAM STRATEGY.—In carrying out the program, the Secretary shall develop a program strategy that encompasses those actions necessary to assure the readiness, reliability, continuity, and integrity of Defense information systems, networks, and infrastructure, including through compliance with subchapter II of chapter 35 of title 44, including through compliance with subchapter III of chapter 35 of title 44. The program strategy shall include the following:

(1) A vulnerability and threat assessment of elements of the defense and supporting non-defense information infrastructures that are essential to the operations of the Department and the armed forces.

(2) Development of essential information assurances technologies and programs.

(3) Organization of the Department, the armed forces, and supporting activities to defend against information warfare.

(4) Joint activities of the Department with other departments and agencies of the Government, State and local agencies, and elements of the national information infrastructure.

(5) The conduct of exercises, war games, simulations, experiments, and other activities designed to prepare the Department to respond to information warfare threats.

(6) Development of proposed legislation that the Secretary considers necessary for implementing the program or for otherwise responding to the information warfare threat.

(d) COORDINATION.—In carrying out the program, the Secretary shall coordinate, as appropriate, with the head of any relevant Federal agency and with representatives of those national critical information infrastructure systems that are essential to the operations of the Department and the armed forces on information assurance measures necessary to the protection of these systems.

[(e) Repealed. Pub. L. 108–136, div. A, title X, §1031(a)(12), Nov. 24, 2003, 117 Stat. 1597.]

(f) INFORMATION ASSURANCE TEST BED.—The Secretary shall develop an information assurance test bed within the Department of Defense to provide—

(1) an integrated organization structure to plan and facilitate the conduct of simulations, war games, exercises, experiments, and other activities to prepare and inform the Department regarding information warfare threats; and

(2) organization and planning means for the conduct by the Department of the integrated or joint exercises and experiments with elements of the national information systems infrastructure and other non-Department of Defense organizations that are responsible for the oversight and management of critical information systems and infrastructures on which the Department, the armed forces, and supporting activities depend for the conduct of daily operations and operations during crisis.

(Added Pub. L. 106–65, div. A, title X, §1043(a), Oct. 5, 1999, 113 Stat. 760; amended Pub. L. 106–398, §1 [[div. A], title X, §1063], Oct. 30, 2000, 114 Stat. 1654, 1654A–274; Pub. L. 107–296, title X, §1001(c)(1)(B), Nov. 25, 2002, 116 Stat. 2267; Pub. L. 107–347, title III, §301(c)(1)(B), Dec. 17, 2002, 116 Stat. 2955; Pub. L. 108–136, div. A, title X, §1031(a)(12), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 108–375, div. A, title X, §1084(d)(17), Oct. 28, 2004, 118 Stat. 2062.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375 substituted ''subchapter II'' for ''subtitle II'' in introductory provisions.

2003—Subsec. (e). Pub. L. 108–136 struck out subsec. (e) which directed the Secretary of Defense to annually submit to Congress a report on the Defense Information Assurance Program.

2002—Subsec. (b). Pub. L. 107–296, §1001(c)(1)(B)(i), and Pub. L. 107–347, §301(c)(1)(B)(i), amended subsec. (b) identically, substituting ''Objectives of the Program'' for ''Objectives and Minimum Requirements'' in heading and striking out par. (1) designation before ''The objectives''.

Subsec. (b)(2). Pub. L. 107–347, §301(c)(1)(B)(ii), struck out par. (2) which read as follows: ''The program shall at a minimum meet the requirements of sections 3534 and 3535 of title 44.''

Pub. L. 107–296, §1001(c)(1)(B)(ii), which directed the striking out of ''(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.'' could not be executed. See above par.

Subsec. (c). Pub. L. 107–347, §301(c)(1)(B)(iii), inserted '', including through compliance with subchapter III of chapter 35 of title 44'' after ''infrastructure'' in introductory provisions.

Pub. L. 107–296, §1001(c)(1)(B)(iii), inserted '', including through compliance with subtitle II of chapter 35 of title 44'' after ''infrastructure'' in introductory provisions.

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title X, §1063(a)], substituted ''OBJECTIVES AND MINIMUM REQUIREMENTS'' for ''OBJECTIVES OF THE PROGRAM'' in heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (e)(7). Pub. L. 106–398, §1 [[div. A], title X, §1063(b)], added par. (7).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–398 effective 30 days after Oct. 30, 2000, see section 1 [[div. A], title X, §1065] of Pub. L. 106–398, Oct. 30, 2000, 114 Stat. 1654, formerly set out as an Effective Date note under former section 3531 of Title 44, Public Printing and Documents.

ACQUISITION AUTHORITY OF THE COMMANDER OF UNITED STATES CYBER COMMAND

Pub. L. 114–92, div. A, title VIII, §807, Nov. 25, 2015, 129 Stat. 886, provided that:

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Commander of the United States Cyber Command shall be responsible for, and shall have the authority to conduct, the following acquisition activities:

''(A) Development and acquisition of cyber operations-peculiar equipment and capabilities.

''(B) Acquisition and sustainment of cyber capability-peculiar equipment, capabilities, and services.

''(2) ACQUISITION FUNCTIONS.—Subject to the authority, direction, and control of the Secretary of Defense, the Commander shall have authority to exercise the functions of the head of an agency under chapter 137 of title 10, United States Code.

''(b) COMMAND ACQUISITION EXECUTIVE.—

''(1) IN GENERAL.—The staff of the Commander shall include a command acquisition executive, who shall be responsible for the overall supervision of acquisition matters for the United States Cyber Command. The command acquisition executive shall have the authority—

''(A) to negotiate memoranda of agreement with the military departments and Department of Defense components to carry out the acquisition of equipment, capabilities, and services described in subsection (a)(1) on behalf of the Command;

''(B) to supervise the acquisition of equipment, capabilities, and services described in subsection (a)(1);

''(C) to represent the Command in discussions with the military departments regarding acquisi-

tion programs for which the Command is a customer; and

''(D) to work with the military departments to ensure that the Command is appropriately represented in any joint working group or integrated product team regarding acquisition programs for which the Command is a customer.

''(2) DELIVERY OF ACQUISITION SOLUTIONS.—The command acquisition executive of the United States Cyber Command shall be—

''(A) responsible to the Commander for rapidly delivering acquisition solutions to meet validated cyber operations-peculiar requirements;

''(B) subordinate to the defense acquisition executive in matters of acquisition;

''(C) subject to the same oversight as the service acquisition executives; and

''(D) included on the distribution list for acquisition directives and instructions of the Department of Defense.

''(c) ACQUISITION PERSONNEL.—

''(1) IN GENERAL.—The Secretary of Defense shall provide the United States Cyber Command with the personnel or funding equivalent to ten full-time equivalent personnel to support the Commander in fulfilling the acquisition responsibilities provided for under this section with experience in—

''(A) program acquisition;

''(B) the Joint Capabilities Integration and Development System Process;

''(C) program management;

''(D) system engineering; and

''(E) costing.

''(2) EXISTING PERSONNEL.—The personnel provided under this subsection shall be provided from among the existing personnel of the Department of Defense.

''(d) BUDGET.—In addition to the activities of a combatant command for which funding may be requested under section 166 of title 10, United States Code, the budget proposal of the United States Cyber Command shall include requests for funding for—

''(1) development and acquisition of cyber operations-peculiar equipment; and

''(2) acquisition and sustainment of other capabilities or services that are peculiar to cyber operations activities.

''(e) CYBER OPERATIONS PROCUREMENT FUND.—In exercising the authority granted in subsection (a), the Commander may not obligate or expend more than $75,000,000 out of the funds made available in each fiscal year from 2016 through 2021 to support acquisition activities provided for under this section.

''(f) RULE OF CONSTRUCTION REGARDING INTELLIGENCE AND SPECIAL ACTIVITIES.—Nothing in this section shall be construed to constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.).

''(g) IMPLEMENTATION PLAN REQUIRED.—The authority granted in subsection (a) shall become effective 30 days after the date on which the Secretary of Defense provides to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of those authorities under subsection (a). The plan shall include the following:

''(1) A Department of Defense definition of—

''(A) cyber operations-peculiar equipment and capabilities; and

''(B) cyber capability-peculiar equipment, capabilities, and services.

''(2) Summaries of the components to be negotiated in the memorandum of agreements with the military departments and other Department of Defense components to carry out the development, acquisition, and sustainment of equipment, capabilities, and services described in subparagraphs (A) and (B) of subsection (a)(1).

''(3) Memorandum of agreement negotiation and approval timelines.

''(4) Plan for oversight of the command acquisition executive established in subsection (b).

''(5) Assessment of the acquisition workforce needs of the United States Cyber Command to support the authority in subsection (a) until 2021.

''(6) Other matters as appropriate.

''(h) ANNUAL END-OF-YEAR ASSESSMENT.—Each year, the Cyber Investment Management Board shall review and assess the acquisition activities of the United States Cyber Command, including contracting and acquisition documentation, for the previous fiscal year, and provide any recommendations or feedback to the acquisition executive of Cyber Command.

''(i) SUNSET.—

''(1) IN GENERAL.—The authority under this section shall terminate on September 30, 2021.

''(2) LIMITATION ON DURATION OF ACQUISITIONS.—The authority under this section does not include major defense acquisition programs, major automated information system programs, or acquisitions of foundational infrastructure or software architectures the duration of which is expected to last more than five years.''

NOTIFICATION OF FOREIGN THREATS TO INFORMATION TECHNOLOGY SYSTEMS IMPACTING NATIONAL SECURITY

Pub. L. 113–291, div. A, title X, § 1078, Dec. 19, 2014, 128 Stat. 3520, provided that:

''(a) NOTIFICATION REQUIRED.—

''(1) IN GENERAL.—Not later than 30 days after the Secretary of Defense determines, through the use of open source information or the use of existing authorities (including section 806 of the National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4260; 10 U.S.C. 2304 note)), that there is evidence of a national security threat described in paragraph (2), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a notification of such threat.

''(2) NATIONAL SECURITY THREAT.—A national security threat described in this paragraph is a threat to an information technology or telecommunications component or network by an agent of a foreign power in which the compromise of such technology, component, or network poses a significant risk to the programs and operations of the Department of Defense, as determined by the Secretary of Defense.

''(3) FORM.—A notification under this subsection shall be submitted in classified form.

''(b) ACTION PLAN REQUIRED.—In the event that a notification is submitted pursuant to subsection (a), the Secretary shall work with the head of any department or agency affected by the national security threat to develop a plan of action for responding to the concerns leading to the notification.

''(c) AGENT OF A FOREIGN POWER.—In this section, the term 'agent of a foreign power' has the meaning given such term in section 101(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)).''

AUTHORITIES, CAPABILITIES, AND OVERSIGHT OF THE UNITED STATES CYBER COMMAND

Pub. L. 113–66, div. A, title IX, § 932, Dec. 26, 2013, 127 Stat. 829, provided that:

''(a) PROVISION OF CERTAIN OPERATIONAL CAPABILITIES.—The Secretary of Defense shall take such actions as the Secretary considers appropriate to provide the United States Cyber Command operational military units with infrastructure and equipment enabling access to the Internet and other types of networks to permit the United States Cyber Command to conduct the peacetime and wartime missions of the Command.

''(b) CYBER RANGES.—

''(1) IN GENERAL.—The Secretary shall review existing cyber ranges and adapt one or more such ranges,

as necessary, to support training and exercises of cyber units that are assigned to execute offensive military cyber operations.

''(2) ELEMENTS.—Each range adapted under paragraph (1) shall have the capability to support offensive military operations against targets that—

''(A) have not been previously identified and prepared for attack; and

''(B) must be compromised or neutralized immediately without regard to whether the adversary can detect or attribute the attack.

''(c) PRINCIPAL ADVISOR ON MILITARY CYBER FORCE MATTERS.—

''(1) DESIGNATION.—The Secretary shall designate, from among the personnel of the Office of the Under Secretary of Defense for Policy, a Principal Cyber Advisor to act as the principal advisor to the Secretary on military cyber forces and activities. The Secretary may only designate an official under this paragraph if such official was appointed to the position in which such official serves by and with the advice and consent of the Senate.

''(2) RESPONSIBILITIES.—The Principal Cyber Advisor shall be responsible for the following:

''(A) Overall supervision of cyber activities related to offensive missions, defense of the United States, and defense of Department of Defense networks, including oversight of policy and operational considerations, resources, personnel, and acquisition and technology.

''(B) Such other matters relating to offensive military cyber forces as the Secretary shall specify for purposes of this subsection.

''(3) CROSS-FUNCTIONAL TEAM.—The Principal Cyber Advisor shall—

''(A) integrate the cyber expertise and perspectives of appropriate organizations within the Office of the Secretary of Defense, Joint Staff, military departments, Defense Agencies, and combatant commands, by establishing and maintaining a full-time cross-functional team of subject matter experts from those organizations; and

''(B) select team members, and designate a team leader, from among those personnel nominated by the heads of such organizations.

''(d) TRAINING OF CYBER PERSONNEL.—The Secretary shall establish and maintain training capabilities and facilities in the Armed Forces and, as the Secretary considers appropriate, at the United States Cyber Command, to support the needs of the Armed Forces and the United States Cyber Command for personnel who are assigned offensive and defensive cyber missions in the Department of Defense.''

JOINT FEDERATED CENTERS FOR TRUSTED DEFENSE SYSTEMS FOR THE DEPARTMENT OF DEFENSE

Pub. L. 113–66, div. A, title IX, §937, Dec. 26, 2013, 127 Stat. 834, as amended by Pub. L. 114–92, div. A, title II, §231, Nov. 25, 2015, 129 Stat. 778, provided that:

''(a) FEDERATION REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall provide for the establishment of a joint federation of capabilities to support the trusted defense system needs of the Department of Defense (in this section referred to as the 'federation').

''(2) PURPOSE.—The purpose of the federation shall be to serve as a joint, Department-wide federation of capabilities to support the trusted defense system needs of the Department to ensure security in the software and hardware developed, acquired, maintained, and used by the Department, pursuant to the trusted defense systems strategy of the Department and supporting policies related to software assurance and supply chain risk management.

''(b) DISCHARGE OF ESTABLISHMENT.—In providing for the establishment of the federation, the Secretary shall consider whether the purpose of the federation can be met by existing centers in the Department. If the Department determines that there are capabilities gaps that cannot be satisfied by existing centers, the Department shall devise a strategy for creating and providing resources for such capabilities to fill such gaps.

''(c) CHARTER.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary shall issue a charter for the federation. The charter shall—

''(1) be established pursuant to the trusted defense systems strategy of the Department and supporting policies related to software assurance and supply chain risk management; and

''(2) set forth—

''(A) the role of the federation in supporting program offices in implementing the trusted defense systems strategy of the Department;

''(B) the software and hardware assurance expertise and capabilities of the federation, including policies, standards, requirements, best practices, contracting, training, and testing;

''(C) the requirements for the discharge by the federation of a program of research and development to improve automated software code vulnerability analysis and testing tools;

''(D) the requirements for the federation to procure, manage, and distribute enterprise licenses for automated software vulnerability analysis tools; and

''(E) the requirements for the discharge by the federation of a program of research and development to improve hardware vulnerability, testing, and protection tools.

''(d) REPORT.—The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], at the time of the submittal to Congress of the budget of the President for fiscal year 2016 pursuant to section 1105 of title 31, United States Code, a report on the funding and management of the federation. The report shall set forth such recommendations as the Secretary considers appropriate regarding the optimal placement of the federation within the organizational structure of the Department, including responsibility for the funding and management of the federation.''

IMPROVEMENTS IN ASSURANCE OF COMPUTER SOFTWARE PROCURED BY THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title IX, §933, Jan. 2, 2013, 126 Stat. 1884, provided that:

''(a) BASELINE SOFTWARE ASSURANCE POLICY.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the Chief Information Officer of the Department of Defense, shall develop and implement a baseline software assurance policy for the entire lifecycle of covered systems. Such policy shall be included as part of the strategy for trusted defense systems of the Department of Defense.

''(b) POLICY ELEMENTS.—The baseline software assurance policy under subsection (a) shall—

''(1) require use of appropriate automated vulnerability analysis tools in computer software code during the entire lifecycle of a covered system, including during development, operational testing, operations and sustainment phases, and retirement;

''(2) require covered systems to identify and prioritize security vulnerabilities and, based on risk, determine appropriate remediation strategies for such security vulnerabilities;

''(3) ensure such remediation strategies are translated into contract requirements and evaluated during source selection;

''(4) promote best practices and standards to achieve software security, assurance, and quality; and

''(5) support competition and allow flexibility and compatibility with current or emerging software methodologies.

''(c) VERIFICATION OF EFFECTIVE IMPLEMENTATION.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the Chief Information Officer of the Department of Defense, shall—

''(1) collect data on implementation of the policy developed under subsection (a) and measure the effectiveness of such policy, including the particular elements required under subsection (b); and

''(2) identify and promote best practices, tools, and standards for developing and validating assured software for the Department of Defense.

''(d) BRIEFING ON ADDITIONAL MEANS OF IMPROVING SOFTWARE ASSURANCE.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Under Secretary for Acquisition, Technology, and Logistics shall, in coordination with the Chief Information Officer of the Department of Defense, provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the following:

''(1) A research and development strategy to advance capabilities in software assurance and vulnerability detection.

''(2) The state-of-the-art of software assurance analysis and test.

''(3) How the Department might hold contractors liable for software defects or vulnerabilities.

''(e) DEFINITIONS.—In this section:

''(1) COVERED SYSTEM.—The term 'covered system' means any Department of Defense critical information, business, or weapons system that is—

''(A) a major system, as that term is defined in section 2302(5) of title 10, United States Code;

''(B) a national security system, as that term is defined in [former] section 3542(b)(2) of title 44, United States Code [see now 44 U.S.C. 3552(b)(6)]; or

''(C) a Department of Defense information system categorized as Mission Assurance Category I in Department of Defense Directive 8500.01E that is funded by the Department of Defense.

''(2) SOFTWARE ASSURANCE.—The term 'software assurance' means the level of confidence that software functions as intended and is free of vulnerabilities, either intentionally or unintentionally designed or inserted as part of the software, throughout the life cycle.''

REPORTS TO DEPARTMENT OF DEFENSE ON PENETRATIONS OF NETWORKS AND INFORMATION SYSTEMS OF CERTAIN CONTRACTORS

Pub. L. 112–239, div. A, title IX, § 941, Jan. 2, 2013, 126 Stat. 1889, which authorized the Secretary of Defense to establish criteria and reporting procedures applicable to penetration of cleared defense contractors' networks or information systems, was transferred to chapter 19 of this title, redesignated as section 393, and amended by Pub. L. 114–92, div. A, title XVI, § 1641(a), Nov. 25, 2015, 129 Stat. 1114.

INSIDER THREAT DETECTION

Pub. L. 112–81, div. A, title IX, § 922, Dec. 31, 2011, 125 Stat. 1537, as amended by Pub. L. 114–92, div. A, title X, § 1073(e), Nov. 25, 2015, 129 Stat. 996, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall establish a program for information sharing protection and insider threat mitigation for the information systems of the Department of Defense to detect unauthorized access to, use of, or transmission of classified or controlled unclassified information.

''(b) ELEMENTS.—The program established under subsection (a) shall include the following:

''(1) Technology solutions for deployment within the Department of Defense that allow for centralized monitoring and detection of unauthorized activities, including—

''(A) monitoring the use of external ports and read and write capability controls;

''(B) disabling the removable media ports of computers physically or electronically;

''(C) electronic auditing and reporting of unusual and unauthorized user activities;

''(D) using data-loss prevention and data-rights management technology to prevent the unauthorized export of information from a network or to render such information unusable in the event of the unauthorized export of such information;

''(E) a roles-based access certification system;

''(F) cross-domain guards for transfers of information between different networks; and

''(G) patch management for software and security updates.

''(2) Policies and procedures to support such program, including special consideration for policies and procedures related to international and interagency partners and activities in support of ongoing operations in areas of hostilities.

''(3) A governance structure and process that integrates information security and sharing technologies with the policies and procedures referred to in paragraph (2). Such structure and process shall include—

''(A) coordination with the existing security clearance and suitability review process;

''(B) coordination of existing anomaly detection techniques, including those used in counterintelligence investigation or personnel screening activities; and

''(C) updating and expediting of the classification review and marking process.

''(4) A continuing analysis of—

''(A) gaps in security measures under the program; and

''(B) technology, policies, and processes needed to increase the capability of the program beyond the initially established full operating capability to address such gaps.

''(5) A baseline analysis framework that includes measures of performance and effectiveness.

''(6) A plan for how to ensure related security measures are put in place for other departments or agencies with access to Department of Defense networks.

''(7) A plan for enforcement to ensure that the program is being applied and implemented on a uniform and consistent basis.

''(c) OPERATING CAPABILITY.—The Secretary shall ensure the program established under subsection (a)—

''(1) achieves initial operating capability not later than October 1, 2012; and

''(2) achieves full operating capability not later than October 1, 2013.

''(d) REPORT.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

''(1) the implementation plan for the program established under subsection (a);

''(2) the resources required to implement the program;

''(3) specific efforts to ensure that implementation does not negatively impact activities in support of ongoing operations in areas of hostilities;

''(4) a definition of the capabilities that will be achieved at initial operating capability and full operating capability, respectively; and

''(5) a description of any other issues related to such implementation that the Secretary considers appropriate.

''(e) BRIEFING REQUIREMENT.—The Secretary shall provide briefings to the Committees on Armed Services of the House of Representatives and the Senate as follows:

''(1) Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], a briefing describing the governance structure referred to in subsection (b)(3).

''(2) Not later than 120 days after the date of the enactment of this Act, a briefing detailing the inventory and status of technology solutions deployment referred to in subsection (b)(1), including an identification of the total number of host platforms planned for such deployment, the current number of host platforms that provide appropriate security, and the funding and timeline for remaining deployment.

''(3) Not later than 180 days after the date of the enactment of this Act, a briefing detailing the policies and procedures referred to in subsection (b)(2), including an assessment of the effectiveness of such policies and procedures and an assessment of the potential impact of such policies and procedures on information sharing within the Department of Defense and with interagency and international partners.''

STRATEGY TO ACQUIRE CAPABILITIES TO DETECT PREVIOUSLY UNKNOWN CYBER ATTACKS

Pub. L. 112–81, div. A, title IX, §953, Dec. 31, 2011, 125 Stat. 1550, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall develop and implement a plan to augment the cybersecurity strategy of the Department of Defense through the acquisition of advanced capabilities to discover and isolate penetrations and attacks that were previously unknown and for which signatures have not been developed for incorporation into computer intrusion detection and prevention systems and anti-virus software systems.

''(b) CAPABILITIES.—

''(1) NATURE OF CAPABILITIES.—The capabilities to be acquired under the plan required by subsection (a) shall—

''(A) be adequate to enable well-trained analysts to discover the sophisticated attacks conducted by nation-state adversaries that are categorized as 'advanced persistent threats';

''(B) be appropriate for—

''(i) endpoints or hosts;

''(ii) network-level gateways operated by the Defense Information Systems Agency where the Department of Defense network connects to the public Internet; and

''(iii) global networks owned and operated by private sector Tier 1 Internet Service Providers;

''(C) at the endpoints or hosts, add new discovery capabilities to the Host-Based Security System of the Department, including capabilities such as—

''(i) automatic blocking of unauthorized software programs and accepting approved and vetted programs;

''(ii) constant monitoring of all key computer attributes, settings, and operations (such as registry keys, operations running in memory, security settings, memory tables, event logs, and files); and

''(iii) automatic baselining and remediation of altered computer settings and files;

''(D) at the network-level gateways and internal network peering points, include the sustainment and enhancement of a system that is based on full-packet capture, session reconstruction, extended storage, and advanced analytic tools, by—

''(i) increasing the number and skill level of the analysts assigned to query stored data, whether by contracting for security services, hiring and training Government personnel, or both; and

''(ii) increasing the capacity of the system to handle the rates for data flow through the gateways and the storage requirements specified by the United States Cyber Command; and

''(E) include the behavior-based threat detection capabilities of Tier 1 Internet Service Providers and other companies that operate on the global Internet.

''(2) SOURCE OF CAPABILITIES.—The capabilities to be acquired shall, to the maximum extent practicable, be acquired from commercial sources. In making decisions on the procurement of such capabilities from among competing commercial and Government providers, the Secretary shall take into consideration the needs of other departments and agencies of the Federal Government, State and local governments, and critical infrastructure owned and operated by the private sector for unclassified, affordable, and sustainable commercial solutions.

''(c) INTEGRATION AND MANAGEMENT OF DISCOVERY CAPABILITIES.—The plan required by subsection (a) shall include mechanisms for improving the standardization, organization, and management of the security information and event management systems that are widely deployed across the Department of Defense to improve the ability of United States Cyber Command to understand and control the status and condition of Department networks, including mechanisms to ensure that the security information and event management systems of the Department receive and correlate data collected and analyses conducted at the host or endpoint, at the network gateways, and by Internet Service Providers in order to discover new attacks reliably and rapidly.

''(d) PROVISION FOR CAPABILITY DEMONSTRATIONS.—The plan required by subsection (a) shall provide for the conduct of demonstrations, pilot projects, and other tests on cyber test ranges and operational networks in order to determine and verify that the capabilities to be acquired pursuant to the plan are effective, practical, and affordable.

''(e) REPORT.—Not later than April 1, 2012, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the plan required by subsection (a). The report shall set forth the plan and include a comprehensive description of the actions being undertaken by the Department to implement the plan.''

STRATEGY ON COMPUTER SOFTWARE ASSURANCE

Pub. L. 111–383, div. A, title IX, §932, Jan. 7, 2011, 124 Stat. 4335, provided that:

''(a) STRATEGY REQUIRED.—The Secretary of Defense shall develop and implement, by not later than October 1, 2011, a strategy for assuring the security of software and software-based applications for all covered systems.

''(b) COVERED SYSTEMS.—For purposes of this section, a covered system is any critical information system or weapon system of the Department of Defense, including the following:

''(1) A major system, as that term is defined in section 2302(5) of title 10, United States Code.

''(2) A national security system, as that term is defined in [former] section 3542(b)(2) of title 44, United States Code [see now 44 U.S.C. 3552(b)(6)].

''(3) Any Department of Defense information system categorized as Mission Assurance Category I.

''(4) Any Department of Defense information system categorized as Mission Assurance Category II in accordance with Department of Defense Directive 8500.01E.

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

''(1) Policy and regulations on the following:

''(A) Software assurance generally.

''(B) Contract requirements for software assurance for covered systems in development and production.

''(C) Inclusion of software assurance in milestone reviews and milestone approvals.

''(D) Rigorous test and evaluation of software assurance in development, acceptance, and operational tests.

''(E) Certification and accreditation requirements for software assurance for new systems and for updates for legacy systems, including mechanisms to monitor and enforce reciprocity of certification and accreditation processes among the military departments and Defense Agencies.

''(F) Remediation in legacy systems of critical software assurance deficiencies that are defined as critical in accordance with the Application Security Technical Implementation Guide of the Defense Information Systems Agency.

''(2) Allocation of adequate facilities and other resources for test and evaluation and certification and accreditation of software to meet applicable requirements for research and development, systems acquisition, and operations.

''(3) Mechanisms for protection against compromise of information systems through the supply chain or cyber attack by acquiring and improving automated tools for—

''(A) assuring the security of software and software applications during software development;

''(B) detecting vulnerabilities during testing of software; and

''(C) detecting intrusions during real-time monitoring of software applications.

''(4) Mechanisms providing the Department of Defense with the capabilities—

''(A) to monitor systems and applications in order to detect and defeat attempts to penetrate or disable such systems and applications; and

''(B) to ensure that such monitoring capabilities are integrated into the Department of Defense system of cyber defense-in-depth capabilities.

''(5) An update to Committee for National Security Systems Instruction No. 4009, entitled 'National Information Assurance Glossary', to include a standard definition for software security assurance.

''(6) Either—

''(A) mechanisms to ensure that vulnerable Mission Assurance Category III information systems, if penetrated, cannot be used as a foundation for penetration of protected covered systems, and means for assessing the effectiveness of such mechanisms; or

''(B) plans to address critical vulnerabilities in Mission Assurance Category III information systems to prevent their use for intrusions of Mission Assurance Category I systems and Mission Assurance Category II systems.

''(7) A funding mechanism for remediation of critical software assurance vulnerabilities in legacy systems.

''(d) REPORT.—Not later than October 1, 2011, 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 the strategy required by subsection (a). The report shall include the following:

''(1) A description of the current status of the strategy required by subsection (a) and of the implementation of the strategy, including a description of the role of the strategy in the risk management by the Department regarding the supply chain and in operational planning for cyber security.

''(2) A description of the risks, if any, that the Department will accept in the strategy due to limitations on funds or other applicable constraints.''

INSTITUTE FOR DEFENSE COMPUTER SECURITY AND INFORMATION PROTECTION

Pub. L. 106–398, § 1 [[div. A], title IX, § 921], Oct. 30, 2000, 114 Stat. 1654, 1654A–233, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Institute for Defense Computer Security and Information Protection.

''(b) MISSION.—The Secretary shall require the institute—

''(1) to conduct research and technology development that is relevant to foreseeable computer and network security requirements and information assurance requirements of the Department of Defense with a principal focus on areas not being carried out by other organizations in the private or public sector; and

''(2) to facilitate the exchange of information regarding cyberthreats, technology, tools, and other relevant issues.

''(c) CONTRACTOR OPERATION.—The Secretary shall enter into a contract with a not-for-profit entity, or a consortium of not-for-profit entities, to organize and operate the institute. The Secretary shall use competitive procedures for the selection of the contractor to the extent determined necessary by the Secretary.

''(d) FUNDING.—Of the amount authorized to be appropriated by section 301(5) [114 Stat. 1654A–52], $5,000,000 shall be available for the Institute for Defense Computer Security and Information Protection.

''(e) REPORT.—Not later than April 1, 2001, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the Secretary's plan for implementing this section.''

§ 2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense

(a) IN GENERAL.—The provisions of subchapter II[1] of chapter 35 of title 44 shall continue to apply through September 30, 2004, with respect to the Department of Defense, notwithstanding the expiration of authority under section 3536[1] of such title.

(b) RESPONSIBILITIES.—In administering the provisions of subchapter II[1] of chapter 35 of title 44 with respect to the Department of Defense after the expiration of authority under section 3536[1] of such title, the Secretary of Defense shall perform the duties set forth in that subchapter for the Director of the Office of Management and Budget.

(Added Pub. L. 107–314, div. A, title X, § 1052(b)(1), Dec. 2, 2002, 116 Stat. 2648.)

REFERENCES IN TEXT

Provisions relating to the expiration of authority of subchapter II of chapter 35 of title 44, referred to in text, did not appear in section 3536 of title 44 subsequent to the general revision of subchapter II by Pub. L. 107–296, title X, § 1001(b)(1), Nov. 25, 2002, 116 Stat. 2259. Subchapter II, as revised by Pub. L. 107–296, was repealed and a new subchapter II enacted by Pub. L. 113–283, § 2(a), Dec. 18, 2014, 128 Stat. 3073.

§ 2225. Information technology purchases: tracking and management

(a) COLLECTION OF DATA REQUIRED.—To improve tracking and management of information technology products and services by the Department of Defense, the Secretary of Defense shall provide for the collection of the data described in subsection (b) for each purchase of such products or services made by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.

(b) DATA TO BE COLLECTED.—The data required to be collected under subsection (a) includes the following:

(1) The products or services purchased.

(2) Whether the products or services are categorized as commercially available off-the-shelf items, other commercial items, nondevelopmental items other than commercial items, other noncommercial items, or services.

(3) The total dollar amount of the purchase.

(4) The form of contracting action used to make the purchase.

(5) In the case of a purchase made through an agency other than the Department of Defense—

[1] See References in Text note below.

(A) the agency through which the purchase is made; and

(B) the reasons for making the purchase through that agency.

(6) The type of pricing used to make the purchase (whether fixed price or another type of pricing).

(7) The extent of competition provided in making the purchase.

(8) A statement regarding whether the purchase was made from—

(A) a small business concern;

(B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or

(C) a small business concern owned and controlled by women.

(9) A statement regarding whether the purchase was made in compliance with the planning requirements under sections 11312 and 11313 of title 40.

(c) RESPONSIBILITY TO ENSURE FAIRNESS OF CERTAIN PRICES.—The head of each contracting activity in the Department of Defense shall have responsibility for ensuring the fairness and reasonableness of unit prices paid by the contracting activity for information technology products and services that are frequently purchased commercially available off-the-shelf items.

(d) LIMITATION ON CERTAIN PURCHASES.—No purchase of information technology products or services in excess of the simplified acquisition threshold shall be made for the Department of Defense from a Federal agency outside the Department of Defense unless—

(1) the purchase data is collected in accordance with subsection (a); or

(2)(A) in the case of a purchase by a Defense Agency, the purchase is approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics; or

(B) in the case of a purchase by a military department, the purchase is approved by the senior procurement executive of the military department.

(e) ANNUAL REPORT.—Not later than March 15 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 containing a summary of the data collected in accordance with subsection (a).

(f) DEFINITIONS.—In this section:

(1) The term ''senior procurement executive'', with respect to a military department, means the official designated as the senior procurement executive for the military department for the purposes of section 1702(c) of title 41.

(2) The term ''simplified acquisition threshold'' has the meaning given the term in section 134 of title 41.

(3) The term ''small business concern'' means a business concern that meets the applicable size standards prescribed pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(4) The term ''small business concern owned and controlled by socially and economically disadvantaged individuals'' has the meaning given that term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

(5) The term ''small business concern owned and controlled by women'' has the meaning given that term in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D)).

(Added Pub. L. 106–398, §1 [[div. A], title VIII, §812(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–212; amended Pub. L. 108–178, §4(b)(2), Dec. 15, 2003, 117 Stat. 2640; Pub. L. 109–364, div. A, title X, §1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111–350, §5(b)(6), Jan. 4, 2011, 124 Stat. 3842.)

AMENDMENTS

2011—Subsec. (f)(1). Pub. L. 111–350, §5(b)(6)(A), substituted ''section 1702(c) of title 41'' for ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))''.

Subsec. (f)(2). Pub. L. 111–350, §5(b)(6)(B), substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))''.

2006—Subsec. (f)(1). Pub. L. 109–364 substituted ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))'' for ''section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))''.

2003—Subsec. (b)(9). Pub. L. 108–178 substituted ''sections 11312 and 11313 of title 40'' for ''sections 5122 and 5123 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1422, 1423)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

DESIGNATION OF MILITARY DEPARTMENT ENTITY RESPONSIBLE FOR ACQUISITION OF CRITICAL CYBER CAPABILITIES

Pub. L. 114–92, div. A, title XVI, §1645, Nov. 25, 2015, 129 Stat. 1117, provided that:

''(a) DESIGNATION.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall designate an entity within a military department to be responsible for the acquisition of each critical cyber capability described in paragraph (2).

''(2) CRITICAL CYBER CAPABILITIES DESCRIBED.—The critical cyber capabilities described in this paragraph are the cyber capabilities that the Secretary considers critical to the mission of the Department of Defense, including the following:

''(A) The Unified Platform described in the Department of Defense document titled 'The Department of Defense Cyber Strategy' dated April 15, 2015.

''(B) A persistent cyber training environment.

''(C) A cyber situational awareness and battle management system.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing the information described in paragraph (2).

''(2) CONTENTS.—The report under paragraph (1) shall include the following with respect to the critical cyber capabilities described in subsection (a)(2):

''(A) Identification of each critical cyber capability and the entity of a military department responsible for the acquisition of the capability.

''(B) Estimates of the funding requirements and acquisition timelines for each critical cyber capability.

''(C) An explanation of whether critical cyber capabilities could be acquired more quickly with changes to acquisition authorities.

''(D) Such recommendations as the Secretary may have for legislation or administrative action to improve the acquisition of, or to acquire more quickly, the critical cyber capabilities for which designations are made under subsection (a).''

COMPETITION IN CONNECTION WITH DEPARTMENT OF DEFENSE TACTICAL DATA LINK SYSTEMS

Pub. L. 112–239, div. A, title IX, § 934, Jan. 2, 2013, 126 Stat. 1885, as amended by Pub. L. 113–66, div. A, title IX, § 931, Dec. 26, 2013, 127 Stat. 829, provided that:

''(a) COMPETITION IN CONNECTION WITH TACTICAL DATA LINK SYSTEMS.—Not later than December 1, 2013, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall—

''(1) develop an inventory of all tactical data link systems in use and in development in the Department of Defense, including interfaces and waveforms and an assessment of vulnerabilities to such systems in anti-access or area-denial environments;

''(2) conduct an analysis of each data link system contained in the inventory under paragraph (1) to determine whether—

''(A) the upgrade, new deployment, or replacement of such system should be open to competition; or

''(B) the data link should be converted to an open architecture, or a different data link standard should be adopted to enable such competition;

''(3) for each data link system for which competition is determined advisable under subparagraph (A) or (B) of paragraph (2), develop a plan to achieve such competition, including a plan to address any policy, legal, programmatic, or technical barriers to such competition; and

''(4) for each data link system for which competition is determined not advisable under paragraph (2), prepare an explanation for such determination.

''(b) EARLIER ACTIONS.—If the Under Secretary completes any portion of the plan described in subsection (a)(3) before December 1, 2013, the Secretary may commence action on such portion of the plan upon completion of such portion, including publication of such portion of the plan.

''(c) REPORT.—At the same time the budget of the President for fiscal year 2015 is submitted to Congress pursuant to section 1105(a) of title 31, United States Code, the Under Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the plans described in paragraph (3) of subsection (a), including any explanation prepared under paragraph (4) of such subsection.''

DEMONSTRATION AND PILOT PROJECTS ON CYBERSECURITY

Pub. L. 111–383, div. A, title II, § 215, Jan. 7, 2011, 124 Stat. 4165, provided that:

''(a) DEMONSTRATION PROJECTS ON PROCESSES FOR APPLICATION OF COMMERCIAL TECHNOLOGIES TO CYBERSECURITY REQUIREMENTS.—

''(1) PROJECTS REQUIRED.—The Secretary of Defense and the Secretaries of the military departments shall jointly carry out demonstration projects to assess the feasibility and advisability of using various business models and processes to rapidly and effectively identify innovative commercial technologies and apply such technologies to Department of Defense and other cybersecurity requirements.

''(2) SCOPE OF PROJECTS.—Any demonstration project under paragraph (1) shall be carried out in such a manner as to contribute to the cyber policy review of the President and the Comprehensive National Cybersecurity Initiative.

''(b) PILOT PROGRAMS ON CYBERSECURITY REQUIRED.—The Secretary of Defense shall support or conduct pilot programs on cybersecurity with respect to the following areas:

''(1) Threat sensing and warning for information networks worldwide.

''(2) Managed security services for cybersecurity within the defense industrial base, military departments, and combatant commands.

''(3) Use of private processes and infrastructure to address threats, problems, vulnerabilities, or opportunities in cybersecurity.

''(4) Processes for securing the global supply chain.

''(5) Processes for threat sensing and security of cloud computing infrastructure.

''(c) REPORTS.—

''(1) REPORTS REQUIRED.—Not later than 240 days after the date of the enactment of this Act [Jan. 7, 2011], and annually thereafter at or about the time of the submittal to Congress of the budget of the President for a fiscal year (as submitted pursuant to section 1105(a) of title 31, United States Code), the Secretary of Defense shall, in coordination with the Secretary of Homeland Security, submit to Congress a report on any demonstration projects carried out under subsection (a), and on the pilot projects carried out under subsection (b), during the preceding year.

''(2) ELEMENTS.—Each report under this subsection shall include the following:

''(A) A description and assessment of any activities under the demonstration projects and pilot projects referred to in paragraph (1) during the preceding year.

''(B) For the pilot projects supported or conducted under subsection (b)(2)—

''(i) a quantitative and qualitative assessment of the extent to which managed security services covered by the pilot project could provide effective and affordable cybersecurity capabilities for components of the Department of Defense and for entities in the defense industrial base, and an assessment whether such services could be expanded rapidly to a large scale without exceeding the ability of the Federal Government to manage such expansion; and

''(ii) an assessment of whether managed security services are compatible with the cybersecurity strategy of the Department of Defense with respect to conducting an active, in-depth defense under the direction of United States Cyber Command.

''(C) For the pilot projects supported or conducted under subsection (b)(3)—

''(i) a description of any performance metrics established for purposes of the pilot project, and a description of any processes developed for purposes of accountability and governance under any partnership under the pilot project; and

''(ii) an assessment of the role a partnership such as a partnership under the pilot project would play in the acquisition of cyberspace capabilities by the Department of Defense, including a role with respect to the development and approval of requirements, approval and oversight of acquiring capabilities, test and evaluation of new capabilities, and budgeting for new capabilities.

''(D) For the pilot projects supported or conducted under subsection (b)(4)—

''(i) a framework and taxonomy for evaluating practices that secure the global supply chain, as well as practices for securely operating in an uncertain or compromised supply chain;

''(ii) an assessment of the viability of applying commercial practices for securing the global supply chain; and

''(iii) an assessment of the viability of applying commercial practices for securely operating in an uncertain or compromised supply chain.

''(E) For the pilot projects supported or conducted under subsection (b)(5)—

''(i) an assessment of the capabilities of Federal Government providers to offer secure cloud computing environments; and

''(ii) an assessment of the capabilities of commercial providers to offer secure cloud computing environments to the Federal Government.

''(3) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.''

IMPLEMENTATION OF NEW ACQUISITION PROCESS FOR INFORMATION TECHNOLOGY SYSTEMS

Pub. L. 111–84, div. A, title VIII, §804, Oct. 28, 2009, 123 Stat. 2402, provided that:

''(a) NEW ACQUISITION PROCESS REQUIRED.—The Secretary of Defense shall develop and implement a new acquisition process for information technology systems. The acquisition process developed and implemented pursuant to this subsection shall, to the extent determined appropriate by the Secretary—

''(1) be based on the recommendations in chapter 6 of the March 2009 report of the Defense Science Board Task Force on Department of Defense Policies and Procedures for the Acquisition of Information Technology; and

''(2) be designed to include—

''(A) early and continual involvement of the user;

''(B) multiple, rapidly executed increments or releases of capability;

''(C) early, successive prototyping to support an evolutionary approach; and

''(D) a modular, open-systems approach.

''(b) REPORT TO CONGRESS.—Not later than 270 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the new acquisition process developed pursuant to subsection (a). The report required by this subsection shall, at a minimum—

''(1) describe the new acquisition process;

''(2) provide an explanation for any decision by the Secretary to deviate from the criteria established for such process in paragraphs (1) and (2) of subsection (a);

''(3) provide a schedule for the implementation of the new acquisition process;

''(4) identify the categories of information technology acquisitions to which such process will apply; and

''(5) include the Secretary's recommendations for any legislation that may be required to implement the new acquisition process.''

CLEARINGHOUSE FOR RAPID IDENTIFICATION AND DISSEMINATION OF COMMERCIAL INFORMATION TECHNOLOGIES

Pub. L. 110–181, div. A, title VIII, §881, Jan. 28, 2008, 122 Stat. 262, provided that:

''(a) REQUIREMENT TO ESTABLISH CLEARINGHOUSE.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall establish a clearinghouse for identifying, assessing, and disseminating knowledge about readily available information technologies (with an emphasis on commercial off-the-shelf information technologies) that could support the warfighting mission of the Department of Defense.

''(b) RESPONSIBILITIES.—The clearinghouse established pursuant to subsection (a) shall be responsible for the following:

''(1) Developing a process to rapidly assess and set priorities and needs for significant information technology needs of the Department of Defense that could be met by commercial technologies, including a process for—

''(A) aligning priorities and needs with the requirements of the commanders of the combatant command; and

''(B) proposing recommendations to the commanders of the combatant command of feasible technical solutions for further evaluation.

''(2) Identifying and assessing emerging commercial technologies (including commercial off-the-shelf technologies) that could support the warfighting mission of the Department of Defense, including the priorities and needs identified pursuant to paragraph (1).

''(3) Disseminating information about commercial technologies identified pursuant to paragraph (2) to commanders of combatant commands and other potential users of such technologies.

''(4) Identifying gaps in commercial technologies and working to stimulate investment in research and development in the public and private sectors to address those gaps.

''(5) Enhancing internal data and communications systems of the Department of Defense for sharing and retaining information regarding commercial technology priorities and needs, technologies available to meet such priorities and needs, and ongoing research and development directed toward gaps in such technologies.

''(6) Developing mechanisms, including web-based mechanisms, to facilitate communications with industry regarding the priorities and needs of the Department of Defense identified pursuant to paragraph (1) and commercial technologies available to address such priorities and needs.

''(7) Assisting in the development of guides to help small information technology companies with promising technologies to understand and navigate the funding and acquisition processes of the Department of Defense.

''(8) Developing methods to measure how well processes developed by the clearinghouse are being utilized and to collect data on an ongoing basis to assess the benefits of commercial technologies that are procured on the recommendation of the clearinghouse.

''(c) PERSONNEL.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall provide for the hiring and support of employees (including detailees from other components of the Department of Defense and from other Federal departments or agencies) to assist in identifying, assessing, and disseminating information regarding commercial technologies under this section.

''(d) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act [Jan. 28, 2008], 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 the implementation of this section.''

TIME FOR IMPLEMENTATION; APPLICABILITY

Pub. L. 106–398, §1 [[div. A], title VIII, §812(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, provided that:

''(1) The Secretary of Defense shall collect data as required under section 2225 of title 10, United States Code (as added by subsection (a)) for all contractual actions covered by such section entered into on or after the date that is one year after the date of the enactment of this Act [Oct. 30, 2000].

''(2) Subsection (d) of such section shall apply with respect to purchases described in that subsection for which solicitations of offers are issued on or after the date that is one year after the date of the enactment of this Act.''

GAO REPORT

Pub. L. 106–398, §1 [[div. A], title VIII, §812(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, directed the Comptroller General to submit to committees of Congress a report on the collection of data under this section not later than 15 months after Oct. 30, 2000.

§ 2226. Contracted property and services: prompt payment of vouchers

(a) REQUIREMENT.—Of the contract vouchers that are received by the Defense Finance and

Accounting Service by means of the mechanization of contract administration services system, the number of such vouchers that remain unpaid for more than 30 days as of the last day of each month may not exceed 5 percent of the total number of the contract vouchers so received that remain unpaid on that day.

(b) CONTRACT VOUCHER DEFINED.—In this section, the term ''contract voucher'' means a voucher or invoice for the payment to a contractor for services, commercial items (as defined in section 103 of title 41), or other deliverable items provided by the contractor under a contract funded by the Department of Defense.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1006(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–247; amended Pub. L. 111–350, §5(b)(7), Jan. 4, 2011, 124 Stat. 3842.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350 substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title X, §1006(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–248, provided that: ''Section 2226 of title 10, United States Code (as added by subsection (a)), shall take effect on December 1, 2000.''

CONDITIONAL REQUIREMENT FOR REPORT

Pub. L. 106–398, §1 [[div. A], title X, §1006(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–248, provided that:

''(1) If for any month of the noncompliance reporting period the requirement in section 2226 of title 10, United States Code (as added by subsection (a)), is not met, the Secretary of Defense 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 magnitude of the unpaid contract vouchers. The report for a month shall be submitted not later than 30 days after the end of that month.

''(2) A report for a month under paragraph (1) shall include information current as of the last day of the month as follows:

''(A) The number of the vouchers received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system during each month.

''(B) The number of the vouchers so received, whenever received by the Defense Finance and Accounting Service, that remain unpaid for each of the following periods:

''(i) Over 30 days and not more than 60 days.

''(ii) Over 60 days and not more than 90 days.

''(iii) More than 90 days.

''(C) The number of the vouchers so received that remain unpaid for the major categories of procurements, as defined by the Secretary of Defense.

''(D) The corrective actions that are necessary, and those that are being taken, to ensure compliance with the requirement in subsection (a).

''(3) For purposes of this subsection:

''(A) The term 'noncompliance reporting period' means the period beginning on December 1, 2000, and ending on November 30, 2004.

''(B) The term 'contract voucher' has the meaning given that term in section 2226(b) of title 10, United States Code (as added by subsection (a)).''

§ 2227. Electronic submission and processing of claims for contract payments

(a) SUBMISSION OF CLAIMS.—The Secretary of Defense shall require that any claim for payment under a Department of Defense contract shall be submitted to the Department of Defense in electronic form.

(b) PROCESSING.—A contracting officer, contract administrator, certifying official, or other officer or employee of the Department of Defense who receives a claim for payment in electronic form in accordance with subsection (a) and is required to transmit the claim to any other officer or employee of the Department of Defense for processing under procedures of the department shall transmit the claim and any additional documentation necessary to support the determination and payment of the claim to such other officer or employee electronically.

(c) WAIVER AUTHORITY.—If the Secretary of Defense determines that the requirement for using electronic means for submitting claims under subsection (a), or for transmitting claims and supporting documentation under subsection (b), is unduly burdensome in any category of cases, the Secretary may exempt the cases in that category from the application of the requirement.

(d) IMPLEMENTATION OF REQUIREMENTS.—In implementing subsections (a) and (b), the Secretary of Defense shall provide for the following:

(1) Policies, requirements, and procedures for using electronic means for the submission of claims for payment to the Department of Defense and for the transmission, between Department of Defense officials, of claims for payment received in electronic form, together with supporting documentation (such as receiving reports, contracts and contract modifications, and required certifications).

(2) The format in which information can be accepted by the corporate database of the Defense Finance and Accounting Service.

(3) The requirements to be included in contracts regarding the electronic submission of claims for payment by contractors.

(e) CLAIM FOR PAYMENT DEFINED.—In this section, the term ''claim for payment'' means an invoice or any other demand or request for payment.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1008(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–249.)

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title X, §1008(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250, provided that:

''(1) Subject to paragraph (2), the Secretary of Defense shall apply section 2227 of title 10, United States Code (as added by subsection (a)), with respect to contracts for which solicitations of offers are issued after June 30, 2001.

''(2)(A) The Secretary may delay the implementation of section 2227 to a date after June 30, 2001, upon a finding that it is impracticable to implement that section until that later date. In no event, however, may the implementation be delayed to a date after October 1, 2002.

''(B) Upon determining to delay the implementation of such section 2227 to a later date under subparagraph (A), the Secretary shall promptly publish a notice of the delay in the Federal Register. The notice shall include a specification of the later date on which the implementation of that section is to begin. Not later than 30 days before the later implementation date, the Secretary shall publish in the Federal Register another notice that such section is being implemented beginning on that date.''

[Notice by Department of Defense of delay in the implementation of this section from June 30, 2001, until

Oct. 1, 2002, was published on Aug. 21, 2001, at 66 F.R. 43841.]

IMPLEMENTATION PLAN

Pub. L. 106–398, §1 [[div. A], title X, §1008(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250, directed the Secretary of Defense, not later than Mar. 30, 2001, to submit to committees of Congress a plan for the implementation of the requirements imposed under this section.

§ 2228. Office of Corrosion Policy and Oversight

(a) OFFICE AND DIRECTOR.—(1) There is an Office of Corrosion Policy and Oversight within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) The Office shall be headed by a Director of Corrosion Policy and Oversight, who shall be assigned to such position by the Under Secretary from among civilian employees of the Department of Defense with the qualifications described in paragraph (3). The Director is responsible in the Department of Defense to the Secretary of Defense (after the Under Secretary of Defense for Acquisition, Technology, and Logistics) for the prevention and mitigation of corrosion of the military equipment and infrastructure of the Department of Defense. The Director shall report directly to the Under Secretary.

(3) In order to qualify to be assigned to the position of Director, an individual shall—

(A) have management expertise in, and professional experience with, corrosion project and policy implementation, including an understanding of the effects of corrosion policies on infrastructure; research, development, test, and evaluation; and maintenance; and

(B) have an understanding of Department of Defense budget formulation and execution, policy formulation, and planning and program requirements.

(4) The Secretary of Defense shall designate the position of Director as a critical acquisition position under section 1733(b)(1)(C) of this title.

(b) DUTIES.—(1) The Director of Corrosion Policy and Oversight (in this section referred to as the ''Director'') shall oversee and coordinate efforts throughout the Department of Defense to prevent and mitigate corrosion of the military equipment and infrastructure of the Department. The duties under this paragraph shall include the duties specified in paragraphs (2) through (5).

(2) The Director shall develop and recommend any policy guidance on the prevention and mitigation of corrosion to be issued by the Secretary of Defense.

(3) The Director shall review the programs and funding levels proposed by the Secretary of each military department during the annual internal Department of Defense budget review process as those programs and funding proposals relate to programs and funding for the prevention and mitigation of corrosion and shall submit to the Secretary of Defense recommendations regarding those programs and proposed funding levels.

(4) The Director shall provide oversight and coordination of the efforts within the Department of Defense to prevent or mitigate corrosion during—

(A) the design, acquisition, and maintenance of military equipment; and

(B) the design, construction, and maintenance of infrastructure.

(5) The Director shall monitor acquisition practices within the Department of Defense—

(A) to ensure that the use of corrosion prevention technologies and the application of corrosion prevention treatments are fully considered during research and development in the acquisition process; and

(B) to ensure that, to the extent determined appropriate for each acquisition program, such technologies and treatments are incorporated into that program, particularly during the engineering and design phases of the acquisition process.

(c) ADDITIONAL AUTHORITIES FOR DIRECTOR.—The Director is authorized to—

(1) develop, update, and coordinate corrosion training with the Defense Acquisition University;

(2) participate in the process within the Department of Defense for the development of relevant directives and instructions; and

(3) interact directly with the corrosion prevention industry, trade associations, other government corrosion prevention agencies, academic research and educational institutions, and scientific organizations engaged in corrosion prevention, including the National Academy of Sciences.

(d) LONG-TERM STRATEGY.—(1) The Secretary of Defense shall develop and implement a long-term strategy to reduce corrosion and the effects of corrosion on the military equipment and infrastructure of the Department of Defense.

(2) The strategy under paragraph (1) shall include the following:

(A) Expansion of the emphasis on corrosion prevention and mitigation within the Department of Defense to include coverage of infrastructure.

(B) Application uniformly throughout the Department of Defense of requirements and criteria for the testing and certification of new corrosion-prevention technologies for equipment and infrastructure with similar characteristics, similar missions, or similar operating environments.

(C) Implementation of programs, including supporting databases, to ensure that a focused and coordinated approach is taken throughout the Department of Defense to collect, review, validate, and distribute information on proven methods and products that are relevant to the prevention of corrosion of military equipment and infrastructure.

(D) Establishment of a coordinated research and development program for the prevention and mitigation of corrosion for new and existing military equipment and infrastructure that includes a plan to transition new corrosion prevention technologies into operational systems, including through the establishment of memoranda of agreement, joint funding agreements, public-private partnerships, university research and education centers, and other cooperative research agreements.

(3) The strategy shall include, for the matters specified in paragraph (2), the following:

(A) Policy guidance.

(B) Performance measures and milestones.

(C) An assessment of the necessary personnel and funding necessary to accomplish the long-term strategy.

(e) REPORT.—(1) For each budget for a fiscal year, beginning with the budget for fiscal year 2009, the Secretary of Defense shall submit, with the defense budget materials, a report on the following:

(A) Funding requirements for the long-term strategy developed under subsection (d).

(B) The return on investment that would be achieved by implementing the strategy, including available validated data on return on investment for completed corrosion projects and activities.

(C) For the fiscal year covered by the report and the preceding fiscal year, the funds requested in the budget compared to the funding requirements.

(D) An explanation if the funding requirements are not fully funded in the budget.

(E) For the fiscal year preceding the fiscal year covered by the report, the amount of funds requested in the budget for each project or activity described in subsection (d) compared to the funding requirements for the project or activity.

(F) For the fiscal year preceding the fiscal year covered by the report, a description of the specific amount of funds used for military corrosion projects, the Technical Corrosion Collaboration pilot program, and other corrosion-related activities.

(2) Each report under this section shall include, in an annex to the report, a copy of the annual corrosion report most recently submitted by the corrosion control and prevention executive of each military department under section 903(b)(5) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4567; 10 U.S.C. 2228 note).

(f) DEFINITIONS.—In this section:

(1) The term ''corrosion'' means the deterioration of a material or its properties due to a reaction of that material with its chemical environment.

(2) The term ''military equipment'' includes all weapon systems, weapon platforms, vehicles, and munitions of the Department of Defense, and the components of such items.

(3) The term ''infrastructure'' includes all buildings, structures, airfields, port facilities, surface and subterranean utility systems, heating and cooling systems, fuel tanks, pavements, and bridges.

(4) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(5) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(Added Pub. L. 107–314, div. A, title X, §1067(a)(1), Dec. 2, 2002, 116 Stat. 2657; amended Pub. L. 110–181, div. A, title III, §371(a)–(e), Jan. 28, 2008, 122 Stat. 79–81; Pub. L. 110–417, [div. A], title X, §1061(b)(1), Oct. 14, 2008, 122 Stat. 4612; Pub. L. 111–383, div. A, title III, §331, Jan. 7, 2011, 124 Stat. 4185; Pub. L. 112–239, div. A, title III, §341, Jan. 2, 2013, 126 Stat. 1699.)

AMENDMENTS

2013—Subsec. (e)(1)(B). Pub. L. 112–239, §341(1)(A), inserted '', including available validated data on return on investment for completed corrosion projects and activities'' before period at end.

Subsec. (e)(1)(E). Pub. L. 112–239, §341(1)(B), substituted ''For the fiscal year preceding the fiscal year covered by the report'' for ''For the fiscal year covered by the report and the preceding fiscal year''.

Subsec. (e)(1)(F). Pub. L. 112–239, §341(1)(C), added subpar. (F).

Subsec. (e)(2), (3). Pub. L. 112–239, §341(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Within 60 days after submission of the budget for a fiscal year, the Comptroller General shall provide to the congressional defense committees—

''(A) an analysis of the budget submission for corrosion control and prevention by the Department of Defense; and

''(B) an analysis of the report required under paragraph (1), including the annex to the report described in paragraph (3).''

2011—Subsec. (e)(1)(C). Pub. L. 111–383, §331(1)(A), substituted ''For the fiscal year covered by the report and the preceding fiscal year, the'' for ''The''.

Subsec. (e)(1)(E). Pub. L. 111–383, §331(1)(B), added subpar. (E).

Subsec. (e)(2)(B). Pub. L. 111–383, §331(2), inserted before period at end '', including the annex to the report described in paragraph (3)''.

Subsec. (e)(3). Pub. L. 111–383, §331(3), added par. (3).

2008—Pub. L. 110–181, §371(a)(1), substituted ''Office of Corrosion Policy and Oversight'' for ''Military equipment and infrastructure: prevention and mitigation of corrosion'' in section catchline.

Subsec. (a). Pub. L. 110–181, §371(a)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Former text read as follows: ''The Secretary of Defense shall designate an officer or employee of the Department of Defense, or a standing board or committee of the Department of Defense, as the senior official or organization responsible in the Department to the Secretary of Defense (after the Under Secretary of Defense for Acquisition, Technology, and Logistics) for the prevention and mitigation of corrosion of the military equipment and infrastructure of the Department.''

Subsec. (b)(1). Pub. L. 110–181, §371(a)(2)(A), substituted ''Director of Corrosion Policy and Oversight (in this section referred to as the 'Director')'' for ''official or organization designated under subsection (a)''.

Subsec. (b)(2) to (5). Pub. L. 110–181, §371(a)(2)(B), substituted ''Director'' for ''designated official or organization''.

Subsecs. (c), (d). Pub. L. 110–181, §371(b), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (d)(2)(D). Pub. L. 110–181, §371(c), as amended by Pub. L. 110–417, inserted '', including through the establishment of memoranda of agreement, joint funding agreements, public-private partnerships, university research and education centers, and other cooperative research agreements'' after ''operational systems''.

Subsec. (e). Pub. L. 110–181, §371(d), added subsec. (e).

Subsec. (f). Pub. L. 110–181, §371(b), redesignated subsec. (d) as (f).

Subsec. (f)(4), (5). Pub. L. 110–181, §371(e), added pars. (4) and (5).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–417 effective Jan. 28, 2008, and as if included in Pub. L. 110–181 as enacted, see section 1061(b) of Pub. L. 110–417, set out as a note under

section 6382 of Title 5, Government Organization and Employees.

IMPLEMENTATION OF CORRECTIVE ACTIONS RESULTING FROM CORROSION STUDY OF THE F–22 AND F–35 AIRCRAFT

Pub. L. 112–81, div. A, title III, §324, Dec. 31, 2011, 125 Stat. 1362, provided that:

''(a) IMPLEMENTATION; CONGRESSIONAL BRIEFING.—Not later than January 31, 2012, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall implement the recommended actions described in subsection (b) and provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the actions taken by the Under Secretary to implement such recommended actions.

''(b) RECOMMENDED ACTIONS.—The recommended actions described in this subsection are the following four recommended actions included in the report of the Government Accountability Office report numbered GAO–11–117R and titled 'Defense Management: DOD Needs to Monitor and Assess Corrective Actions Resulting from Its Corrosion Study of the F–35 Joint Strike Fighter':

''(1) The documentation of program-specific recommendations made as a result of the corrosion study described in subsection (d) with regard to the F–35 and F–22 aircraft and the establishment of a process for monitoring and assessing the effectiveness of the corrective actions taken with respect to such aircraft in response to such recommendations.

''(2) The documentation of program-specific recommendations made as a result of such corrosion study with regard to the other weapon systems identified in the study, specifically the CH–53K helicopter, the Joint High Speed Vessel, the Broad Area Maritime Surveillance Unmanned Aircraft System, and the Joint Light Tactical Vehicle, and the establishment of a process for monitoring and assessing the effectiveness of the corrosion prevention and control programs implemented for such weapons systems in response to such recommendations.

''(3) The documentation of Air Force-specific and Navy-specific recommendations made as a result of such corrosion study and the establishment of a process for monitoring and assessing the effectiveness of the corrective actions taken by the Air Force and the Navy in response to such recommendations.

''(4) The documentation of Department of Defense-wide recommendations made as a result of such corrosion study, the implementation of any needed changes in policies and practices to improve corrosion prevention and control in new systems acquired by the Department, and the establishment of a process for monitoring and assessing the effectiveness of the corrective actions taken by the Department in response to such recommendations.

''(c) DEADLINE FOR COMPLIANCE.—Not later than December 31, 2012, the Under Secretary of Defense for Acquisition, Technology, and Logistics, in conjunction with the directors of the F–35 and F–22 program offices, the directors of the program offices for the weapons systems referred to in subsection (b)(2), the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy, shall—

''(1) take whatever steps necessary to comply with the recommendations documented pursuant to the required implementation under subsection (a) of the recommended actions described in subsection (b); or

''(2) submit to the congressional defense committees written justification of why compliance was not feasible or achieved.

''(d) CORROSION STUDY.—The corrosion study described in this subsection is the study required in House Report 111–166 accompanying H.R. 2647 of the 111th Congress [Pub. L. 111–84] conducted by the Office of the Director of Corrosion Policy and Oversight of the Office of the Secretary of Defense and titled 'Corrosion Evaluation of the F–22 Raptor and F–35 Lightning II Joint Strike Fighter'.''

CORROSION CONTROL AND PREVENTION EXECUTIVES FOR THE MILITARY DEPARTMENTS

Pub. L. 110–417, [div. A], title IX, §903, Oct. 14, 2008, 122 Stat. 4566, as amended by Pub. L. 113–66, div. A, title III, §334, title X, §1084(b)(1), Dec. 26, 2013, 127 Stat. 740, 871, provided that:

''(a) REQUIREMENT TO DESIGNATE CORROSION CONTROL AND PREVENTION EXECUTIVE.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Assistant Secretary of each military department with responsibility for acquisition, technology, and logistics shall designate an employee of the military department as the corrosion control and prevention executive. Such executive shall be the senior official in the department with responsibility for coordinating department-level corrosion control and prevention program activities (including budget programming) with the military department and the Office of the Secretary of Defense, the program executive officers of the military departments, and relevant major subordinate commands of the military departments.

''(b) DUTIES.—(1) The corrosion control and prevention executive of a military department shall ensure that corrosion control and prevention is maintained in the department's policy and guidance for management of each of the following:

''(A) System acquisition and production, including design and maintenance.

''(B) Research, development, test, and evaluation programs and activities.

''(C) Equipment standardization programs, including international standardization agreements.

''(D) Logistics research and development initiatives.

''(E) Logistics support analysis as it relates to integrated logistic support in the materiel acquisition process.

''(F) Military infrastructure design, construction, and maintenance.

''(2) The corrosion control and prevention executive of a military department shall be responsible for identifying the funding levels necessary to accomplish the items listed in subparagraphs (A) through (F) of paragraph (1).

''(3) The corrosion control and prevention executive of a military department shall, in cooperation with the appropriate staff of the department, develop, support, and provide the rationale for resources—

''(A) to initiate and sustain an effective corrosion control and prevention program in the department;

''(B) to evaluate the program's effectiveness; and

''(C) to ensure that corrosion control and prevention requirements for materiel are reflected in budgeting and policies of the department for the formulation, management, and evaluation of personnel and programs for the entire department, including its reserve components.

''(4) The corrosion control and prevention executive of a military department shall be the principal point of contact of the department to the Director of Corrosion Policy and Oversight (as assigned under section 2228 of title 10, United States Code).

''(5)(A) Not later than December 31 of each year, the corrosion control and prevention executive of a military department shall submit to the Secretary of Defense a report containing recommendations pertaining to the corrosion control and prevention program of the military department. Such report shall include recommendations for the funding levels necessary for the executive to carry out the duties of the executive under this section.

''(B) The report required under subparagraph (A) shall—

''(i) provide a clear linkage between the corrosion control and prevention program of the military department and the overarching goals and objectives of the long-term corrosion control and prevention strategy developed and implemented by the Secretary of Defense under section 2228(d) of title 10, United States Code; and

''(ii) include performance measures to ensure that the corrosion control and prevention program is achieving the goals and objectives described in clause (i).''

DEADLINE FOR DESIGNATION OF RESPONSIBLE OFFICIAL OR ORGANIZATION; INTERIM REPORT; DEADLINE FOR LONG-TERM STRATEGY; GAO REVIEW

Pub. L. 107–314, div. A, title X, §1067(b)–(e), Dec. 2, 2002, 116 Stat. 2658, 2659, directed the Secretary of Defense to designate a responsible official or organization under subsec. (a) of this section not later than 90 days after Dec. 2, 2002, directed the Secretary to submit to Congress a report setting forth the long-term strategy required under subsec. (c) of this section not later than one year after Dec. 2, 2002, and required the Comptroller General to monitor the implementation of such long-term strategy and, not later than 18 months after Dec. 2, 2002, to submit to Congress an assessment of the extent to which that strategy had been implemented.

§ 2229. Strategic policy on prepositioning of materiel and equipment

(a) POLICY REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall maintain a strategic policy on the programs of the Department of Defense for prepositioned materiel and equipment. Such policy shall take into account national security threats, strategic mobility, service requirements, support for crisis response elements, and the requirements of the combatant commands, and shall address how the Department's prepositioning programs, both ground and afloat, align with national defense strategies and departmental priorities.

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

(A) Overarching strategic guidance concerning planning and resource priorities that link the Department of Defense's current and future needs for prepositioned stocks, such as desired responsiveness, to evolving national defense objectives.

(B) A description of the Department's vision for prepositioning programs and the desired end state.

(C) Specific interim goals demonstrating how the vision and end state will be achieved.

(D) A description of the strategic environment, requirements for, and challenges associated with, prepositioning.

(E) Metrics for how the Department will evaluate the extent to which prepositioned assets are achieving defense objectives.

(F) A framework for joint departmental oversight that reviews and synchronizes the military services' prepositioning strategies to minimize potentially duplicative efforts and maximize efficiencies in prepositioned materiel and equipment across the Department of Defense.

(3) JOINT OVERSIGHT.—The Secretary of Defense shall establish joint oversight of the military services' prepositioning efforts to maximize efficiencies across the Department of Defense.

(b) LIMITATION OF DIVERSION OF PREPOSITIONED MATERIEL.—The Secretary of a military department may not divert materiel or equipment from prepositioned stocks except—

(1) in accordance with a change made by the Secretary of Defense to the policy maintained under subsection (a); or

(2) for the purpose of directly supporting a contingency operation or providing humanitarian assistance under chapter 20 of this title.

(c) CONGRESSIONAL NOTIFICATION.—The Secretary of Defense may not implement or change the policy required under subsection (a) until the Secretary submits to the congressional defense committees a report describing the policy or change to the policy.

(d) ANNUAL CERTIFICATION.—(1) Not later than the date of the submission of the President's budget request for a fiscal year under section 1105 of title 31, the Secretary of Defense shall submit to the congressional defense committees a certification in writing that the prepositioned stocks of each of the military departments meet all operations plans, in both fill and readiness, that are in effect as of the date of the submission of the certification.

(2) If, for any year, the Secretary cannot certify that any of the prepositioned stocks meet such operations plans, the Secretary shall include with the certification for that year a list of the operations plans affected, a description of any measures that have been taken to mitigate any risk associated with prepositioned stock shortfalls, and an anticipated timeframe for the replenishment of the stocks.

(3) A certification under this subsection shall be in an unclassified form but may have a classified annex.

(Added Pub. L. 109–364, div. A, title III, §351(a), Oct. 17, 2006, 120 Stat. 2160; amended Pub. L. 112–81, div. A, title III, §341(a), Dec. 31, 2011, 125 Stat. 1369; Pub. L. 113–66, div. A, title III, §321(a), Dec. 26, 2013, 127 Stat. 730; Pub. L. 113–291, div. A, title III, §322, Dec. 19, 2014, 128 Stat. 3343; Pub. L. 114–92, div. A, title X, §1081(a)(8), Nov. 25, 2015, 129 Stat. 1001.)

AMENDMENTS

2015—Subsec. (d)(1). Pub. L. 114–92 substituted ''a certification in writing'' for ''certification in writing''.

2014—Subsec. (a)(1). Pub. L. 113–291 inserted ''support for crisis response elements,'' after ''service requirements,''.

2013—Subsec. (a). Pub. L. 113–66 amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall maintain a strategic policy on the programs of the Department of Defense for the prepositioning of materiel and equipment. Such policy shall take into account national security threats, strategic mobility, service requirements, and the requirements of the combatant commands.''

2011—Subsec. (d). Pub. L. 112–81 added subsec. (d).

IMPLEMENTATION PLAN AND REPORT

Pub. L. 113–66, div. A, title III, §321(b), (c), Dec. 26, 2013, 127 Stat. 731, 732, as amended by Pub. L. 113–291, div. A, title III, §324, Dec. 19, 2014, 128 Stat. 3343, provided that:

''(b) IMPLEMENTATION PLAN.—

''(1) IN GENERAL.—Not later than 120 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 prepositioning strategic policy required under section 2229(a) of title 10, United States Code, as amended by subsection (a).

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

''(A) Detailed guidance for how the Department of Defense will achieve the vision, end state, and goals outlined in the strategic policy.

''(B) A comprehensive list of the Department's prepositioned materiel and equipment programs.

''(C) A detailed description of how the plan will be implemented.

''(D) A schedule with milestones for the implementation of the plan.

''(E) An assignment of roles and responsibilities for the implementation of the plan.

''(F) A description of the resources required to implement the plan.

''(G) A description of how the plan will be reviewed and assessed to monitor progress.

''(c) COMPTROLLER GENERAL REPORT.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall review the implementation plan submitted under subsection (b) and the prepositioning strategic policy required under section 2229(a) of title 10, United States Code, as amended by subsection (a), and submit to the congressional defense committees a report describing the findings of such review and including any additional information relating to the prepositioning strategic policy and plan that the Comptroller General determines appropriate.

''(2) PROGRESS REPORTS.—Not later than one year after submitting the report required under paragraph (1), and annually thereafter for two years, the Comptroller General shall submit to the congressional defense committees a report assessing the progress of the Department of Defense in implementing its strategic policy and plan for its prepositioned stocks and including any additional information related to the Department's management of its prepositioned stocks that the Comptroller General determines appropriate.''

DEADLINE FOR ESTABLISHMENT OF POLICY

Pub. L. 109–364, div. A, title III, §351(c), Oct. 17, 2006, 120 Stat. 2160, provided that:

''(1) DEADLINE.—Not later than six months after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall establish the strategic policy on the programs of the Department of Defense for the prepositioning of materiel and equipment required under section 2229 of title 10, United States Code, as added by subsection (a).

''(2) LIMITATION ON DIVERSION OF PREPOSITIONED MATERIEL.—During the period beginning on the date of the enactment of this Act [Oct. 17, 2006] and ending on the date on which the Secretary of Defense submits the report required under section 2229(c) of title 10, United States Code, on the policy referred to in paragraph (1), the Secretary of a military department may not divert materiel or equipment from prepositioned stocks except for the purpose of directly supporting a contingency operation or providing humanitarian assistance under chapter 20 of that title.''

IMPROVING DEPARTMENT OF DEFENSE SUPPORT FOR CIVIL AUTHORITIES

Pub. L. 109–364, div. A, title III, §359, Oct. 17, 2006, 120 Stat. 2164, provided that:

''(a) CONSULTATION.—In the development of concept plans for the Department of Defense for providing support to civil authorities, the Secretary of Defense may consult with the Secretary of Homeland Security and State governments.

''(b) PREPOSITIONING OF DEPARTMENT OF DEFENSE ASSETS.—The Secretary of Defense may provide for the prepositioning of prepackaged or preidentified basic response assets, such as medical supplies, food and water, and communications equipment, in order to improve the ability of the Department of Defense to rapidly provide support to civil authorities. The prepositioning of basic response assets shall be carried out in a manner consistent with Department of Defense concept plans for providing support to civil authorities and section 2229 of title 10, United States Code, as added by section 351.

''(c) REIMBURSEMENT.—To the extent required by section 1535 of title 31, United States Code, or other applicable law, the Secretary of Defense shall require that the Department of Defense be reimbursed for costs incurred by the Department in the prepositioning of basic response assets under subsection (b).

''(d) MILITARY READINESS.—The Secretary of Defense shall ensure that the prepositioning of basic response assets under subsection (b) does not adversely affect the military preparedness of the United States.

''(e) PROCEDURES AND GUIDELINES.—The Secretary may develop procedures and guidelines applicable to the prepositioning of basic response assets under subsection (b).''

§ 2229a. Annual report on prepositioned materiel and equipment

(a) ANNUAL REPORT REQUIRED.—Not later than the date of the submission of the President's budget request for a fiscal year under section 1105 of title 31, the Secretary of Defense shall submit to the congressional defense committees a report on the status of the materiel in the prepositioned stocks as of the end of the fiscal year preceding the fiscal year during which the report is submitted. Each report shall be unclassified and may contain a classified annex. Each report shall include the following information:

(1) The level of fill for major end items of equipment and spare parts in each prepositioned set as of the end of the fiscal year covered by the report.

(2) The material condition of equipment in the prepositioned stocks as of the end of such fiscal year, grouped by category or major end item.

(3) A list of major end items of equipment drawn from the prepositioned stocks during such fiscal year and a description of how that equipment was used and whether it was returned to the stocks after being used.

(4) A timeline for completely reconstituting any shortfall in the prepositioned stocks.

(5) An estimate of the amount of funds required to completely reconstitute any shortfall in the prepositioned stocks and a description of the Secretary's plan for carrying out such complete reconstitution.

(6) A list of any operations plan affected by any shortfall in the prepositioned stocks and a description of any action taken to mitigate any risk that such a shortfall may create.

(7) A list of any non-standard items slated for inclusion in the prepositioned stocks and a plan for funding the inclusion and sustainment of such items.

(8) A list of any equipment used in support of contingency operations slated for retrograde and subsequent inclusion in the prepositioned stocks.

(9) An efficiency strategy for limited shelf-life medical stock replacement.

(10) The status of efforts to develop a joint strategy, integrate service requirements, and eliminate redundancies.

(11) The operational planning assumptions used in the formulation of prepositioned stock levels and composition.

(12) A list of any strategic plans affected by changes to the levels, composition, or locations of the prepositioned stocks and a description of any action taken to mitigate any risk that such changes may create.

(b) COMPTROLLER GENERAL REVIEW.—(1) The Comptroller General shall review each report submitted under subsection (a) and, as the Comptroller General determines appropriate, submit to the congressional defense committees any additional information that the Comptroller General determines will further inform such committees on issues relating to the status of the materiel in the prepositioned stocks.

(2) The Secretary of Defense shall ensure the full cooperation of the Department of Defense with the Comptroller General for purposes of the conduct of the review required by this subsection, both before and after each report is submitted under subsection (a). The Secretary shall conduct periodic briefings for the Comptroller General on the information covered by each report required under subsection (a) and provide to the Comptroller General access to the data and preliminary results to be used by the Secretary in preparing each such report before the Secretary submits the report to enable the Comptroller General to conduct each review required under paragraph (1) in a timely manner.

(3) The requirement to conduct a review under this subsection shall terminate on September 30, 2015.

(Added Pub. L. 110–181, div. A, title III, § 352(a), Jan. 28, 2008, 122 Stat. 71; amended Pub. L. 112–81, div. A, title III, § 341(b), Dec. 31, 2011, 125 Stat. 1369; Pub. L. 112–239, div. A, title III, § 343, Jan. 2, 2013, 126 Stat. 1700; Pub. L. 114–92, div. A, title III, § 331, Nov. 25, 2015, 129 Stat. 791.)

AMENDMENTS

2015—Subsec. (a)(8). Pub. L. 114–92 amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''A list of any equipment used in support of Operation Iraqi Freedom, Operation New Dawn, or Operation Enduring Freedom slated for retrograde and subsequent inclusion in the prepositioned stocks.''

2013—Subsec. (b)(1). Pub. L. 112–239 substituted ''The'' for ''By not later than 120 days after the date on which a report is submitted under subsection (a), the'' and ''each report submitted under subsection (a)'' for ''the report''.

2011—Subsec. (a)(7) to (12). Pub. L. 112–81 added pars. (7) to (12).

CHAPTER 133—FACILITIES FOR RESERVE COMPONENTS

Sec.
2231. Reference to chapter 1803.

PRIOR PROVISIONS

A prior chapter 133 was transferred to end of part V of subtitle E of this title and renumbered chapter 1803.

§ 2231. Reference to chapter 1803

Provisions of law relating to facilities for reserve components are set forth in chapter 1803 of this title (beginning with section 18231).

(Added Pub. L. 103–337, div. A, title XVI, § 1664(b)(11), Oct. 5, 1994, 108 Stat. 3011.)

PRIOR PROVISIONS

Prior sections 2231 to 2239 were renumbered sections 18231 to 18239 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS

Subchapter Sec.
I. Miscellaneous Authorities, Prohibitions, and Limitations on the Use of Appropriated Funds 2241
II. Miscellaneous Administrative Authority 2251

SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS

Sec.
2241. Availability of appropriations for certain purposes.
2241a. Prohibition on use of funds for publicity or propaganda purposes within the United States.
2241b. Prohibition on contracts providing payments for activities at sporting events to honor members of the armed forces.
2242. Authority to use appropriated funds for certain investigations and security services.
2243. Authority to use appropriated funds to support student meal programs in overseas defense dependents' schools.
2244. Security investigations.
2244a. Equipment scheduled for retirement or disposal: limitation on expenditures for modifications.
2245. Use of aircraft for proficiency flying: limitation.
2245a. Use of operation and maintenance funds for purchase of investment items: limitation.
[2246 to 2248. Renumbered or Repealed.]
2249. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
2249a. Prohibition on providing financial assistance to terrorist countries.
2249b. Display of State, District of Columbia, commonwealth, and territorial flags by the armed forces.
2249c. Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials.
2249d. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces.
2249e. Prohibition on use of funds for assistance to units of foreign security forces that have committed a gross violation of human rights.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title III, § 341(b), title V, § 573(b)(2), Nov. 25, 2015, 129 Stat. 793, 831, added item 2241b and substituted ''Authority to use appropriated funds to support student meal programs in overseas defense dependents' schools'' for ''Authority to use appropriated funds to support student meal programs in overseas dependents' schools'' in item 2243.

2014—Pub. L. 113–291, div. A, title XII, § 1204(a)(2), Dec. 19, 2014, 128 Stat. 3533, added item 2249e.

2013—Pub. L. 112–239, div. A, title V, § 588(b)(2), Jan. 2, 2013, 126 Stat. 1769, substituted ''Display of State, District of Columbia, commonwealth, and territorial flags by the armed forces.'' for ''Display of State flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display.'' in item 2249b.

2011—Pub. L. 111–383, div. A, title X, §1075(b)(30), Jan. 7, 2011, 124 Stat. 4370, transferred item 2241a ''Prohibition on use of funds for publicity or propaganda purposes within the United States'' to appear after item 2241.

2009—Pub. L. 111–84, div. A, title X, §1031(a)(2), Oct. 28, 2009, 123 Stat. 2448, added item 2241a at the end.

2008—Pub. L. 110–417, [div. A], title XII, §1205(a)(2), Oct. 14, 2008, 122 Stat. 4624, added item 2249d.

2006—Pub. L. 109–364, div. A, title XII, §1204(d)(3), Oct. 17, 2006, 120 Stat. 2416, substituted ''Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials'' for ''Authority to use appropriated funds for costs of attendance of foreign visitors under Regional Defense Counterterrorism Fellowship Program'' in item 2249c.

Pub. L. 109–163, div. A, title III, §§372(b), 373(b), Jan. 6, 2006, 119 Stat. 3210, 3211, added items 2244a and 2245a.

2004—Pub. L. 108–375, div. A, title VI, §651(f)(3), Oct. 28, 2004, 118 Stat. 1972, struck out items 2246 ''Department of Defense golf courses: limitation on use of appropriated funds'' and 2247 ''Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation''.

2003—Pub. L. 108–136, div. A, title X, §1045(a)(5)(B), title XII, §1221(a)(2), Nov. 24, 2003, 117 Stat. 1612, 1651, struck out item 2248 ''Purchase of surety bonds: prohibition'' and added item 2249c.

1996—Pub. L. 104–201, div. A, title X, §1071(b), Sept. 23, 1996, 110 Stat. 2657, added item 2249b.

Pub. L. 104–106, div. A, title XIII, §1341(b), div. D, title XLIII, §4321(b)(2)(B), Feb. 10, 1996, 110 Stat. 485, 672, redesignated item 2247, relating to prohibition on use of funds for documenting economic or employment impact of certain acquisition programs, as 2249 and added item 2249a.

1994—Pub. L. 103–355, title VII, §7202(a)(2), Oct. 13, 1994, 108 Stat. 3379, added item 2247 relating to prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.

Pub. L. 103–337, div. A, title III, §372(b), title X, §1063(b), Oct. 5, 1994, 108 Stat. 2736, 2848, added item 2247 relating to use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation and item 2248.

1993—Pub. L. 103–160, div. A, title III, §312(b), Nov. 30, 1993, 107 Stat. 1618, added item 2246.

1991—Pub. L. 102–190, div. A, title X, §1062(a)(3), Dec. 5, 1991, 105 Stat. 1475, made technical correction to directory language of Pub. L. 101–510, div. A, title XIV, §1481(e)(2), Nov. 5, 1990, 104 Stat. 1706. See 1990 amendment note below.

1990—Pub. L. 101–510, div. A, title XIV, §1481(e)(2), Nov. 5, 1990, 104 Stat. 1706, as amended by Pub. L. 102–190, div. A, title X, §1062(a)(3), Dec. 5, 1991, 105 Stat. 1475, added item 2245.

Pub. L. 101–510, div. A, title IX, §904(b), Nov. 5, 1990, 104 Stat. 1621, added item 2244.

1989—Pub. L. 101–189, div. A, title III, §326(b), Nov. 29, 1989, 103 Stat. 1416, added item 2243.

§ 2241. Availability of appropriations for certain purposes

(a) OPERATION AND MAINTENANCE APPROPRIATIONS.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the following purposes:

(1) Morale, welfare, and recreation.

(2) Modification of personal property.

(3) Design of vessels.

(4) Industrial mobilization.

(5) Military communications facilities on merchant vessels.

(6) Acquisition of services, special clothing, supplies, and equipment.

(7) Expenses for the Reserve Officers' Training Corps and other units at educational institutions.

(b) NECESSARY EXPENSES.—Amounts appropriated to the Department of Defense may be used for all necessary expenses, at the seat of the Government or elsewhere, in connection with communication and other services and supplies that may be necessary for the national defense.

(c) ACTIVITIES OF THE NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE.—Amounts appropriated for operation and maintenance may, under regulations prescribed by the Secretary of Defense, be used by the Secretary for official reception, representation, and advertising activities and materials of the National Committee for Employer Support of the Guard and Reserve to further employer commitments to their employees who are members of a reserve component.

(Added Pub. L. 100–370, §1(e)(1), July 19, 1988, 102 Stat. 844; amended Pub. L. 108–136, div. A, title V, §518, Nov. 24, 2003, 117 Stat. 1462.)

HISTORICAL AND REVISION NOTES

Subsection (a) of this section and sections 2253(b) and 2661(a) of this title are based on Pub. L. 98–212, title VII, §735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for ''welfare and recreation'' or ''welfare and recreational'' purposes. (Section 735 of Public Law 98–212 and section 8006(b) of Public Law 99–190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term ''morale'' in both of these two instances to conform to the usual ''MWR'' usage for morale, welfare, and recreation activities.

Subsection (b) of this section and sections 2242(1), (4) and 2253(a)(1) of this title are based on Pub. L. 98–212, title VII, §705, Dec. 8, 1983, 97 Stat. 1437.

Section 705 of Public Law 98–212, to be codified as 10 U.S.C. 2241(b), provides that defense appropriations may be used in connection with certain services and supplies ''as may be necessary to carry out the purposes of this Act''. The reference to ''this Act'' means Public Law 98–212, the FY84 Defense Appropriations Act. Language similar to section 705 had been enacted as part of the annual defense appropriation Act for many years. In the FY84 Act, section 705 was enacted as a permanent provision. The quoted phrase above was not, however, revised from the traditional annual wording as the provision had appeared in annual appropriations Acts in order to give it effect beyond the fiscal year concerned. Since the general purpose of a defense appropriations Act is to provide funds for national defense purposes, the committee, in codifying this provision, revised the quoted phrase so as to read ''that may be necessary for the national defense''. No change in meaning is intended.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–136 added subsec. (c).

FUNDS PROHIBITED FOR SUPPORT OF DEPARTMENT OR AGENCY IN ARREARS IN MAKING PAYMENT TO DEPARTMENT OF DEFENSE

Pub. L. 113–235, div. C, title VIII, §8063, Dec. 16, 2014, 128 Stat. 2268, provided that: ''During the current fiscal year and hereafter, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in

arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: *Provided*, That this restriction shall not apply if the department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.''

PUBLIC FINANCIAL DISCLOSURE REQUIRED BY SENIOR MENTOR ADVISING DEPARTMENT OF DEFENSE

Pub. L. 113–235, div. C, title VIII, § 8104, Dec. 16, 2014, 128 Stat. 2278, provided that: ''None of the funds appropriated or otherwise made available by this Act [div. C of Pub. L. 113–235, see Tables for classification] and hereafter may be obligated or expended to pay a retired general or flag officer to serve as a senior mentor advising the Department of Defense unless such retired officer files a Standard Form 278 (or successor form concerning public financial disclosure under part 2634 of title 5, Code of Federal Regulations) to the Office of Government Ethics.''

LIMITATION ON SOURCE OF FUNDS FOR CERTAIN JOINT CARGO AIRCRAFT EXPENDITURES

Pub. L. 110–417, [div. A], title II, § 216, Oct. 14, 2008, 122 Stat. 4387, provided that:

''(a) LIMITATION.—Of the amounts appropriated pursuant to an authorization of appropriations in this Act [see Tables for classification] or otherwise made available for fiscal year 2009 or any fiscal year thereafter for the Army or the Air Force, the Secretary of the Army and the Secretary of the Air Force may fund relevant expenditures for the Joint Cargo Aircraft only through amounts made available for procurement or for research, development, test, and evaluation.

''(b) RELEVANT EXPENDITURES FOR THE JOINT CARGO AIRCRAFT DEFINED.—In this section, the term 'relevant expenditures for the Joint Cargo Aircraft' means expenditures relating to—

''(1) support equipment;

''(2) initial spares;

''(3) training simulators;

''(4) systems engineering and management; and

''(5) post-production modifications.''

PROHIBITIONS RELATING TO PROPAGANDA

Pub. L. 110–417, [div. A], title X, § 1056, Oct. 14, 2008, 122 Stat. 4610, provided that:

''(a) PROHIBITION.—No part of any funds authorized to be appropriated in this or any other Act shall be used by the Department of Defense for publicity or propaganda purposes within the United States not otherwise specifically authorized by law.

''(b) REPORT.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Inspector General of the Department of Defense shall submit to Congress a report on the findings of their project number D2008–DIPOEF–0209.000, entitled 'Examination of Allegations Involving DoD Office of Public Affairs Outreach Program'.

''(c) LEGAL OPINION.—Not later than 120 days after the date of the enactment of this Act, the Comptroller General of the United States shall issue a legal opinion to Congress on whether the Department of Defense violated appropriations prohibitions on publicity or propaganda activities established in Public Laws 107–117, 107–248, 108–87, 108–287, 109–148, 109–289, and 110–116, the Department of Defense Appropriations Acts for fiscal years 2002 through 2008, respectively, by offering special access to prominent persons in the private sector who serve as media analysts, including briefings and information on war efforts, meetings with high level government officials, and trips to Iraq and Guantanamo Bay, Cuba.

''(d) RULE OF CONSTRUCTION RELATED TO INTELLIGENCE ACTIVITIES.—Nothing in this section shall be construed to apply to any lawful and authorized intelligence activity of the United States Government.''

FUNDS MADE AVAILABLE FOR TRANSPORTATION OF MEDICAL SUPPLIES TO AMERICAN SAMOA AND INDIAN HEALTH SERVICE

Pub. L. 110–329, div. C, title VIII, § 8058, Sept. 30, 2008, 122 Stat. 3634, provided that: ''Notwithstanding any other provision of law, funds available to the Department of Defense in this Act [div. C of Pub. L. 110–329, see Tables for classification], and hereafter, shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.''

OBLIGATION OF FUNDS FOR INSTALLATION SUPPORT FUNCTIONS

Pub. L. 108–287, title VIII, § 8070, Aug. 5, 2004, 118 Stat. 987, provided that: ''Hereafter, funds appropriated for Operation and maintenance and for the Defense Health Program in this Act [see Tables for classification], and in future appropriations acts for the Department of Defense, for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects, or any planning studies, environmental assessments, or similar activities related to installation support functions, may be obligated at the time the reimbursable order is accepted by the performing activity: *Provided*, That for the purpose of this section, supervision and administration costs includes all in-house Government cost.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, § 8071, Sept. 30, 2003, 117 Stat. 1088.

Pub. L. 107–248, title VIII, § 8072, Oct. 23, 2002, 116 Stat. 1553.

Pub. L. 107–117, div. A, title VIII, § 8080, Jan. 10, 2002, 115 Stat. 2265.

Pub. L. 106–259, title VIII, § 8079, Aug. 9, 2000, 114 Stat. 691.

Pub. L. 106–79, title VIII, § 8084, Oct. 25, 1999, 113 Stat. 1251.

Pub. L. 105–262, title VIII, § 8085, Oct. 17, 1998, 112 Stat. 2318.

Pub. L. 105–56, title VIII, § 8093, Oct. 8, 1997, 111 Stat. 1241.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8119], Sept. 30, 1996, 110 Stat. 3009–71, 3009–114.

LIMITATION ON PAYMENT OF FACILITIES CHARGES ASSESSED BY DEPARTMENT OF STATE

Pub. L. 108–136, div. A, title X, § 1007, Nov. 24, 2003, 117 Stat. 1585, provided that:

''(a) COSTS OF GOODS AND SERVICES PROVIDED TO DEPARTMENT OF STATE.—Funds appropriated for the Department of Defense may be transferred to the Department of State as remittance for a fee charged to the Department of Defense by the Department of State for any year for the maintenance, upgrade, or construction of United States diplomatic facilities only to the extent that the amount charged (when added to other amounts previously so charged for that fiscal year) exceeds the total amount of the unreimbursed costs incurred by the Department of Defense during that year in providing goods and services to the Department of State.

''(b) EFFECTIVE DATE.—Subsection (a) shall take effect as of October 1, 2003.''

TOTAL INFORMATION AWARENESS PROGRAM

Pub. L. 108–7, div. M, § 111, Feb. 20, 2003, 117 Stat. 534, provided that:

''(a) LIMITATION ON USE OF FUNDS FOR RESEARCH AND DEVELOPMENT ON TOTAL INFORMATION AWARENESS PROGRAM.—Notwithstanding any other provision of law, commencing 90 days after the date of the enactment of this Act [Feb. 20, 2003], no funds appropriated or otherwise made available to the Department of Defense, whether to an element of the Defense Advanced Research Projects Agency or any other element, or to any other department, agency, or element of the Federal Government, may be obligated or expended on research and development on the Total Information Awareness program unless—

''(1) the report described in subsection (b) is submitted to Congress not later than 90 days after the date of the enactment of this Act; or

''(2) the President certifies to Congress in writing, that—

''(A) the submittal of the report to Congress within 90 days after the date of the enactment of this Act is not practicable; and

''(B) the cessation of research and development on the Total Information Awareness program would endanger the national security of the United States.

''(b) REPORT.—The report described in this subsection is a report, in writing, of the Secretary of Defense, the Attorney General, and the Director of Central Intelligence, acting jointly, that—

''(1) contains—

''(A) a detailed explanation of the actual and intended use of funds for each project and activity of the Total Information Awareness program, including an expenditure plan for the use of such funds;

''(B) the schedule for proposed research and development on each project and activity of the Total Information Awareness program; and

''(C) target dates for the deployment of each project and activity of the Total Information Awareness program;

''(2) assesses the likely efficacy of systems such as the Total Information Awareness program in providing practically valuable predictive assessments of the plans, intentions, or capabilities of terrorists or terrorist groups;

''(3) assesses the likely impact of the implementation of a system such as the Total Information Awareness program on privacy and civil liberties;

''(4) sets forth a list of the laws and regulations that govern the information to be collected by the Total Information Awareness program, and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program; and

''(5) includes recommendations, endorsed by the Attorney General, for practices, procedures, regulations, or legislation on the deployment, implementation, or use of the Total Information Awareness program to eliminate or minimize adverse effects of such program on privacy and other civil liberties.

''(c) LIMITATION ON DEPLOYMENT OF TOTAL INFORMATION AWARENESS PROGRAM.—(1) Notwithstanding any other provision of law and except as provided in paragraph (2), if and when research and development on the Total Information Awareness program, or any component of such program, permits the deployment or implementation of such program or component, no department, agency, or element of the Federal Government may deploy or implement such program or component, or transfer such program or component to another department, agency, or element of the Federal Government, until the Secretary of Defense—

''(A) notifies Congress of that development, including a specific and detailed description of—

''(i) each element of such program or component intended to be deployed or implemented; and

''(ii) the method and scope of the intended deployment or implementation of such program or component (including the data or information to be accessed or used); and

''(B) has received specific authorization by law from Congress for the deployment or implementation of such program or component, including—

''(i) a specific authorization by law for the deployment or implementation of such program or component; and

''(ii) a specific appropriation by law of funds for the deployment or implementation of such program or component.

''(2) The limitation in paragraph (1) shall not apply with respect to the deployment or implementation of the Total Information Awareness program, or a component of such program, in support of the following:

''(A) Lawful military operations of the United States conducted outside the United States.

''(B) Lawful foreign intelligence activities conducted wholly against non-United States persons.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the Total Information Awareness program should not be used to develop technologies for use in conducting intelligence activities or law enforcement activities against United States persons without appropriate consultation with Congress or without clear adherence to principles to protect civil liberties and privacy; and

''(2) the primary purpose of the Defense Advanced Research Projects Agency is to support the lawful activities of the Department of Defense and the national security programs conducted pursuant to the laws assembled for codification purposes in title 50, United States Code.

''(e) DEFINITIONS.—In this section:

''(1) TOTAL INFORMATION AWARENESS PROGRAM.—The term 'Total Information Awareness program'—

''(A) means the computer hardware and software components of the program known as Total Information Awareness, any related information awareness program, or any successor program under the Defense Advanced Research Projects Agency or another element of the Department of Defense; and

''(B) includes a program referred to in subparagraph (1), or a component of such program, that has been transferred from the Defense Advanced Research Projects Agency or another element of the Department of Defense to any other department, agency, or element of the Federal Government.

''(2) NON-UNITED STATES PERSON.—The term 'non-United States person' means any person other than a United States person.

''(3) UNITED STATES PERSON.—The term 'United States person' has the meaning given that term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).''

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 3001 of Title 50, War and National Defense.]

FUNDS PROHIBITED FOR CONTRACTS WITH PERSONS CONVICTED OF UNLAWFUL MANUFACTURE OR SALE OF CONGRESSIONAL MEDALS OF HONOR

Pub. L. 105–262, title VIII, §8118, Oct. 17, 1998, 112 Stat. 2331, provided that: ''During the current fiscal year and hereafter, no funds appropriated or otherwise available to the Department of Defense may be used to award a contract to, extend a contract with, or approve the award of a subcontract to any person who within the preceding 15 years has been convicted under section 704 of title 18, United States Code, of the unlawful manufacture or sale of the Congressional Medal of Honor.''

USE OF FUNDS FOR MODIFICATION OF RETIRED AIRCRAFT, WEAPON, SHIP OR OTHER ITEM OF EQUIPMENT

Pub. L. 105–56, title VIII, §8053, Oct. 8, 1997, 111 Stat. 1232, which provided that none of the funds provided in

the Act and hereafter would be available for use by a military department to modify an aircraft, weapon, ship or other item of equipment, that the military department concerned planned to retire or otherwise dispose of within 5 years after completion of the modification, was repealed and restated in section 2244a of this title by Pub. L. 109–163, div. A, title III, § 372(a), (c), 119 Stat. 3209, 3210.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8055], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99.

Pub. L. 104–61, title VIII, § 8068, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, § 8079, Sept. 30, 1994, 108 Stat. 2636.

Pub. L. 103–139, title VIII, § 8098, Nov. 11, 1993, 107 Stat. 1462.

Pub. L. 102–396, title IX, § 9034, Oct. 6, 1992, 106 Stat. 1908.

Pub. L. 102–172, title VIII, § 8034, Nov. 26, 1991, 105 Stat. 1178.

Pub. L. 101–511, title VIII, § 8035, Nov. 5, 1990, 104 Stat. 1882.

DEMONSTRATION PROJECT FOR UNIFORM FUNDING OF MORALE, WELFARE, AND RECREATION ACTIVITIES AT CERTAIN MILITARY INSTALLATIONS

Pub. L. 104–106, div. A, title III, § 335, Feb. 10, 1996, 110 Stat. 262, directed the Secretary of Defense to conduct a demonstration project to evaluate the feasibility of using only nonappropriated funds to support morale, welfare, and recreation programs at military installations in order to facilitate the procurement of property and services for those programs and the management of employees used to carry out those programs, directed the Secretary to submit to Congress a final report on the results of the project not later than Dec. 31, 1998, and provided that the project would terminate not later than Sept. 30, 1998.

INTERAGENCY COURIER SERVICE

Pub. L. 103–335, title VIII, § 8119, Sept. 30, 1994, 108 Stat. 2649, provided that: ''During the current fiscal year and hereafter, the Department of State and the Department of Defense are authorized to provide interagency courier service on a non-reimbursable basis.''

RESTRICTIONS ON PROCUREMENTS FROM OUTSIDE OF UNITED STATES

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8109], Sept. 30, 1996, 110 Stat. 3009–71, 3009–111, provided for application of section 9005 of Public Law 102–396 (formerly set out below), prior to repeal by Pub. L. 107–107, div. A, title VIII, § 832(b)(2), Dec. 28, 2001, 115 Stat. 1190.

Pub. L. 102–396, title IX, § 9005, Oct. 6, 1992, 106 Stat. 1900, as amended by Pub. L. 103–139, title VIII, § 8005, Nov. 11, 1993, 107 Stat. 1438; Pub. L. 103–355, title IV, § 4401(e), Oct. 13, 1994, 108 Stat. 3348, provided for restrictions on procurements from outside of the United States, prior to repeal by Pub. L. 107–107, div. A, title VIII, § 832(b)(1), Dec. 28, 2001, 115 Stat. 1190.

PROHIBITION ON USE OF FUNDS TO PURCHASE DOGS OR CATS FOR MEDICAL TRAINING

Pub. L. 101–511, title VIII, § 8019, Nov. 5, 1990, 104 Stat. 1879, provided that: ''None of the funds appropriated by this Act [see Tables for classification] or hereafter shall be used to purchase dogs or cats or otherwise fund the use of dogs or cats for the purpose of training Department of Defense students or other personnel in surgical or other medical treatment of wounds produced by any type of weapon: *Provided*, That the standards of such training with respect to the treatment of animals shall adhere to the Federal Animal Welfare Law and to those prevailing in the civilian medical community.''

RESTORATION, CANCELLATION, OR CLOSURE OF CERTAIN DEPARTMENT OF DEFENSE APPROPRIATION ACCOUNT BALANCES

Pub. L. 101–511, title VIII, § 8080, Nov. 5, 1990, 104 Stat. 1893, provided that:

''(a) Upon the date of enactment of this Act [Nov. 5, 1990], the balances of any unobligated amount of an appropriation of the Department of Defense which has been withdrawn under the provisions of section 1552(a)(2) of title 31, United States Code, the obligated balance of which has not been transferred pursuant to the provisions of section 1552(a)(1) of title 31, United States Code, shall be restored to that appropriation. Thirty days following enactment of this Act all balances of unobligated funds withdrawn from any account of the Department of Defense under the provisions of section 1552(a)(2) of title 31, United States Code, prior to the enactment of this Act, (other than those restored pursuant to the provisions of this subsection) are cancelled.

''(b) During the current fiscal year and thereafter—

''(1) on the 3rd September 30th after enactment of this section [Nov. 5, 1990], all obligated balances transferred under section 1552(a)(1) of title 31, United States Code;

''(2) on September 30th of the 5th fiscal year after the period of availability of an appropriation account of the Department of Defense available for obligation for a definite period ends or has ended, with respect to those accounts which, upon the date of enactment of this section have expired for obligation but whose obligated balances have not been transferred pursuant to the provisions of section 1552(a)(1) of title 31, United States Code; and

''(3) with respect to any appropriation account made available to the Department of Defense for an indefinite period against which no obligations have been made for two consecutive years and upon a determination by the Secretary of Defense or the President that the purposes of such indefinite appropriation have been carried out,

any remaining obligated or unobligated balance of such accounts are closed and thereafter shall not be available for obligation or expenditure for any purpose: *Provided*, That collections authorized to be credited to an account which were not credited to the account before it was closed shall be deposited in the Treasury as miscellaneous receipts: *Provided further*, That, without prior action by the Comptroller General but without relieving the Comptroller General of the duty to make decisions under any law or to settle claims and accounts, when an account is closed (including accounts covered by subsection (a) of this section) and currently applicable appropriations of the Department of Defense are not chargeable, obligations and adjustments to obligations that would have been chargeable to an account prior to closing, may be chargeable to currently applicable appropriations of the Department of Defense available for the same purpose in amounts equal to one percent of the total appropriation for the current account or the amount of the original appropriation, whichever is less: *Provided further*, That after the end of the period of availability of an appropriation account available for a definite period and before closing of that account under this section such account shall be available for recording, adjusting, and liquidating obligations properly chargeable to such account in amounts not to exceed the unobligated expired balances of such appropriation: *Provided further*, That with respect to a change to a contract under which the contractor is required to perform additional work, other than adjustments to pay claims or increases under an escalation clause (hereinafter referred to as a contract change), if such a charge for such a contract change with respect to a program, project or activity would cause the total amount of such obligations to exceed $4,000,000 in any single fiscal year for a program, project, or activity,

the obligation may only be made if the obligation is approved by the Secretary of Defense or, if such a change would cause the total amount of such obligations to exceed $25,000,000 in any single fiscal year for a program, project or activity, the obligation may be made only after 30 days have elapsed after the Secretary of Defense submits to the Committees on Appropriations and Armed Services of the Senate and the House of Representatives a notice of the intention to obligate such funds, together with the legal basis and the policy reasons for making such an obligation.

''(c) The provisions of this section shall apply to any appropriation account now or hereafter made unless the appropriation Act for that account specifically provides for an extension of the availability of such account and provides an exception to the five year period of availability for recording, adjusting and liquidating obligations properly chargeable to that account.''

AVAILABILITY OF APPROPRIATIONS

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriations Act, 1990, Pub. L. 101–165, title IX, §§9002, 9006, 9020, 9025, 9030, 9079, Nov. 21, 1989, 103 Stat. 1129, 1130, 1133–1135, 1147:

''SEC. 9002. [Authorized Secretaries of Defense, Army, Navy, and Air Force to procure services in accordance with section 3109 of Title 5, Government Organization and Employees, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals while traveling from their homes or places of business to official duty stations and return; and was repealed and restated in section 129b of this title by Pub. L. 101–510, div. A, title XIV, §1481(b)(1), (3), Nov. 5, 1990, 104 Stat. 1704, 1705.]

''SEC. 9006. [Provided that no appropriations available to the Department of Defense could be used for operating aircraft under the jurisdiction of the armed forces for the purpose of proficiency flying, as defined in Department of Defense Directive 1340.4, except in accordance with regulations prescribed by the Secretary of Defense; and was repealed and restated in section 2245 of this title by Pub. L. 101–510, div. A, title XIV, §1481(e)(1), (3), Nov. 5, 1990, 104 Stat. 1706.]

''SEC. 9020. [Provided that no funds available to the Department of Defense could be used to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department is reimbursed for the costs of providing such care; and was repealed and restated in section 2549 of this title by Pub. L. 101–510, div. A, title XIV, §1481(f)(1), (3), Nov. 5, 1990, 104 Stat. 1707.]

''SEC. 9025. [Provided that no funds available to the Department of Defense could be used to lease to non-Federal agencies in the United States aircraft or vehicles owned or operated by the Department when suitable aircraft or vehicles are commercially available in the private sector; and was repealed and restated in section 2550 of this title by Pub. L. 101–510, div. A, title XIV, §1481(g)(1), (4), Nov. 5, 1990, 104 Stat. 1707.]

''SEC. 9030. [Provided that funds available to the Department of Defense could be used by the Department for helicopters and motorized equipment at Defense installations for removal of feral burros and horses; and was repealed and restated in section 2678 of this title by Pub. L. 101–510, div. A, title XIV, §1481(h)(1), (3), Nov. 5, 1990, 104 Stat. 1708.]

''SEC. 9079. None of the funds appropriated by this Act or hereafter shall be obligated for the second career training program authorized by Public Law 96–347 [amending sections 2109, 3307, 3381 to 3385, and 8335 of Title 5, Government Organization and Employees].''

The following general provision, that had been repeated as fiscal year provision in prior appropriation acts, was enacted as permanent law in the Department of Defense Appropriations Act, 1989, Pub. L. 100–463, title VIII, §8098, Oct. 1, 1988, 102 Stat. 2270–35, which provided that appropriations available to the Department of Defense for operation and maintenance could be used to pay claims authorized by law to be paid by the Department (except for civil functions), was repealed and restated in section 2732 of this title by Pub. L. 101–510, div. A, title XIV, §1481(j)(1), (3), Nov. 5, 1990, 104 Stat. 1708, 1709.

§ 2241a. Prohibition on use of funds for publicity or propaganda purposes within the United States

Funds available to the Department of Defense may not be obligated or expended for publicity or propaganda purposes within the United States not otherwise specifically authorized by law.

(Added Pub. L. 111–84, div. A, title X, §1031(a)(1), Oct. 28, 2009, 123 Stat. 2448.)

EFFECTIVE DATE

Pub. L. 111–84, div. A, title X, §1031(b), Oct. 28, 2009, 123 Stat. 2448, provided that: ''Section 2241a of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2009, or the date of the enactment of this Act [Oct. 28, 2009], whichever is later.''

§ 2241b. Prohibition on contracts providing payments for activities at sporting events to honor members of the armed forces

(a) PROHIBITION.—The Department of Defense may not enter into any contract or other agreement under which payments are to be made in exchange for activities by the contractor intended to honor, or giving the appearance of honoring, members of the armed forces (whether members of the regular components or the reserve components) at any form of sporting event.

(b) CONSTRUCTION.—Nothing in subsection (a) shall be construed as prohibiting the Department of Defense from taking actions to facilitate activities intended to honor members of the armed forces at sporting events that are provided on a pro bono basis or otherwise funded with non-Federal funds if such activities are provided and received in accordance with applicable rules and regulations regarding the acceptance of gifts by the military departments, the armed forces, and members of the armed forces.

(Added Pub. L. 114–92, div. A, title III, §341(a), Nov. 25, 2015, 129 Stat. 792.)

§ 2242. Authority to use appropriated funds for certain investigations and security services

The Secretary of Defense and the Secretary of each military department may—

(1) pay in advance for the expenses of conducting investigations in foreign countries incident to matters relating to the Department of Defense, to the extent such expenses are determined by the investigating officer to be necessary and in accord with local custom;

(2) pay expenses incurred in connection with the administration of occupied areas;

(3) pay expenses of military courts, boards, and commissions; and

(4) reimburse the Administrator of General Services for security guard services furnished by the Administrator to the Department of Defense for the protection of confidential files.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844.)

HISTORICAL AND REVISION NOTES

Paragraphs (1) and (4) of this section and sections 2241(b) and 2253(a)(1) of this title are based on Pub. L. 98–212, title VII, § 705, Dec. 8, 1983, 97 Stat. 1437.

Paragraphs (2) and (3) are based on Pub. L. 99–190, § 101(b) [title VIII, §§ 8005(a), 8006(a)], Dec. 19, 1985, 99 Stat. 1185, 1202, 1203.

§ 2243. Authority to use appropriated funds to support student meal programs in overseas defense dependents' schools

(a) AUTHORITY.—Subject to subsection (b), amounts appropriated to the Department of Defense for the operation of overseas defense dependents' schools may be used by the Secretary of Defense to enable an overseas meal program to provide students enrolled in such a school with meals at a price equal to the average price paid by students for equivalent meals under a comparable public school meal program in the United States.

(b) LIMITATION.—The authority provided by subsection (a) may be used only if the Secretary of Defense determines that Federal payments and commodities provided under section 20 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b) and section 20 of the Child Nutrition Act of 1966 (42 U.S.C. 1789) to support an overseas meal program are insufficient to provide meals under that program at a price for students equal to the average price paid by students for equivalent meals under a comparable public school meal program in the United States.

(c) DETERMINING AVERAGE PRICE.—In determining the average price paid by students in the United States for meals under a school meal program, the Secretary of Defense shall exclude free and reduced price meals provided pursuant to income guidelines.

(d) OVERSEAS MEAL PROGRAM DEFINED.—In this section, the term ''overseas meal program'' means a program administered by the Secretary of Defense to provide breakfasts or lunches to students attending overseas defense dependents' schools.

(e) OVERSEAS DEFENSE DEPENDENTS' SCHOOL DEFINED.—In this section, the term ''overseas defense dependents' school'' means the following:

(1) A school established as part of the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) An elementary or secondary school established pursuant to section 2164 of this title that is located in a territory, commonwealth, or possession of the United States.

(Added Pub. L. 101–189, div. A, title III, § 326(a), Nov. 29, 1989, 103 Stat. 1415; amended Pub. L. 106–78, title VII, § 752(b)(7), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 114–92, div. A, title V, § 573(a), (b)(1), Nov. 25, 2015, 129 Stat. 830, 831.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (e)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, which is classified principally to chapter 25A (§ 921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

2015—Pub. L. 114–92, § 573(b)(1), substituted ''Authority to use appropriated funds to support student meal programs in overseas defense dependents' schools'' for ''Authority to use appropriated funds to support student meal programs in overseas dependents' schools'' in section catchline.

Subsec. (a). Pub. L. 114–92, § 573(a)(1), substituted ''overseas defense dependents' schools'' for ''the defense dependents' education system'' and ''students enrolled in such a school'' for ''students enrolled in that system''.

Subsec. (d). Pub. L. 114–92, § 573(a)(2), substituted ''overseas defense dependents' schools'' for ''Department of Defense dependents' schools which are located outside the United States''.

Subsec. (e). Pub. L. 114–92, § 573(a)(3), added subsec. (e).

1999—Subsec. (b). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

§ 2244. Security investigations

(a) Funds appropriated to the Department of Defense may not be used for the conduct of an investigation by the Department of Defense, or by any other Federal department or agency, for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary of Defense determines both of the following:

(1) That a current, complete investigation file is not available from any other department or agency of the Federal Government with respect to that individual or facility.

(2) That no other department or agency of the Federal Government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.

(b) For purposes of subsection (a)(1), a current investigation file is a file on an investigation that has been conducted within the past five years.

(Added Pub. L. 101–510, div. A, title IX, § 904(a), Nov. 5, 1990, 104 Stat. 1621; amended Pub. L. 102–190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473.)

AMENDMENTS

1991—Subsec. (a)(1), (2). Pub. L. 102–190 substituted ''Government'' for ''government''.

§ 2244a. Equipment scheduled for retirement or disposal: limitation on expenditures for modifications

(a) PROHIBITION.—Except as otherwise provided in this section, the Secretary of a military department may not carry out a modification of an aircraft, weapon, vessel, or other item of equipment that the Secretary plans to retire or otherwise dispose of within five years after the date on which the modification, if carried out, would be completed.

(b) EXCEPTIONS.—

(1) EXCEPTION FOR BELOW-THRESHOLD MODIFICATIONS.—The prohibition in subsection (a)

does not apply to a modification for which the cost is less than $100,000.

(2) EXCEPTION FOR TRANSFER OF REUSABLE ITEMS OF VALUE.—The prohibition in subsection (a) does not apply to a modification in a case in which—

(A) the reusable items of value, as determined by the Secretary, installed on the item of equipment as part of such modification will, upon the retirement or disposal of the item to be modified, be removed from such item of equipment, refurbished, and installed on another item of equipment; and

(B) the cost of such modification (including the cost of the removal and refurbishment of reusable items of value under subparagraph (A)) is less than $1,000,000.

(3) EXCEPTION FOR SAFETY MODIFICATIONS.—The prohibition in subsection (a) does not apply to a safety modification.

(c) WAIVER AUTHORITY.—The Secretary concerned may waive the prohibition in subsection (a) in the case of any modification otherwise subject to that subsection if the Secretary determines that carrying out the modification is in the national security interest of the United States. Whenever the Secretary issues such a waiver, the Secretary shall notify the congressional defense committees in writing.

(Added Pub. L. 109–163, div. A, title III, §372(a), Jan. 6, 2006, 119 Stat. 3209.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 105–56, title VIII, §8053, Oct. 8, 1997, 111 Stat. 1232, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 109–163, div. A, title III, §372(c), 119 Stat. 3210.

§ 2245. Use of aircraft for proficiency flying: limitation

(a) An aircraft under the jurisdiction of a military department may not be used by a member of the armed forces for the purpose of proficiency flying except in accordance with regulations prescribed by the Secretary of Defense.

(b) Such regulations—

(1) may not require proficiency flying by a member except to the extent required for the member to maintain flying proficiency in anticipation of the member's assignment to combat operations; and

(2) may not permit proficiency flying in the case of a member who is assigned to a course of instruction of 90 days or more.

(c) In this section, the term ''proficiency flying'' means flying performed under competent orders by a rated or designated member of the armed forces while serving in a non-aviation assignment or in an assignment in which skills would normally not be maintained in the performance of assigned duties.

(Added Pub. L. 101–510, div. A, title XIV, §1481(e)(1), Nov. 5, 1990, 104 Stat. 1706; amended Pub. L. 110–181, div. A, title X, §1077, Jan. 28, 2008, 122 Stat. 333.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, §9006, Nov. 21, 1989, 103 Stat. 1130, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, §1481(e)(3).

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–181 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''In this section, the term 'proficiency flying' has the meaning given that term in Department of Defense Directive 1340.4.''

§ 2245a. Use of operation and maintenance funds for purchase of investment items: limitation

Funds appropriated to the Department of Defense for operation and maintenance may not be used to purchase any item (including any item to be acquired as a replacement for an item) that has an investment item unit cost that is greater than $250,000.

(Added Pub. L. 109–163, div. A, title III, §373(a), Jan. 6, 2006, 119 Stat. 3210.)

[§ 2246. Renumbered § 2491a]

[§ 2247. Renumbered § 2491b]

PRIOR PROVISIONS

Another section 2247 was renumbered section 2249 of this title.

[§ 2248. Repealed. Pub. L. 108–136, div. A, title X, § 1045(a)(5)(A), Nov. 24, 2003, 117 Stat. 1612]

Section, added Pub. L. 103–337, div. A, title X, §1063(a), Oct. 5, 1994, 108 Stat. 2848, related to prohibition on purchase of surety bonds.

§ 2249. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.

(Added Pub. L. 103–355, title VII, §7202(a)(1), Oct. 13, 1994, 108 Stat. 3379, §2247; renumbered §2249, Pub. L. 104–106, div. D, title XLIII, §4321(b)(2)(A), Feb. 10, 1996, 110 Stat. 672.)

AMENDMENTS

1996—Pub. L. 104–106 renumbered section 2247 of this title as this section.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355 set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2249a. Prohibition on providing financial assistance to terrorist countries

(a) PROHIBITION.—Funds available to the Department of Defense may not be obligated or expended to provide financial assistance to—

(1) any country with respect to which the Secretary of State has made a determination under section 6(j)(1)(A) of the Export Adminis-

tration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A));[1]

(2) any country identified in the latest report submitted to Congress under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), as providing significant support for international terrorism; or

(3) any other country that, as determined by the President—

(A) grants sanctuary from prosecution to any individual or group that has committed an act of international terrorism; or

(B) otherwise supports international terrorism.

(b) WAIVER.—(1) The President may waive the application of subsection (a) to a country if the President determines—

(A) that it is in the national security interests of the United States to do so; or

(B) that the waiver should be granted for humanitarian reasons.

(2) The President shall—

(A) notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives at least 15 days before the waiver takes effect; and

(B) publish a notice of the waiver in the Federal Register.

(c) DEFINITION.—In this section, the term ''international terrorism'' has the meaning given that term in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)).

(Added Pub. L. 104–106, div. A, title XIII, § 1341(a), Feb. 10, 1996, 110 Stat. 485; amended Pub. L. 105–85, div. A, title X, § 1073(a)(40), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

REFERENCES IN TEXT

Section 6(j)(1)(A) of the Export Administration Act of 1979, referred to in subsec. (a)(1), was classified to section 2405(j)(1)(A) of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as section 4605(j)(1)(A) of Title 50.

AMENDMENTS

1999—Subsec. (b)(2)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a)(1). Pub. L. 105–85 substituted ''50 U.S.C. App. 2405(j)(1)(A)'' for ''50 App. 2405(j)''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 2249b. Display of State, District of Columbia, commonwealth, and territorial flags by the armed forces

(a) DISPLAY OF FLAGS BY ARMED FORCES.—The Secretary of Defense shall ensure that, whenever the official flags of all 50 States are displayed by the armed forces, such display shall include the flags of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) POSITION AND MANNER OF DISPLAY.—The display of an official flag of a State, territory, or possession of the United States at an installation or other facility of the Department shall be governed by section 7 of title 4 and any modification of section 7 under section 10 of title 4.

(Added Pub. L. 104–201, div. A, title X, § 1071(a), Sept. 23, 1996, 110 Stat. 2656; amended Pub. L. 105–225, § 4(a)(1), Aug. 12, 1998, 112 Stat. 1498; Pub. L. 112–239, div. A, title V, § 588(a), (b)(1), Jan. 2, 2013, 126 Stat. 1768, 1769.)

AMENDMENTS

2013—Pub. L. 112–239, § 588(b)(1), substituted ''Display of State, District of Columbia, commonwealth, and territorial flags by the armed forces'' for ''Display of State flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display'' in section catchline.

Subsec. (a). Pub. L. 112–239, § 588(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''Funds available to the Department of Defense may not be used to prescribe or enforce any rule that arbitrarily excludes the official flag of any State, territory, or possession of the United States from any display of the flags of the States, territories, and possessions of the United States at an official ceremony of the Department of Defense.''

1998—Subsec. (b). Pub. L. 105–225 substituted ''section 7 of title 4 and any modification of section 7 under section 10 of title 4'' for ''the provisions of section 3 of the Joint Resolution of June 22, 1942 (56 Stat. 378, chapter 435; 36 U.S.C. 175), and any modification of such provisions under section 8 of that Joint Resolution (36 U.S.C. 178)''.

§ 2249c. Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials

(a) AUTHORITY TO USE FUNDS.—Under regulations prescribed by the Secretary of Defense, funds appropriated to the Department of Defense may be used to pay any costs associated with the education and training of foreign military officers, ministry of defense officials, or security officials at military or civilian educational institutions, regional centers, conferences, seminars, or other training programs conducted under the Regional Defense Combating Terrorism Fellowship Program. Costs for which payment may be made under this section include the costs of transportation and travel and subsistence costs.

(b) LIMITATION.—The total amount of funds used under the authority in subsection (a) in any fiscal year may not exceed $35,000,000. Amounts available under the authority in subsection (a) for a fiscal year may be used for programs that begin in such fiscal year but end in the next fiscal year.

(c) ANNUAL REPORT.—Not later than December 1 of each year, the Secretary of Defense shall submit to Congress a report on the administration of this section during the fiscal year ended in such year. The report shall include the following matters:

[1] See References in Text note below.

(1) A complete accounting of the expenditure of appropriated funds for purposes authorized under subsection (a), including—

(A) the countries of the foreign officers and officials for whom costs were paid; and

(B) for each such country, the total amount of the costs paid.

(2) The training courses attended by the foreign officers and officials, including a specification of which, if any, courses were conducted in foreign countries.

(3) An assessment of the effectiveness of the program referred to in subsection (a), including engagement activities for program alumni, in increasing the cooperation of the governments of foreign countries with the United States in the global war on terrorism.

(4) A discussion of any actions being taken to improve the program, including a list of any unfunded or unmet training requirements and requests.

(5) A discussion and justification of how the program fits within the theater security priorities of each of the commanders of the geographic combatant commands.

(Added Pub. L. 108–136, div. A, title XII, §1221(a)(1), Nov. 24, 2003, 117 Stat. 1651; amended Pub. L. 109–364, div. A, title XII, §1204(a)–(d)(2), Oct. 17, 2006, 120 Stat. 2415; Pub. L. 110–417, [div. A], title XII, §1209(a), Oct. 14, 2008, 122 Stat. 4627; Pub. L. 113–66, div. A, title X, §1032(a), Dec. 26, 2013, 127 Stat. 850.)

AMENDMENTS

2013—Subsec. (c)(3). Pub. L. 113–66, §1032(a)(1), inserted ‘‘, including engagement activities for program alumni,’’ after ‘‘subsection (a)’’.

Subsec. (c)(4). Pub. L. 113–66, §1032(a)(2), inserted ‘‘, including a list of any unfunded or unmet training requirements and requests’’ after ‘‘program’’.

Subsec. (c)(5). Pub. L. 113–66, §1032(a)(3), added par. (5).

2008—Subsec. (b). Pub. L. 110–417 substituted ‘‘$35,000,000’’ for ‘‘$25,000,000’’.

2006—Pub. L. 109–364, §1204(d)(2), substituted ‘‘Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials’’ for ‘‘Authority to use appropriated funds for costs of attendance of foreign visitors under Regional Defense Counterterrorism Fellowship Program’’ in section catchline.

Subsec. (a). Pub. L. 109–364, §1204(a), substituted ‘‘the education and training of foreign military officers, ministry of defense officials, or security officials at military or civilian educational institutions, regional centers, conferences, seminars, or other training programs conducted under the Regional Defense Combating Terrorism Fellowship Program’’ for ‘‘the attendance of foreign military officers, ministry of defense officials, or security officials at United States military educational institutions, regional centers, conferences, seminars, or other training programs conducted under the Regional Defense Counterterrorism Fellowship Program, including costs of transportation and travel and subsistence costs’’ and inserted at end ‘‘Costs for which payment may be made under this section include the costs of transportation and travel and subsistence costs.’’

Subsec. (b). Pub. L. 109–364, §1204(b), (c), substituted ‘‘$25,000,000’’ for ‘‘$20,000,000’’ and inserted at end ‘‘Amounts available under the authority in subsection (a) for a fiscal year may be used for programs that begin in such fiscal year but end in the next fiscal year.’’

Subsec. (c)(3). Pub. L. 109–364, §1204(d)(1), substituted ‘‘program referred to in subsection (a)’’ for ‘‘Regional Defense Counterterrorism Fellowship Program’’.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title X, §1032(b), Dec. 26, 2013, 127 Stat. 850, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply with respect to a report submitted for a fiscal year beginning after the date of the enactment of this Act [Dec. 26, 2013].’’

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title XII, §1209(b), Oct. 14, 2008, 122 Stat. 4627, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2008, and shall apply with respect to fiscal years beginning on or after that date.’’

REGULATIONS

Pub. L. 108–136, div. A, title XII, §1221(b), Nov. 24, 2003, 117 Stat. 1651, provided that: ‘‘Not later than December 1, 2003, the Secretary of Defense shall—

‘‘(1) prescribe the final regulations for carrying out section 2249c of title 10, United States Code, as added by subsection (a); and

‘‘(2) notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and House of Representatives] of the prescription of such regulations.’’

§ 2249d. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces

(a) DISTRIBUTION AUTHORIZED.—To enhance interoperability between the armed forces and military forces of friendly foreign nations, the Secretary of Defense, with the concurrence of the Secretary of State, may—

(1) provide to personnel referred to in subsection (b) electronically-distributed learning content for the education and training of such personnel for the development or enhancement of allied and friendly military and civilian capabilities for multinational operations, including joint exercises and coalition operations; and

(2) provide information technology, including computer software developed for such purpose, but only to the extent necessary to support the use of such learning content for the education and training of such personnel.

(b) AUTHORIZED RECIPIENTS.—The personnel to whom learning content and information technology may be provided under subsection (a) are military and civilian personnel of a friendly foreign government, with the permission of that government.

(c) EDUCATION AND TRAINING.—Any education and training provided under subsection (a) shall include the following:

(1) Internet-based education and training.

(2) Advanced distributed learning and similar Internet learning tools, as well as distributed training and computer-assisted exercises.

(d) APPLICABILITY OF EXPORT CONTROL REGIMES.—The provision of learning content and information technology under this section shall be subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and any other export control regime under law relating to the

transfer of military technology to foreign nations.

(e) GUIDANCE ON UTILIZATION OF AUTHORITY.—

(1) GUIDANCE REQUIRED.—The Secretary of Defense shall develop and issue guidance on the procedures for the use of the authority in this section.

(2) MODIFICATION.—If the Secretary modifies the guidance issued under paragraph (1), the Secretary shall submit to the appropriate committees of Congress a report setting forth the modified guidance not later than 30 days after the date of such modification.

(f) ANNUAL REPORT.—

(1) REPORT REQUIRED.—Not later than October 31 following each fiscal year in which the authority in this section is used, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the exercise of the authority during such fiscal year.

(2) ELEMENTS.—Each report under paragraph (1) shall include, for the fiscal year covered by such report, the following:

(A) A statement of the recipients of learning content and information technology provided under this section.

(B) A description of the type, quantity, and value of the learning content and information technology provided under this section.

(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

(Added Pub. L. 110–417, [div. A], title XII, §1205(a)(1), Oct. 14, 2008, 122 Stat. 4623.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (d), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, 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.

EFFECTIVE DATE

Pub. L. 110–417, [div. A], title XII, §1205(d), Oct. 14, 2008, 122 Stat. 4625, provided that: ''This section [enacting this section and provisions set out as notes under this section] and the amendments made by this section shall take effect on October 1, 2008.''

GUIDANCE ON UTILIZATION OF AUTHORITY

Pub. L. 110–417, [div. A], title XII, §1205(b), Oct. 14, 2008, 122 Stat. 4624, provided that:

''(1) SUBMITTAL TO CONGRESS.—Not later than 30 days after issuing the guidance required by section 2249d(e) of title 10, United States Code, as added by subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth such guidance.

''(2) UTILIZATION OF SIMILAR GUIDANCE.—In developing the guidance required by section 2249d(e) of title 10, United States Code, as so added, the Secretary may utilize applicable portions of the current guidance developed by the Secretary under subsection (f) of section 1207 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2419) for purposes of the exercise of the authority in such section 1207.''

§ 2249e. Prohibition on use of funds for assistance to units of foreign security forces that have committed a gross violation of human rights

(a) IN GENERAL.—(1) Of the amounts made available to the Department of Defense, none may be used for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.

(2) The Secretary of Defense shall, in consultation with the Secretary of State, ensure that prior to a decision to provide any training, equipment, or other assistance to a unit of a foreign security force full consideration is given to any credible information available to the Department of State relating to human rights violations by such unit.

(b) EXCEPTION.—The prohibition in subsection (a)(1) shall not apply if the Secretary of Defense, after consultation with the Secretary of State, determines that the government of such country has taken all necessary corrective steps, or if the equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

(c) WAIVER.—The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a)(1) if the Secretary determines that the waiver is required by extraordinary circumstances.

(d) PROCEDURES.—The Secretary of Defense shall establish, and periodically update, procedures to ensure that any information in the possession of the Department of Defense about gross violations of human rights by units of foreign security forces is shared on a timely basis with the Department of State.

(e) REPORT.—Not later than 15 days after the application of any exception under subsection (b) or the exercise of any waiver under subsection (c), the Secretary of Defense shall submit to the appropriate committees of Congress a report—

(1) in the case of an exception under subsection (b), providing notice of the use of the exception and stating the grounds for the exception; and

(2) in the case of a waiver under subsection (c), describing—

(A) the information relating to the gross violation of human rights;

(B) the extraordinary circumstances that necessitate the waiver;

(C) the purpose and duration of the training, equipment, or other assistance; and

(D) the United States forces and the foreign security force unit involved.

(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 113–291, div. A, title XII, §1204(a)(1), Dec. 19, 2014, 128 Stat. 3531.)

ANNUAL REPORTS

Pub. L. 113–291, div. A, title XII, §1204(b), Dec. 19, 2014, 128 Stat. 3533, provided that:

''(1) IN GENERAL.—Not later than March 31, 2015, and every March 31 thereafter through 2024, the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth for the preceding fiscal year the following:

''(A) The total number of cases submitted for vetting for purposes of section 2249e of title 10, United States Code (as added by subsection (a)), and the total number of such cases approved, or suspended or rejected for human rights reasons, non-human rights reasons, or administrative reasons.

''(B) In the case of units rejected for non-human rights reasons, a detailed description of the reasons relating to the rejection.

''(C) A description of the interagency processes that were used to evaluate compliance with requirements to conduct vetting.

''(D) An addendum that includes any comments by the commanders of the combatant commands about the impact of section 2249e of title 10, United States Code (as so added), on their theater security cooperation plan.

''(E) Such other matters with respect to the administration of section 2249e of title 10, United States Code (as so added), as the Secretary considers appropriate.

''(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

''(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' has the meaning given that term in subsection (f) of section 2249e of title 10, United States Code (as so added).''

SUBCHAPTER II—MISCELLANEOUS ADMINISTRATIVE AUTHORITY

Sec.

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Sec.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title VIII, §859(b), Dec. 19, 2014, 128 Stat. 3461, added item 2264.

2011—Pub. L. 112–81, div. A, title X, §1082(a)(2), Dec. 31, 2011, 125 Stat. 1601, added item 2254a.

2008—Pub. L. 110–417, [div. A], title X, §1004(a)(2), Oct. 14, 2008, 122 Stat. 4583, added item 2263.

2006—Pub. L. 109–364, div. A, title X, §1051(b), Oct. 17, 2006, 120 Stat. 2396, added item 2262.

Pub. L. 109–163, div. A, title V, §589(a)(2), Jan. 6, 2006, 119 Stat. 3279, added item 2261.

2004—Pub. L. 108–375, div. A, title X, §1004(b), Oct. 28, 2004, 118 Stat. 2036, added item 2260.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1082(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285, added item 2259.

1999—Pub. L. 106–65, div. A, title V, §574(b), Oct. 5, 1999, 113 Stat. 624, added item 2257.

1996—Pub. L. 104–201, div. A, title IX, §911(a)(2), Sept. 23, 1996, 110 Stat. 2622, added item 2255.

1992—Pub. L. 102–484, div. A, title X, §1071(a)(2), Oct. 23, 1992, 106 Stat. 2508, added item 2254.

§ 2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii

(a) IN GENERAL.—Subject to subsection (b), the Secretary of the military department concerned may—

(1) purchase household furnishings and automobiles from members of the armed forces and civilian employees of the Department of Defense on duty outside the United States or in Hawaii for resale at cost to incoming personnel; and

(2) provide household furnishings, without charge, in other than public quarters occupied by members of the armed forces or civilian employees of the Department of Defense who are on duty outside the United States or in Alaska or Hawaii.

(b) REQUIRED DETERMINATION.—The authority provided in subsection (a) may be used only when it is determined, under regulations approved by the Secretary of Defense, that the use of that authority would be advantageous to the United States.

(Added Pub. L. 100–370, §1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 98–212, title VII, §723, Dec. 8, 1983, 97 Stat. 1443.

§ 2252. Rewards: missing property

The Secretary of Defense and the Secretary of each military department may pay a reward of not more than $500 in any case for information leading to the discovery of missing property under the jurisdiction of that Secretary or leading to the recovery of such property.

(Added Pub. L. 100–370, §1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, §101(b) [title VIII, §8005(b)], Dec. 19, 1985, 99 Stat. 1185, 1202.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 7209 of this title prior to repeal by Pub. L. 100–370, §1(e)(3)(A).

§ 2253. Motor vehicles

(a) GENERAL AUTHORITIES.—The Secretary of Defense and the Secretary of each military department may—

(1) provide for insurance of official motor vehicles in a foreign country when the laws of such country require such insurance; and

(2) purchase right-hand drive passenger sedans at a cost of not more than $30,000 each.

(b) HIRE OF PASSENGER VEHICLES.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the hire of passenger motor vehicles.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 845; amended Pub. L. 105–85, div. A, title VIII, § 805, Nov. 18, 1997, 111 Stat. 1834; Pub. L. 112–81, div. A, title VIII, § 814(a), Dec. 31, 2011, 125 Stat. 1491.)

HISTORICAL AND REVISION NOTES

Subsection (a)(1) of this section and sections 2241(b) and 2242(1), (4) of this title are based on Pub. L. 98–212, title VII, § 705, Dec. 8, 1983, 97 Stat. 1437.

Subsection (a)(2) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(i)], Dec. 19, 1985, 99 Stat. 1185, 1202.

Subsection (b) of this section and sections 2241(a) and 2661(a) of this title are based on Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 112–81 substituted ''passenger sedans'' for ''vehicles''.

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''$30,000'' for ''$12,000''.

§ 2254. Treatment of reports of aircraft accident investigations

(a) IN GENERAL.—(1) Whenever the Secretary of a military department conducts an accident investigation of an accident involving an aircraft under the jurisdiction of the Secretary, the records and report of the investigations shall be treated in accordance with this section.

(2) For purposes of this section, an accident investigation is any form of investigation of an aircraft accident other than an investigation (known as a ''safety investigation'') that is conducted solely to determine the cause of the accident and to obtain information that may prevent the occurrence of similar accidents.

(b) PUBLIC DISCLOSURE OF CERTAIN ACCIDENT INVESTIGATION INFORMATION.—(1) The Secretary concerned, upon request, shall publicly disclose unclassified tapes, scientific reports, and other factual information pertinent to an aircraft accident investigation, before the release of the final accident investigation report relating to the accident, if the Secretary concerned determines—

(A) that such tapes, reports, or other information would be included within and releasable with the final accident investigation report; and

(B) that release of such tapes, reports, or other information—

(i) would not undermine the ability of accident or safety investigators to continue to conduct the investigation; and

(ii) would not compromise national security.

(2) A disclosure under paragraph (1) may not be made by or through officials with responsibility for, or who are conducting, a safety investigation with respect to the accident.

(c) OPINIONS REGARDING CAUSATION OF ACCIDENT.—Following a military aircraft accident—

(1) if the evidence surrounding the accident is sufficient for the investigators who conduct the accident investigation to come to an opinion (or opinions) as to the cause or causes of the accident, the final report of the accident investigation shall set forth the opinion (or opinions) of the investigators as to the cause or causes of the accident; and

(2) if the evidence surrounding the accident is not sufficient for those investigators to come to an opinion as to the cause or causes of the accident, the final report of the accident investigation shall include a description of those factors, if any, that, in the opinion of the investigators, substantially contributed to or caused the accident.

(d) USE OF INFORMATION IN CIVIL PROCEEDINGS.—For purposes of any civil or criminal proceeding arising from an aircraft accident, any opinion of the accident investigators as to the cause of, or the factors contributing to, the accident set forth in the accident investigation report may not be considered as evidence in such proceeding, nor may such information be considered an admission of liability by the United States or by any person referred to in those conclusions or statements.

(e) REGULATIONS.—The Secretary of each military department shall prescribe regulations to carry out this section.

(Added Pub. L. 102–484, div. A, title X, § 1071(a)(1), Oct. 23, 1992, 106 Stat. 2507.)

EFFECTIVE DATE

Pub. L. 102–484, div. A, title X, § 1071(c), Oct. 23, 1992, 106 Stat. 2508, provided that: ''Section 2254 of title 10, United States Code, as added by subsection (a), shall apply with respect to accidents occurring on or after the date on which regulations are first prescribed under that section.''

REGULATIONS

Pub. L. 105–261, div. A, title X, § 1065(c), Oct. 17, 1998, 112 Stat. 2134, provided that: ''The Secretary of Defense shall prescribe regulations, which shall be applied uniformly across the Department of Defense, establishing procedures by which the military departments shall provide to the family members of any person involved in a military aviation accident periodic update reports on the conduct and progress of investigations into the accident.''

Pub. L. 102–484, div. A, title X, § 1071(b), Oct. 23, 1992, 106 Stat. 2508, provided that: ''Regulations under section 2254 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].''

§ 2254a. Data files of military flight operations quality assurance systems: exemption from disclosure under Freedom of Information Act

(a) AUTHORITY TO EXEMPT CERTAIN DATA FILES FROM DISCLOSURE UNDER FOIA.—

(1) The Secretary of Defense may exempt information contained in any data file of the

military flight operations quality assurance system of a military department from disclosure under section 552(b)(3) of title 5, upon a written determination that—

(A) the information is sensitive information concerning military aircraft, units, or aircrew; and

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

(2) In this section, the term ''data file'' means a file of the military flight operations quality assurance (in this section referred to as ''MFOQA'') system that contains information acquired or generated by the MFOQA system, including—

(A) any data base containing raw MFOQA data; and

(B) any analysis or report generated by the MFOQA system or which is derived from MFOQA data.

(3) Information that is exempt under paragraph (1) from disclosure under section 552(b)(3) of title 5 shall be exempt from such disclosure even if such information is contained in a data file that is not exempt in its entirety from such disclosure.

(4) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section and which specifically cites and repeals or modifies those provisions.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. Such regulations shall ensure consistent application of the authority in subsection (a) across the military departments.

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

(d) 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, §1082(a)(1), Dec. 31, 2011, 125 Stat. 1600.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(4), is the date of enactment of Pub. L. 112–81, which was approved Dec. 31, 2011.

EFFECTIVE DATE

Pub. L. 112–81, div. A, title X, §1082(b), Dec. 31, 2011, 125 Stat. 1601, provided that: ''Section 2254a of title 10, United States Code, as added by subsection (a), shall apply to any information entered into any data file of the military flight operations quality assurance system before, on, or after the date of the enactment of this Act [Dec. 31, 2011].''

§ 2255. Aircraft accident investigation boards: composition requirements

(a) REQUIRED MEMBERSHIP OF BOARDS.—Whenever the Secretary of a military department convenes an aircraft accident investigation board to conduct an accident investigation (as described in section 2254(a)(2) of this title) with respect to a Class A accident involving an aircraft under the jurisdiction of the Secretary, the Secretary shall select the membership of the board so that—

(1) a majority of the members (or in the case of a board consisting of a single member, the member) is selected from units other than the mishap unit or a unit subordinate to the mishap unit; and

(2) in the case of a board consisting of more than one member, at least one member of the board is a member of the armed forces or an officer or an employee of the Department of Defense who possesses knowledge and expertise relevant to aircraft accident investigations.

(b) EXCEPTION.—The Secretary of the military department concerned may waive the requirement of subsection (a)(1) in the case of an aircraft accident if the Secretary determines that—

(1) it is not practicable to meet the requirement because of—

(A) the remote location of the aircraft accident;

(B) an urgent need to promptly begin the investigation; or

(C) a lack of available persons outside of the mishap unit who have adequate knowledge and expertise regarding the type of aircraft involved in the accident; and

(2) the objectivity and independence of the aircraft accident investigation board will not be compromised.

(c) CONSULTATION REQUIREMENT.—In the case of an aircraft accident investigation board consisting of a single member, the member shall consult with a member of the armed forces or an officer or an employee of the Department of Defense who possesses knowledge and expertise relevant to aircraft accident investigations.

(d) DESIGNATION OF CLASS A ACCIDENTS.—Not later than 60 days after an aircraft accident involving an aircraft under the jurisdiction of the Secretary of a military department, the Secretary shall determine whether the aircraft accident should be designated as a Class A accident for purposes of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''Class A accident'' means an accident involving an aircraft that results in—

(A) the loss of life or permanent disability;

(B) damages to the aircraft, other property, or a combination of both, in an amount in excess of the amount specified by the Secretary of Defense for purposes of determining Class A accidents; or

(C) the destruction of the aircraft.

(2) The term ''mishap unit'', with respect to an aircraft accident investigation, means the unit of the armed forces (at the squadron or battalion level or equivalent) to which was assigned the flight crew of the aircraft that sustained the accident that is the subject of the investigation.

(Added Pub. L. 104–201, div. A, title IX, §911(a)(1), Sept. 23, 1996, 110 Stat. 2621; amended Pub. L.

108–136, div. A, title X, § 1031(a)(13), Nov. 24, 2003, 117 Stat. 1597.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136 struck out par. (1) designation before ''The Secretary'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, redesignated cls. (i) to (iii) of former subpar. (A) as subpars. (A) to (C), respectively, of par. (1), and struck out par. (2) which read as follows: ''The Secretary shall notify Congress of a waiver exercised under this subsection and the reasons therefor.''

EFFECTIVE DATE

Pub. L. 104–201, div. A, title IX, § 911(b), Sept. 23, 1996, 110 Stat. 2622, provided that: ''Section 2255 of title 10, United States Code, as added by subsection (a), shall apply with respect to any aircraft accident investigation board convened by the Secretary of a military department after the end of the six-month period beginning on the date of the enactment of this Act [Sept. 23, 1996].''

§ 2257. Use of recruiting materials for public relations

The Secretary of Defense may use for public relations purposes of the Department of Defense any advertising materials developed for use for recruitment and retention of personnel for the armed forces. Any such use shall be under such conditions and subject to such restrictions as the Secretary of Defense shall prescribe.

(Added Pub. L. 106–65, div. A, title V, § 574(a), Oct. 5, 1999, 113 Stat. 624.)

§ 2259. Transit pass program: personnel in poor air quality areas

(a) ESTABLISHMENT OF PROGRAM.—To encourage Department of Defense personnel assigned to duty, or employed, in poor air quality areas to use means other than single-occupancy motor vehicles to commute to or from the location of their duty assignments, the Secretary of Defense shall exercise the authority provided in section 7905 of title 5 to establish a program to provide a transit pass benefit under subsection (b)(2)(A) of that section for members of the Army, Navy, Air Force, and Marine Corps who are assigned to duty, and to Department of Defense civilian officers and employees who are employed, in a poor air quality area.

(b) POOR AIR QUALITY AREAS.—In this section, the term ''poor air quality area'' means an area—

(1) that is subject to the national ambient air quality standards promulgated by the Administrator of the Environmental Protection Agency under section 109 of the Clean Air Act (42 U.S.C. 7409); and

(2) that, as determined by the Administrator of the Environmental Protection Agency, is a nonattainment area with respect to any of those standards.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1082(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285.)

TIME FOR IMPLEMENTATION

Pub. L. 106–398, § 1 [[div. A], title X, § 1082(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285, provided that: ''The Secretary of Defense shall prescribe the effective date for the transit pass program required under section 2259 of title 10, United States Code, as added by subsection (a). The effective date so prescribed may not be later than the first day of the first month that begins on or after the date that is 180 days after the date of the enactment of this Act [Oct. 30, 2000].''

§ 2260. Licensing of intellectual property: retention of fees

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security, the Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned or controlled by the Secretary concerned and may retain and expend fees received from such licensing in accordance with this section.

(b) DESIGNATED MARKS.—The Secretary concerned shall designate the trademarks, service marks, certification marks, and collective marks regarding which the Secretary will exercise the authority to retain licensing fees under this section.

(c) LICENSES FOR QUALIFYING COMPANIES.—(1) The Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned or controlled by the Secretary relating to military designations and likenesses of military weapons systems to any qualifying company upon receipt of a request from the company.

(2) For purposes of paragraph (1), a qualifying company is any United States company that—

(A) is a toy or hobby manufacturer; and

(B) is determined by the Secretary concerned to be qualified in accordance with such criteria as determined appropriate by the Secretary of Defense.

(3) The fee for a license under this subsection shall not exceed by more than a nominal amount the amount needed to recover all costs of the Department of Defense in processing the request for the license and supplying the license.

(4) A license to a qualifying company under this subsection shall provide that the license may not be transferred, sold, or relicensed by the qualifying company.

(5) A license under this subsection shall not be an exclusive license.

(d) USE OF FEES.—The Secretary concerned shall use fees retained under this section for the following purposes:

(1) For payment of the following costs incurred by the Secretary:

(A) Costs of securing trademark registrations.

(B) Costs of operating the licensing program under this section.

(2) For morale, welfare, and recreation activities under the jurisdiction of the Secretary, to the extent (if any) that the total amount of the licensing fees available under this section for a fiscal year exceed the total amount needed for such fiscal year under paragraph (1).

(e) AVAILABILITY.—Fees received in a fiscal year and retained under this section shall be available for obligation in such fiscal year and the following two fiscal years.

(f) DEFINITIONS.—In this section:

(1) The terms ''trademark'', ''service mark'', ''certification mark'', and ''collective mark''

have the meanings given such terms in section 45 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946; 15 U.S.C. 1127).

(2) The term ''Secretary concerned'' has the meaning provided in section 101(a)(9) of this title and also includes—

(A) the Secretary of Defense, with respect to matters concerning the Defense Agencies and Department of Defense Field Activities; and

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

(Added Pub. L. 108–375, div. A, title X, §1004(a), Oct. 28, 2004, 118 Stat. 2035; amended Pub. L. 110–181, div. A, title VIII, §882(a), Jan. 28, 2008, 122 Stat. 263; Pub. L. 110–417, [div. A], title VIII, §881, Oct. 14, 2008, 122 Stat. 4559.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, §881(1), inserted ''or the Secretary of Homeland Security'' after ''Secretary of Defense''.

Subsecs. (c) to (e). Pub. L. 110–181, §882(a), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 110–417, §881(2), substituted ''this section:'' for ''this section,'' and ''(1) The'' for ''the'' and added par. (2).

Pub. L. 110–181, §882(a)(1), redesignated subsec. (e) as (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, §882(b), Jan. 28, 2008, 122 Stat. 264, provided that: ''The Secretary of Defense shall prescribe regulations to implement the amendment made by this section [amending this section] not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008].''

§ 2261. Presentation of recognition items for recruitment and retention purposes

(a) EXPENDITURES FOR RECOGNITION ITEMS.—Under regulations prescribed by the Secretary of Defense, appropriated funds may be expended—

(1) to procure recognition items of nominal or modest value for recruitment or retention purposes; and

(2) to present such items—

(A) to members of the armed forces; and

(B) to members of the families of members of the armed forces, and other individuals, recognized as providing support that substantially facilitates service in the armed forces.

(b) PROVISION OF MEALS AND REFRESHMENTS.—For purposes of section 520c of this title and any regulation prescribed to implement that section, functions conducted for the purpose of presenting recognition items described in subsection (a) shall be treated as recruiting functions, and recipients of such items shall be treated as persons who are the objects of recruiting efforts.

(c) RECOGNITION ITEMS OF NOMINAL OR MODEST VALUE.—In this section, the term ''recognition item of nominal or modest value'' means a commemorative coin, medal, trophy, badge, flag, poster, painting, or other similar item that is valued at less than $50 per item and is designed to recognize or commemorate service in the armed forces.

(Added Pub. L. 109–163, div. A, title V, §589(a)(1), Jan. 6, 2006, 119 Stat. 3279; amended Pub. L. 109–364, div. A, title V, §594, Oct. 17, 2006, 120 Stat. 2235.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–364 struck out heading and text of subsec. (d). Text read as follows: ''The authority under this section shall expire December 31, 2007.''

§ 2262. Department of Defense conferences: collection of fees to cover Department of Defense costs

(a) AUTHORITY TO COLLECT FEES.—(1) The Secretary of Defense may collect fees from any individual or commercial participant in a conference, seminar, exhibition, symposium, or similar meeting conducted by the Department of Defense (in this section referred to collectively as a ''conference'').

(2) The Secretary may provide for the collection of fees under this section directly or by contract. The fees may be collected in advance of a conference.

(b) USE OF COLLECTED FEES.—Amounts collected under subsection (a) with respect to a conference shall be credited to the appropriation or account from which the costs of the conference are paid and shall be available to pay the costs of the Department of Defense with respect to the conference or to reimburse the Department for costs incurred with respect to the conference.

(c) TREATMENT OF EXCESS AMOUNTS.—In the event the total amount of fees collected under subsection (a) with respect to a conference exceeds the actual costs of the Department of Defense with respect to the conference, the amount of such excess shall be deposited into the Treasury as miscellaneous receipts.

(d) ANNUAL REPORTS.—(1) Not later than 45 days after the President submits to Congress the budget for a fiscal year under section 1105 of title 31, the Secretary of Defense shall submit to the congressional defense committees a budget justification document summarizing the use of the fee-collection authority provided by this section.

(2) Each report shall include the following:

(A) A list of all conferences conducted during the preceding two calendar years for which fees were collected under this section.

(B) For each conference included on the list under subparagraph (A):

(i) The estimated costs of the Department for the conference.

(ii) The actual costs of the Department for the conference, including a separate statement of the amount of any conference coordinator fees associated with the conference.

(iii) The amount of fees collected under this section for the conference.

(C) An estimate of the number of conferences to be conducted during the calendar year in which the report is submitted for which the Department will collect fees under this section.

(Added Pub. L. 109–364, div. A, title X, § 1051(a), Oct. 17, 2006, 120 Stat. 2395.)

§ 2263. United States contributions to the North Atlantic Treaty Organization common-funded budgets

(a) IN GENERAL.—The total amount contributed by the Secretary of Defense in any fiscal year for the common-funded budgets of NATO may be an amount in excess of the maximum amount that would otherwise be applicable to those contributions in such fiscal year under the fiscal year 1998 baseline limitation.

(b) REPORTS.—(1) Not later than October 30 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the contributions made by the Secretary to the common-funded budgets of NATO in the preceding fiscal year.

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

(A) The amounts contributed by the Secretary to each of the separate budgets and programs of the North Atlantic Treaty Organization under the common-funded budgets of NATO.

(B) For each budget and program to which the Secretary made such a contribution, the percentage of such budget or program during the fiscal year that such contribution represented.

(c) DEFINITIONS.—In this section:

(1) COMMON-FUNDED BUDGETS OF NATO.—The term ''common-funded budgets of NATO'' means the Military Budget, the Security Investment Program, and the Civil Budget of the North Atlantic Treaty Organization (and any successor or additional account or program of NATO).

(2) FISCAL YEAR 1998 BASELINE LIMITATION.—The term ''fiscal year 1998 baseline limitation'' means the maximum annual amount of Department of Defense contributions for common-funded budgets of NATO that is set forth as the annual limitation in section 3(2)(C)(ii) of the resolution of the Senate giving the advice and consent of the Senate to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic (as defined in section 4(7) of that resolution), approved by the Senate on April 30, 1998.

(Added Pub. L. 110–417, [div. A], title X, § 1004(a)(1), Oct. 14, 2008, 122 Stat. 4582.)

REFERENCES IN TEXT

The resolution of ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic approved by the Senate on April 30, 1998, referred to in subsec. (c)(2), was adopted in the 105th Congress and is not classified to the Code. See Cong. Rec., vol. 144, pt. 5, p. 7555, Apr. 30, 1998.

EFFECTIVE DATE

Pub. L. 110–417, [div. A], title X, § 1004(b), Oct. 14, 2008, 122 Stat. 4583, provided that: ''The amendments made by this section [enacting this section] shall take effect on October 1, 2008, and shall apply to fiscal years that begin on or after that date.''

§ 2264. Reimbursement for assistance provided to nongovernmental entertainment-oriented media producers

(a) IN GENERAL.—There shall be credited to the applicable appropriations account or fund from which the expenses described in subsection (b) were charged any amounts received by the Department of Defense as reimbursement for such expenses.

(b) DESCRIPTION OF EXPENSES.—The expenses referred to in subsection (a) are any expenses—

(1) incurred by the Department of Defense as a result of providing assistance to a nongovernmental entertainment-oriented media producer;

(2) for which the Department of Defense requires reimbursement under section 9701 of title 31 or any other provision of law; and

(3) for which the Department of Defense received reimbursement after the date of the enactment of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015.

(Added Pub. L. 113–291, div. A, title VIII, § 859(a), Dec. 19, 2014, 128 Stat. 3461.)

REFERENCES IN TEXT

The date of the enactment of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015, referred to in subsec. (b)(3), is the date of the enactment of Pub. L. 113–291, which was approved Dec. 19, 2014.

CHAPTER 135—SPACE PROGRAMS

Sec.
2271. Management of space programs: joint program offices and officer management programs.
2272. Space science and technology strategy: coordination.
2273. Policy regarding assured access to space: national security payloads.
2273a. Operationally Responsive Space Program Office.
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2275. Reports on integration of acquisition and capability delivery schedules for segments of major satellite acquisition programs and funding for such programs.
2276. Commercial space launch cooperation.
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2278. Notification of foreign interference of national security space.
2279. Foreign commercial satellite services.
2279a. Principal Advisor on Space Control.
2279b. Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title XVI, §§ 1602(b), 1603(b), Nov. 25, 2015, 129 Stat. 1096, 1098, added items 2279a and 2279b.

2013—Pub. L. 113–66, div. A, title IX, § 911(b), title XVI, § 1602(a)(2), Dec. 26, 2013, 127 Stat. 823, 942, added items 2278 and 2279.

Pub. L. 112–239, div. A, title IX, §§ 911(b), 912(b), 913(c)(2), Jan. 2, 2013, 126 Stat. 1872, 1874, 1876, added items 2275 to 2277.

2009—Pub. L. 111–84, div. A, title IX, § 912(b), Oct. 28, 2009, 123 Stat. 2431, added item 2274 and struck out former item 2274 ''Space surveillance network: pilot

program for provision of satellite tracking support to entities outside United States Government''.

2006—Pub. L. 109–364, div. A, title IX, §913(b)(2), Oct. 17, 2006, 120 Stat. 2357, substituted ''Operationally Responsive Space Program Office'' for ''Operationally responsive national security payloads and buses: separate program element required'' in item 2273a.

2004—Pub. L. 108–375, div. A, title IX, §913(a)(2), Oct. 28, 2004, 118 Stat. 2028, added item 2273a.

2003—Pub. L. 108–136, div. A, title IX, §§911(a)(2), 912(b), 913(b), Nov. 24, 2003, 117 Stat. 1564, 1565, 1567, added items 2272 to 2274.

§ 2271. Management of space programs: joint program offices and officer management programs

(a) JOINT PROGRAM OFFICES.—The Secretary of Defense shall take appropriate actions to ensure, to the maximum extent practicable, that space development and acquisition programs of the Department of Defense are carried out through joint program offices.

(b) OFFICER MANAGEMENT PROGRAMS.—(1) The Secretary of Defense shall take appropriate actions to ensure, to the maximum extent practicable, that—

(A) Army, Navy, and Marine Corps officers, as well as Air Force officers, are assigned to the space development and acquisition programs of the Department of Defense; and

(B) Army, Navy, and Marine Corps officers, as well as Air Force officers, are eligible, on the basis of qualification, to hold leadership positions within the joint program offices referred to in subsection (a).

(2) The Secretary of Defense shall designate those positions in the Office of the National Security Space Architect of the Department of Defense (or any successor office) that qualify as joint duty assignment positions for purposes of chapter 38 of this title.

(Added Pub. L. 107–107, div. A, title IX, §911(a), Dec. 28, 2001, 115 Stat. 1195.)

PRIOR PROVISIONS

A prior section 2271, act Aug. 10, 1956, ch. 1041, 70A Stat. 123, related to competitions for designs of aircraft, aircraft parts, and aeronautical accessories, prior to repeal by Pub. L. 103–160, div. A, title VIII, §821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

CONSOLIDATION OF ACQUISITION OF WIDEBAND SATELLITE COMMUNICATIONS

Pub. L. 114–92, div. A, title XVI, §1610, Nov. 25, 2015, 129 Stat. 1102, provided that:

''(a) PLAN.—

''(1) CONSOLIDATION.—Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], 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 the consolidation, during the one-year period beginning on the date on which the plan is submitted, of the acquisition of wideband satellite communications necessary to meet the requirements of the Department of Defense for such communications, including with respect to military and commercial satellite communications.

''(2) ELEMENTS.—The plan under paragraph (1) shall include—

''(A) an assessment of the management and overhead costs relating to the acquisition of commercial satellite communications services across the Department of Defense;

''(B) an estimate of—

''(i) the costs of implementing the consolidation of the acquisition of such services described in paragraph (1); and

''(ii) the projected savings of the consolidation;

''(C) the identification and designation of a single acquisition agent pursuant to paragraph (3)(A); and

''(D) the roles and responsibilities of officials of the Department, including pursuant to paragraph (3).

''(3) SINGLE ACQUISITION AGENT.—

''(A) Except as provided by subparagraph (B), under the plan under paragraph (1), the Secretary of Defense shall identify and designate a single senior official of the Department of Defense to procure wideband satellite communications necessary to meet the requirements of the Department of Defense for such communications, including with respect to military and commercial satellite communications.

''(B) Notwithstanding subparagraph (A), under the plan under paragraph (1), an official described in subparagraph (C) may carry out the procurement of commercial wideband satellite communications if the official determines that such procurement is required to meet an urgent need.

''(C) An official described in this subparagraph is any of the following:

''(i) A Secretary of a military department.

''(ii) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(iii) The Chief Information Office[r] of the Department of Defense.

''(iv) A commander of a combatant command.

''(4) VALIDATION.—The Director of Cost Assessment and Program Evaluation shall validate the assessment required by subparagraph (A) of paragraph (2) and the estimates required by subparagraph (B) of such paragraph.

''(b) IMPLEMENTATION.—

''(1) IN GENERAL.—Except as provided by paragraph (2), the Secretary of Defense shall complete the implementation of the plan under subsection (a) by not later than one year after the date on which the Secretary submits the plan under such paragraph.

''(2) WAIVER.—The Secretary may waive the implementation of the plan under subsection (a) if the Secretary—

''(A) determines that—

''(i) such implementation will require significant additional funding; or

''(ii) such waiver is in the interests of national security; and

''(B) submits to the congressional defense committees notice of such waiver and the justifications for such waiver.''

SATELLITE COMMUNICATIONS RESPONSIBILITIES OF EXECUTIVE AGENT FOR SPACE

Pub. L. 113–291, div. A, title XVI, §1603, Dec. 19, 2014, 128 Stat. 3622, provided that: ''The Secretary of Defense shall, not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], revise Department of Defense directives and guidance to require the Department of Defense Executive Agent for Space to ensure that in developing space strategies, architectures, and programs for satellite communications, the Executive Agent shall—

''(1) conduct strategic planning to ensure the Department of Defense is effectively and efficiently meeting the satellite communications requirements of the military departments and commanders of the combatant commands;

''(2) coordinate with the secretaries of the military departments, the commanders of the combatant commands, and the heads of Defense Agencies to eliminate duplication of effort and to ensure that resources are used to achieve the maximum effort in related satellite communication science and technology; research, development, test and evaluation; production; and operations and sustainment;

''(3) coordinate with the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department to ensure that effective and efficient acquisition approaches are being used to acquire military and commercial satellite communications for the Department, including space, ground, and user terminal integration; and

''(4) coordinate with the chairman of the Joint Requirements Oversight Council to develop a process to identify the current and projected satellite communications requirements of the Department.''

PROHIBITION ON CONTRACTING WITH RUSSIAN SUPPLIERS OF ROCKET ENGINES FOR THE EVOLVED EXPENDABLE LAUNCH VEHICLE PROGRAM

Pub. L. 113–291, div. A, title XVI, §1608, Dec. 19, 2014, 128 Stat. 3626, as amended by Pub. L. 114–92, div. A, title XVI, §1607, Nov. 25, 2015, 129 Stat. 1100, provided that:

''(a) IN GENERAL.—Except as provided by subsections (b) and (c), beginning on the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense may not award or renew a contract for the procurement of property or services for space launch activities under the evolved expendable launch vehicle program if such contract carries out such space launch activities using rocket engines designed or manufactured in the Russian Federation.

''(b) WAIVER.—The Secretary may waive the prohibition under subsection (a) with respect to a contract for the procurement of property or services for space launch activities if the Secretary determines, and certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 30 days before the waiver takes effect, that—

''(1) the waiver is necessary for the national security interests of the United States; and

''(2) the space launch services and capabilities covered by the contract could not be obtained at a fair and reasonable price without the use of rocket engines designed or manufactured in the Russian Federation.

''(c) EXCEPTION.—

''(1) IN GENERAL.—The prohibition in subsection (a) shall not apply to any of the following:

''(A) The placement of orders or the exercise of options under the contract numbered FA8811–13–C–0003 and awarded on December 18, 2013.

''(B) Subject to paragraph (2), contracts awarded for the procurement of property or services for space launch activities that include the use of not more than a total of five rocket engines designed or manufactured in the Russian Federation that prior to February 1, 2014, were either fully paid for by the contractor or covered by a legally binding commitment of the contractor to fully pay for such rocket engines.

''(C) Contracts not covered under subparagraph (A) or (B) that are awarded for the procurement of property or services for space launch activities that include the use of not more than a total of four additional rocket engines designed or manufactured in the Russian Federation.

''(2) CERTIFICATION.—The Secretary may not award or renew a contract for the procurement of property or services for space launch activities described in paragraph (1)(B) unless the Secretary, upon the advice of the General Counsel of the Department of Defense, certifies to the congressional defense committees that the offeror has provided to the Secretary sufficient documentation to conclusively demonstrate that prior to February 1, 2014, the offeror had either fully paid for the rocket engines described in such paragraph or made a legally binding commitment to fully pay for such rocket engines.''

INTEGRATED SPACE ARCHITECTURES

Pub. L. 111–383, div. A, title IX, §911, Jan. 7, 2011, 124 Stat. 4328, as amended by Pub. L. 113–291, div. A, title X, §1071(d)(1)(A), Dec. 19, 2014, 128 Stat. 3509, provided that: ''The Secretary of Defense and the Director of National Intelligence shall develop an integrated process for national security space architecture planning, development, coordination, and analysis that—

''(1) encompasses defense and intelligence space plans, programs, budgets, and organizations;

''(2) provides mid-term to long-term recommendations to guide space-related defense and intelligence acquisitions, requirements, and investment decisions;

''(3) is independent of, but coordinated with, the space architecture planning, development, coordination, and analysis activities of each military department and each element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))); and

''(4) makes use of, to the maximum extent practicable, joint duty assignment (as defined in section 668 of title 10, United States Code) positions.''

SPACE PROTECTION STRATEGY

Pub. L. 110–181, div. A, title IX, §911(a)–(f), Jan. 28, 2008, 122 Stat. 279, 280, as amended by Pub. L. 113–66, div. A, title IX, §912(c), Dec. 26, 2013, 127 Stat. 824; Pub. L. 113–291, div. A, title X, §1071(d)(1)(B), title XVI, §1606(e), Dec. 19, 2014, 128 Stat. 3509, 3625, provided that:

''(a) SENSE OF CONGRESS.—It is the Sense of Congress that the United States should place greater priority on the protection of national security space systems.

''(b) STRATEGY.—The Secretary of Defense, in conjunction with the Director of National Intelligence, shall develop a strategy, to be known as the Space Protection Strategy, for the development and fielding by the United States of the capabilities that are necessary to ensure freedom of action in space for the United States.

''(c) MATTERS INCLUDED.—The strategy required by subsection (b) shall include each of the following:

''(1) An identification of the threats to, and the vulnerabilities of, the national security space systems of the United States.

''(2) A description of the capabilities currently contained in the program of record of the Department of Defense and the intelligence community that ensure freedom of action in space.

''(3) For each period covered by the strategy, a description of the capabilities that are needed for the period, including—

''(A) the hardware, software, and other materials or services to be developed or procured;

''(B) the management and organizational changes to be achieved; and

''(C) concepts of operations, tactics, techniques, and procedures to be employed.

''(4) For each period covered by the strategy, an assessment of the gaps and shortfalls between the capabilities that are needed for the period and the capabilities currently contained in the program of record.

''(5) For each period covered by the strategy, a comprehensive plan for investment in capabilities that identifies specific program and technology investments to be made in that period.

''(6) A description of the current processes by which the systems protection requirements of the Department of Defense and the intelligence community are addressed in space acquisition programs and during key milestone decisions, an assessment of the adequacy of those processes, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in those processes.

''(7) A description of the current processes by which the Department of Defense and the intelligence community program and budget for capabilities (including capabilities that are incorporated into single programs and capabilities that span multiple programs), an assessment of the adequacy of those processes, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in those processes.

''(8) A description of the organizational and management structure of the Department of Defense and the intelligence community for addressing policy, planning, acquisition, and operations with respect to capabilities, a description of the roles and responsibilities of each organization, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in that structure.

''(d) PERIODS COVERED.—The strategy required by subsection (b) shall cover the following periods:

''(1) Fiscal years 2008 through 2013.

''(2) Fiscal years 2014 through 2019.

''(3) Fiscal years 2020 through 2025.

''(4) Fiscal years 2026 through 2030.

''(e) DEFINITIONS.—In this section—

''(1) the term 'capabilities' means space, airborne, and ground systems and capabilities for space situational awareness and for space systems protection; and

''(2) the term 'intelligence community' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

''(f) REPORT; BIENNIAL UPDATE.—

''(1) REPORT.—Not later than six months after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, in conjunction with the Director of National Intelligence, shall submit to Congress a report on the strategy required by subsection (b), including—

''(A) each of the matters required by subsection (c); and

''(B) a description of how the Department of Defense and the intelligence community plan to provide necessary national security capabilities, through alternative space, airborne, or ground systems, if a foreign actor degrades, denies access to, or destroys United States national security space capabilities.

''(2) BIENNIAL UPDATE.—Not later than March 15 of each even-numbered year after 2008, the Secretary of Defense, in conjunction with the Director of National Intelligence, shall submit to Congress an update to the report required by paragraph (1).

''(3) CLASSIFICATION.—The report required by paragraph (1), and each update required by paragraph (2), shall be in unclassified form, but may include a classified annex.''

MAINTENANCE OF CAPABILITY FOR SPACE-BASED NUCLEAR DETECTION

Pub. L. 110–181, div. A, title X, §1065, Jan. 28, 2008, 122 Stat. 324, provided that: ''The Secretary of Defense shall maintain the capability for space-based nuclear detection at a level that meets or exceeds the level of capability as of the date of the enactment of this Act [Jan. 28, 2008].''

SPACE SITUATIONAL AWARENESS STRATEGY AND SPACE CONTROL MISSION REVIEW

Pub. L. 109–163, div. A, title IX, §911, Jan. 6, 2006, 119 Stat. 3405, required the Secretary of Defense to develop a ''Space Situational Awareness Strategy'' for ensuring freedom to operate United States space assets affecting national security, and to provide for a review and assessment of the requirements of the Department of Defense for the space control mission, prior to repeal by Pub. L. 110–181, div. A, title IX, §911(g), Jan. 28, 2008, 122 Stat. 280.

SPACE PERSONNEL CAREER FIELDS

Pub. L. 108–136, div. A, title V, §547, Nov. 24, 2003, 117 Stat. 1480, as amended by Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

''(a) STRATEGY REQUIRED.—The Secretary of Defense shall develop a strategy for the Department of Defense that will—

''(1) promote the development of space personnel career fields within each of the military departments; and

''(2) ensure that the space personnel career fields developed by the military departments are integrated with each other to the maximum extent practicable.

''(b) REPORT.—Not later than February 1, 2004, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the strategy developed under subsection (a). The report shall include the following:

''(1) A statement of the strategy developed under subsection (a), together with an explanation of that strategy.

''(2) An assessment of the measures required for the Department of Defense and the military departments to integrate the space personnel career fields of the military departments.

''(3) A comprehensive assessment of the adequacy of the actions of the Secretary of Air Force pursuant to section 8084 of title 10, United States Code, to establish for Air Force officers a career field for space.

''(c) GOVERNMENT ACCOUNTABILITY OFFICE REVIEW AND REPORTS.—(1) The Comptroller General shall review the strategy developed under subsection (a) and the status of efforts by the military departments in developing space personnel career fields.

''(2) The Comptroller General shall submit to the committees referred to in subsection (b) two reports on the review under paragraph (1), as follows:

''(A) Not later than June 15, 2004, the Comptroller General shall submit a report that assesses how effective that Department of Defense strategy and the efforts by the military departments, when implemented, are likely to be for developing the personnel required by each of the military departments who are expert in development of space doctrine and concepts of space operations, the development of space systems, and operation of space systems.

''(B) Not later than March 15, 2005, the Comptroller General shall submit a report that assesses, as of the date of the report—

''(i) the effectiveness of that Department of Defense strategy and the efforts by the military departments in developing the personnel required by each of the military departments who are expert in development of space doctrine and concepts of space operations, the development of space systems, and in operation of space systems; and

''(ii) progress made in integrating the space career fields of the military departments.''

COMPTROLLER GENERAL ASSESSMENT OF IMPLEMENTATION OF RECOMMENDATIONS OF SPACE COMMISSION

Pub. L. 107–107, div. A, title IX, §914, Dec. 28, 2001, 115 Stat. 1197, directed the Comptroller General to carry out an assessment through Feb. 15, 2003, of the actions taken by the Secretary of Defense in implementing the recommendations in the report of the Space Commission submitted to Congress pursuant to Pub. L. 106–65, §1623, formerly set out as a note under section 111 of this title, that were applicable to the Department of Defense, and to submit reports to committees of Congress, not later than Feb. 15, 2002, and Feb. 15, 2003, setting forth the results of the assessment.

§ 2272. Space science and technology strategy: coordination

The Secretary of Defense and the Director of National Intelligence shall jointly develop and implement a space science and technology strategy and shall review and, as appropriate, revise the strategy biennially. Functions of the Secretary under this section shall be carried out jointly by the Assistant Secretary of Defense for Research and Engineering and the official of the Department of Defense designated as the Department of Defense Executive Agent for Space.

(Added Pub. L. 108–136, div. A, title IX, §911(a)(1), Nov. 24, 2003, 117 Stat. 1563; amended Pub. L.

111–84, div. A, title IX, § 911(a)(1)–(3), Oct. 28, 2009, 123 Stat. 2428, 2429; Pub. L. 111–383, div. A, title IX, § 901(j)(2), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 114–92, div. A, title XVI, § 1604, Nov. 25, 2015, 129 Stat. 1098.)

PRIOR PROVISIONS

A prior section 2272, act Aug. 10, 1956, ch. 1041, 70A Stat. 124, related to contracts to obtain designs submitted in design competitions, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2015—Pub. L. 114–92 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to space science and technology strategy, required coordination, and definitions.

2011—Subsecs. (a), (b). Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering'' wherever appearing.

2009—Subsec. (a)(1). Pub. L. 111–84, § 911(a)(1), substituted ''The Secretary of Defense and the Director of National Intelligence shall jointly develop'' for ''The Secretary of Defense shall develop''.

Subsec. (a)(2)(D). Pub. L. 111–84, § 911(a)(2), added subpar. (D).

Subsec. (a)(5). Pub. L. 111–84, § 911(a)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The strategy shall be available for review by the congressional defense committees.''

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

INITIAL REPORT

Pub. L. 111–84, div. A, title IX, § 911(a)(4), Oct. 28, 2009, 123 Stat. 2429, required the first space science and technology strategy required to be submitted under former 10 U.S.C. 2272(a)(5) to be submitted on the date on which the President submitted to Congress the budget for fiscal year 2012 under 31 U.S.C. 1105.

§ 2273. Policy regarding assured access to space: national security payloads

(a) POLICY.—It is the policy of the United States for the President to undertake actions appropriate to ensure, to the maximum extent practicable, that the United States has the capabilities necessary to launch and insert United States national security payloads into space whenever such payloads are needed in space.

(b) INCLUDED ACTIONS.—The appropriate actions referred to in subsection (a) shall include, at a minimum, providing resources and policy guidance to sustain—

(1) the availability of at least two space launch vehicles (or families of space launch vehicles) capable of delivering into space any payload designated by the Secretary of Defense or the Director of National Intelligence as a national security payload; and

(2) a robust space launch infrastructure and industrial base.

(c) COORDINATION.—The Secretary of Defense shall, to the maximum extent practicable, pursue the attainment of the capabilities described in subsection (a) in coordination with the Administrator of the National Aeronautics and Space Administration.

(Added Pub. L. 108–136, div. A, title IX, § 912(a)(1), Nov. 24, 2003, 117 Stat. 1565; Pub. L. 110–181, div. A, title IX, § 931(a)(12), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(11), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475.)

PRIOR PROVISIONS

A prior section 2273, acts Aug. 10, 1956, ch. 1041, 70A Stat. 125; Apr. 2, 1982, Pub. L. 97–164, title I, § 160(a)(4), 96 Stat. 48; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516, related to right of United States to designs, rights of designers to patents, and rights to sue United States, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(11). See 2008 Amendment note below.

2008—Subsec. (b)(1). Pub. L. 110–181 and Pub. L. 110–417, § 932(a)(11), amended par. (1) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, § 932(a)(11), was repealed by Pub. L. 111–84.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

ACQUISITION STRATEGY FOR EVOLVED EXPENDABLE LAUNCH VEHICLE PROGRAM

Pub. L. 114–92, div. A, title XVI, § 1608, Nov. 25, 2015, 129 Stat. 1100, provided that:

''(a) TREATMENT OF CERTAIN ARRANGEMENT.—

''(1) DISCONTINUATION.—The Secretary of the Air Force shall discontinue the evolved expendable launch vehicle launch capability arrangement, as structured as of the date of the enactment of this Act [Nov. 25, 2015], for—

''(A) existing contracts using rocket engines designed or manufactured in the Russian Federation by not later than December 31, 2019; and

''(B) existing contracts using domestic rocket engines by not later than December 31, 2020.

''(2) WAIVER.—The Secretary may waive paragraph (1) if the Secretary—

''(A) determines that such waiver is necessary for the national security interests of the United States;

''(B) notifies the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of such waiver; and

''(C) a period of 90 days has elapsed following the date of such notification.

''(b) CONSISTENT STANDARDS.—In accordance with section 2306a of title 10, United States Code, the Secretary shall—

''(1) apply consistent and appropriate standards to certified evolved expendable launch vehicle providers with respect to certified cost and pricing data; and

''(2) conduct the appropriate audits.

''(c) ACQUISITION STRATEGY.—In accordance with subsections (a) and (b) and section 2273 of title 10, United States Code, the Secretary shall develop and carry out a 10-year phased acquisition strategy, including near and long term, for the evolved expendable launch vehicle program.

''(d) ELEMENTS.—The acquisition strategy under subsection (c) for the evolved expendable launch vehicle program shall—

''(1) provide the necessary—

''(A) stability in budgeting and acquisition of capabilities;

''(B) flexibility to the Federal Government; and

''(C) procedures for fair competition; and

''(2) specifically take into account, as appropriate per competition, the effect of—

''(A) contracts or agreements for launch services or launch capability entered into by the Department of Defense and the National Aeronautics and Space Administration with certified evolved expendable launch vehicle providers;

''(B) the requirements of the Department of Defense, including with respect to launch capabilities and pricing data, that are met by such providers;

''(C) the cost of integrating a satellite onto a launch vehicle; and

''(D) any other matters the Secretary considers appropriate.

''(e) COMPETITION.—In awarding any contract for launch services in a national security space mission pursuant to a competitive acquisition, the evaluation shall account for the value of the evolved expendable launch vehicle launch capability arrangement per contract line item numbers in the bid price of the offeror as appropriate per launch.

''(f) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate a report on the acquisition strategy developed under subsection (c).''

ROCKET PROPULSION SYSTEM DEVELOPMENT PROGRAM

Pub. L. 113–291, div. A, title XVI, §1604, Dec. 19, 2014, 128 Stat. 3623, as amended by Pub. L. 114–92, div. A, title XVI, §1606(a), Nov. 25, 2015, 129 Stat. 1099, provided that:

''(a) DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary of Defense shall develop a next-generation rocket propulsion system that enables the effective, efficient, and expedient transition from the use of non-allied space launch engines to a domestic alternative for national security space launches.

''(2) REQUIREMENTS.—The system developed under paragraph (1) shall—

''(A) be made in the United States;

''(B) meet the requirements of the national security space community;

''(C) be developed by not later than 2019;

''(D) be developed using full and open competition; and

''(E) be available for purchase by all space launch providers of the United States.

''(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary shall submit to the appropriate congressional committees a report that includes—

''(1) a plan to carry out the development of the rocket propulsion system under subsection (a), including an analysis of the benefits of using public-private partnerships;

''(2) the requirements of the program to develop such system; and

''(3) the estimated cost of such system.

''(c) STREAMLINED ACQUISITION.—In developing the rocket propulsion system required under subsection (a), the Secretary shall—

''(1) use a streamlined acquisition approach, including tailored documentation and review processes, that enables the effective, efficient, and expedient transition from the use of non-allied space launch engines to a domestic alternative for national security space launches; and

''(2) prior to establishing such acquisition approach, establish well-defined requirements with a clear acquisition strategy.

''(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means the following:

''(1) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(2) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''

§ 2273a. Operationally Responsive Space Program Office

(a) IN GENERAL.—There is within the Air Force Space and Missile Systems Center of the Department of Defense a joint program office known as the Operationally Responsive Space Program Office (in this section referred to as the ''Office''). The facilities of the Office may not be co-located with the headquarters facilities of the Air Force Space and Missile Systems Center.

(b) HEAD OF OFFICE.—The head of the Office shall be the designee of the Department of Defense Executive Agent for Space. The head of the Office shall report to the Commander of the Air Force Space and Missile Systems Center.

(c) MISSION.—The mission of the Office shall be—

(1) to contribute to the development of low-cost, rapid reaction payloads, busses, launch, and launch control capabilities in order to fulfill joint military operational requirements for on-demand space support and reconstitution; and

(2) to coordinate and execute operationally responsive space efforts across the Department of Defense with respect to planning, acquisition, and operations.

(d) ELEMENTS.—The Secretary of Defense shall select the elements of the Department of Defense to be included in the Office so as to contribute to the development of capabilities for operationally responsive space and to achieve a balanced representation of the military departments in the Office to ensure proper acknowledgment of joint considerations in the activities of the Office, except that the Office shall include the following:

(1) A science and technology element that shall pursue innovative approaches to the development of capabilities for operationally responsive space through basic and applied research focused on (but not limited to) payloads, bus, and launch equipment.

(2) An acquisition element that shall undertake the acquisition of systems necessary to integrate, sustain, and launch assets for operationally responsive space.

(3) An operations element that shall—

(A) sustain and maintain assets for operationally responsive space prior to launch;

(B) integrate and launch such assets; and

(C) operate such assets in orbit.

(4) A combatant command support element that shall serve as the primary intermediary between the military departments and the combatant commands in order to—

(A) ascertain the needs of the commanders of the combatant commands; and

(B) integrate operationally responsive space capabilities into—

(i) operations plans of the combatant commands;

(ii) techniques, tactics, and procedures of the military departments; and

(iii) military exercises, demonstrations, and war games.

(5) Such other elements as the Secretary of Defense may consider necessary.

(e) ACQUISITION AUTHORITY.—The acquisition activities of the Office shall be subject to the following:

(1) The Program Executive Officer for Space shall be the Acquisition Executive of the Office and shall provide streamlined acquisition authorities for projects of the Office.

(2) The Joint Capabilities Integration and Development System process shall not apply to acquisitions by the Office for operational experimentation.

(3) The commander of the United States Strategic Command, or the designee of the commander, shall—

(A) validate all system requirements for systems to be acquired by the Office; and

(B) participate in the approval of any acquisition program initiated by the Office.

(4) To the maximum extent practicable, the procurement unit cost of a launch vehicle procured by the Office for launch to low earth orbit should not exceed $20,000,000 (in constant dollars).

(5) To the maximum extent practicable, the procurement unit cost of an integrated satellite procured by the Office should not exceed $40,000,000 (in constant dollars).

(f) REQUIRED PROGRAM ELEMENT.—(1) The Secretary of Defense shall ensure that, within budget program elements for space programs of the Department of Defense, that—

(A) there is a separate, dedicated program element for operationally responsive space;

(B) to the extent applicable, relevant program elements should be consolidated into the program element required by subparagraph (A); and

(C) the Office executes its responsibilities through this program element.

(2) The Office shall manage the program element required by paragraph (1)(A).

(g) EXECUTIVE COMMITTEE.—(1) The Secretary of Defense shall establish for the Office an Executive Committee (to be known as the ''Operationally Responsive Space Executive Committee'') to provide coordination, oversight, and approval of projects of the Office.

(2) The Executive Committee shall consist of the officials (and their duties) as follows:

(A) The Department of Defense Executive Agent for Space, who shall serve as Chair of the Executive Committee and provide oversight, prioritization, coordination, and resources for the Office.

(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall provide coordination and oversight of the Office and recommend funding sources for programs of the Office that exceed the approved program baseline.

(C) The Commander of the United States Strategic Command, who shall validate requirements for systems to be acquired by the Office and participate in approval of any acquisition program initiated by the Office.

(D) The Commander of the Air Force Space Command, the Commander of the Army Space and Missile Defense Command, and the Commander of the Space and Naval Warfare Systems Command, who shall jointly organize, train, and equip forces to support the acquisition programs of the Office.

(E) Such other officials (and their duties) as the Secretary of Defense considers appropriate.

(Added Pub. L. 108–375, div. A, title IX, § 913(a)(1), Oct. 28, 2004, 118 Stat. 2028; amended Pub. L. 109–364, div. A, title IX, § 913(b)(1), Oct. 17, 2006, 120 Stat. 2355; Pub. L. 112–239, div. A, title IX, § 914, Jan. 2, 2013, 126 Stat. 1876.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–239, § 914(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall establish within the Department of Defense an office to be known as the Operationally Responsive Space Program Office (in this section referred to as the 'Office').''

Subsec. (b). Pub. L. 112–239, § 914(b), substituted ''shall be the designee of the Department of Defense Executive Agent for Space. The head of the Office shall report to the Commander of the Air Force Space and Missile Systems Center.'' for ''shall be—

''(1) the Department of Defense Executive Agent for Space; or

''(2) the designee of the Secretary of Defense, who shall report to the Department of Defense Executive Agent for Space.''

Subsec. (c)(1). Pub. L. 112–239, § 914(c), substituted ''launch'' for ''spacelift''.

Subsec. (e)(1). Pub. L. 112–239, § 914(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Department of Defense Executive Agent for Space shall be the senior acquisition executive of the Office.''

Subsec. (g). Pub. L. 112–239, § 914(e), added subsec. (g).

2006—Pub. L. 109–364 amended section catchline and text generally, substituting provisions relating to establishment, control, mission, elements, and authority of the Operationally Responsive Space Program Office within the Department of Defense for provisions relating to requirement for a separate, dedicated program element for operationally responsive national security payloads and buses within budget program elements for space programs of the Department of Defense.

EFFECTIVE DATE

Pub. L. 108–375, div. A, title IX, § 913(b), Oct. 28, 2004, 118 Stat. 2028, provided that: ''Subsection (a) of section 2273a of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 2005.''

UNITED STATES POLICY ON OPERATIONALLY RESPONSIVE SPACE

Pub. L. 109–364, div. A, title IX, § 913(a), Oct. 17, 2006, 120 Stat. 2355, provided that: ''It is the policy of the United States to demonstrate, acquire, and deploy an effective capability for operationally responsive space to support military users and operations from space, which shall consist of—

''(1) responsive satellite payloads and busses built to common technical standards;

''(2) low-cost space launch vehicles and supporting range operations that facilitate the timely launch and on-orbit operations of satellites;

''(3) responsive command and control capabilities; and

''(4) concepts of operations, tactics, techniques, and procedures that permit the use of responsive space assets for combat and military operations other than war.''

JOINT OPERATIONALLY RESPONSIVE SPACE PAYLOAD TECHNOLOGY ORGANIZATION

Pub. L. 109–163, div. A, title IX, § 913(a), Jan. 6, 2006, 119 Stat. 3408, which directed the Secretary of Defense to establish or designate an organization in the Department of Defense to coordinate joint operationally responsive space payload technology, was repealed by Pub. L. 109–364, div. A, title IX, § 913(d), Oct. 17, 2006, 120 Stat. 2358.

§ 2274. Space situational awareness services and information: provision to non-United States Government entities

(a) AUTHORITY.—The Secretary of Defense may provide space situational awareness services and information to, and may obtain space situational awareness data and information from, non-United States Government entities in accordance with this section. Any such action may be taken only if the Secretary determines that such action is consistent with the national security interests of the United States.

(b) ELIGIBLE ENTITIES.—The Secretary may provide services and information under subsection (a) to, and may obtain data and information under subsection (a) from, any non-United States Government entity, including any of the following:

(1) A State.
(2) A political subdivision of a State.
(3) A United States commercial entity.
(4) The government of a foreign country.
(5) A foreign commercial entity.

(c) AGREEMENT.—The Secretary may not provide space situational awareness services and information under subsection (a) to a non-United States Government entity unless that entity enters into an agreement with the Secretary under which the entity—

(1) agrees to pay an amount that may be charged by the Secretary under subsection (d);

(2) agrees not to transfer any data or technical information received under the agreement, including the analysis of data, to any other entity without the express approval of the Secretary; and

(3) agrees to any other terms and conditions considered necessary by the Secretary.

(d) CHARGES.—(1) As a condition of an agreement under subsection (c), the Secretary may (except as provided in paragraph (2)) require the non-United States Government entity entering into the agreement to pay to the Department of Defense such amounts as the Secretary determines appropriate to reimburse the Department for the costs to the Department of providing space situational awareness services or information under the agreement.

(2) The Secretary may not require the government of a State, or of a political subdivision of a State, to pay any amount under paragraph (1).

(e) CREDITING OF FUNDS RECEIVED.—(1) Funds received for the provision of space situational awareness services or information pursuant to an agreement under this section shall be credited, at the election of the Secretary, to the following:

(A) The appropriation, fund, or account used in incurring the obligation.

(B) An appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(2) Funds credited under paragraph (1) shall be merged with, and remain available for obligation with, the funds in the appropriation, fund, or account to which credited.

(f) PROCEDURES.—The Secretary shall establish procedures by which the authority under this section shall be carried out. As part of those procedures, the Secretary may allow space situational awareness services or information to be provided through a contractor of the Department of Defense.

(g) IMMUNITY.—The United States, any agencies and instrumentalities thereof, and any individuals, firms, corporations, and other persons acting for the United States, shall be immune from any suit in any court for any cause of action arising from the provision or receipt of space situational awareness services or information, whether or not provided in accordance with this section, or any related action or omission.

(h) NOTICE OF CONCERNS OF DISCLOSURE OF INFORMATION.—If the Secretary determines that a commercial or foreign entity has declined or is reluctant to provide data or information to the Secretary in accordance with this section due to the concerns of such entity about the potential disclosure of such data or information, the Secretary shall, not later than 60 days after the Secretary makes that determination, provide notice to the congressional defense committees of the declination or reluctance of such entity.

(Added Pub. L. 108–136, div. A, title IX, § 913(a), Nov. 24, 2003, 117 Stat. 1565; amended Pub. L. 109–364, div. A, title IX, § 912, Oct. 17, 2006, 120 Stat. 2355; Pub. L. 110–417, [div. A], title IX, § 911, Oct. 14, 2008, 122 Stat. 4571; Pub. L. 111–84, div. A, title IX, § 912(a), Oct. 28, 2009, 123 Stat. 2429.)

PRIOR PROVISIONS

A prior section 2274, act Aug. 10, 1956, ch. 1041, 70A Stat. 126, which related to procurement for experimental purposes, was repealed by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2009—Pub. L. 111–84 amended section generally. Prior to amendment, section related to space surveillance network: pilot program for provision of satellite tracking support to entities outside United States Government.

2008—Subsec. (i). Pub. L. 110–417 substituted ''September 30, 2010'' for ''September 30, 2009''.

2006—Subsec. (i). Pub. L. 109–364 substituted ''may be conducted through September 30, 2009'' for ''shall be conducted during the three-year period beginning on a date specified by the Secretary of Defense, which date shall be not later than 180 days after the date of the enactment of this section''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title IX, § 912(c), Oct. 28, 2009, 123 Stat. 2431, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2009, or the date of the enactment of this Act [Oct. 28, 2009], whichever is later.''

§ 2275. Reports on integration of acquisition and capability delivery schedules for segments of major satellite acquisition programs and funding for such programs

(a) REPORTS REQUIRED.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees a report on each major satellite acquisition program in accordance with subsection (d) that assesses—

(1) the integration of the schedules for the acquisition and the delivery of the capabilities of the segments for the program; and

(2) funding for the program.

(b) ELEMENTS.—Each report required by subsection (a) with respect to a major satellite acquisition program shall include the following:

(1) The amount of funding approved for the program and for each segment of the program that is necessary for full operational capability of the program.

(2) The dates by which the program and each segment of the program is anticipated to reach initial and full operational capability.

(3) A description of the intended primary capabilities and key performance parameters of the program.

(4) An assessment of the extent to which the schedules for the acquisition and the delivery of the capabilities of the segments for the program or any related program referred to in paragraph (1) are integrated.

(5) If the Under Secretary determines pursuant to the assessment under paragraph (4) that the program is a non-integrated program, an identification of—

(A) the impact on the mission of the program of having the delivery of the segment capabilities of the program more than one year apart;

(B) the measures the Under Secretary is taking or is planning to take to improve the integration of the acquisition and delivery schedules of the segment capabilities; and

(C) the risks and challenges that impede the ability of the Department of Defense to fully integrate those schedules.

(c) CONSIDERATION BY MILESTONE DECISION AUTHORITY.—The Milestone Decision Authority shall include the report required by subsection (a) with respect to a major satellite acquisition program as part of the documentation used to approve the acquisition of the program.

(d) SUBMITTAL OF REPORTS.—(1) In the case of a major satellite acquisition program initiated before January 2, 2013, the Under Secretary shall submit the report required by subsection (a) with respect to the program not later than one year after such date of enactment.[1]

(2) In the case of a major satellite acquisition program initiated on or after January 2, 2013, the Under Secretary shall submit the report required by subsection (a) with respect to the program at the time of the Milestone B approval of the program.

(e) NOTIFICATION TO CONGRESS OF NON-INTEGRATED ACQUISITION AND CAPABILITY DELIVERY SCHEDULES.—If, after submitting the report required by subsection (a) with respect to a major satellite acquisition program, the Under Secretary determines that the program is a non-integrated program, the Under Secretary shall, not later than 30 days after making that determination, submit to the congressional defense committees a report—

(1) notifying the committees of that determination; and

(2) identifying—

(A) the impact on the mission of the program of having the delivery of the segment capabilities of the program more than one year apart;

(B) the measures the Under Secretary is taking or is planning to take to improve the integration of the acquisition and delivery schedules of the segment capabilities; and

(C) the risks and challenges that impede the ability of the Department of Defense to fully integrate those schedules.

(f) ANNUAL UPDATES FOR NON-INTEGRATED PROGRAMS.—

(1) REQUIREMENT.—For each major satellite acquisition program that the Under Secretary has determined under subsection (b)(5) or subsection (e) is a non-integrated program, the Under Secretary shall annually submit to Congress, at the same time the budget of the President for a fiscal year is submitted under section 1105 of title 31, an update to the report required by subsection (a) for such program.

(2) TERMINATION OF REQUIREMENT.—The requirement to submit an annual report update for a program under paragraph (1) shall terminate on the date on which the Under Secretary submits to the congressional defense committees notice that the Under Secretary has determined that such program is no longer a non-integrated program, or on the date that is five years after the date on which the initial report update required under paragraph (1) is submitted, whichever is earlier.

(3) GAO REVIEW OF CERTAIN NON-INTEGRATED PROGRAMS.—If at the time of the termination of the requirement to annually update a report for a program under paragraph (1) the Under Secretary has not provided notice to the congressional defense committees that the Under Secretary has determined that the program is no longer a non-integrated program, the Comptroller General shall conduct a review of such program and submit the results of such review to the congressional defense committees.

(g) DEFINITIONS.—In this section:

(1) SEGMENTS.—The term ''segments'', with respect to a major satellite acquisition program, refers to any satellites acquired under the program and the ground equipment and user terminals necessary to fully exploit the capabilities provided by those satellites.

(2) MAJOR SATELLITE ACQUISITION PROGRAM.—The term ''major satellite acquisition program'' means a major defense acquisition program (as defined in section 2430 of this title) for the acquisition of a satellite.

(3) MILESTONE B APPROVAL.—The term ''Milestone B approval'' has the meaning given that term in section 2366(e)(7) of this title.

(4) NON-INTEGRATED PROGRAM.—The term ''non-integrated program'' means a program with respect to which the schedules for the acquisition and the delivery of the capabilities of the segments for the program, or a related program that is necessary for the operational capability of the program, provide for the acquisition or the delivery of the capabilities of at least two of the three segments for the program or related program more than one year apart.

(Added Pub. L. 112–239, div. A, title IX, § 911(a), Jan. 2, 2013, 126 Stat. 1870; amended Pub. L. 113–291, div. A, title X, § 1071(e)(3), Dec. 19, 2014, 128 Stat. 3509.)

[1] See References in Text note below.

REFERENCES IN TEXT

Such date of enactment, referred to in subsec. (d)(1), is a reference to the date of enactment of the National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112–239, which was approved Jan. 2, 2013. Such reference was struck out by Pub. L. 113–291, §1071(e)(3)(A), see 2014 Amendment note below.

PRIOR PROVISIONS

A prior section 2275, act Aug. 10, 1956, ch. 1041, 70A Stat. 126, which related to award of contracts and review of decisions, was repealed by Pub. L. 103–160, div. A, title VIII, §821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2014—Subsec. (d)(1). Pub. L. 113–291, §1071(e)(3)(A), substituted ''before January 2, 2013'' for ''before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2013''.

Subsec. (d)(2). Pub. L. 113–291, §1071(e)(3)(B), substituted ''on or after January 2, 2013'' for ''on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2013''.

§ 2276. Commercial space launch cooperation

(a) AUTHORITY.—The Secretary of Defense may take such actions as the Secretary considers to be in the best interest of the Federal Government to—

(1) maximize the use of the capacity of the space transportation infrastructure of the Department of Defense by the private sector in the United States;

(2) maximize the effectiveness and efficiency of the space transportation infrastructure of the Department of Defense;

(3) reduce the cost of services provided by the Department of Defense related to space transportation infrastructure at launch support facilities and space recovery support facilities;

(4) encourage commercial space activities by enabling investment by covered entities in the space transportation infrastructure of the Department of Defense; and

(5) foster cooperation between the Department of Defense and covered entities.

(b) AUTHORITY FOR CONTRACTS AND OTHER AGREEMENTS RELATING TO SPACE TRANSPORTATION INFRASTRUCTURE.—The Secretary of Defense—

(1) may enter into an agreement with a covered entity to provide the covered entity with support and services related to the space transportation infrastructure of the Department of Defense; and

(2) upon the request of such covered entity, may include such support and services in the space launch and reentry range support requirements of the Department of Defense if—

(A) the Secretary determines that the inclusion of such support and services in such requirements—

(i) is in the best interest of the Federal Government;

(ii) does not interfere with the requirements of the Department of Defense; and

(iii) does not compete with the commercial space activities of other covered entities, unless that competition is in the national security interests of the United States; and

(B) any commercial requirement included in the agreement has full non-Federal funding before the execution of the agreement.

(c) CONTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of Defense may enter into an agreement with a covered entity on a cooperative and voluntary basis to accept contributions of funds, services, and equipment to carry out this section.

(2) USE OF CONTRIBUTIONS.—Any funds, services, or equipment accepted by the Secretary under this subsection—

(A) may be used only for the objectives specified in this section in accordance with terms of use set forth in the agreement entered into under this subsection; and

(B) shall be managed by the Secretary in accordance with regulations of the Department of Defense.

(3) REQUIREMENTS WITH RESPECT TO AGREEMENTS.—An agreement entered into with a covered entity under this subsection—

(A) shall address the terms of use, ownership, and disposition of the funds, services, or equipment contributed pursuant to the agreement; and

(B) shall include a provision that the covered entity will not recover the costs of its contribution through any other agreement with the United States.

(d) DEFENSE COOPERATION SPACE LAUNCH ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a special account to be known as the ''Defense Cooperation Space Launch Account''.

(2) CREDITING OF FUNDS.—Funds received by the Secretary of Defense under subsection (c) shall be credited to the Defense Cooperation Space Launch Account.

(3) USE OF FUNDS.—Funds deposited in the Defense Cooperation Space Launch Account under paragraph (2) are authorized to be appropriated and shall be available for obligation only to the extent provided in advance in an appropriation Act for costs incurred by the Department of Defense in carrying out subsection (b). Funds in the Account shall remain available until expended.

(e) ANNUAL REPORT.—Not later than January 31 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the funds, services, and equipment accepted and used by the Secretary under this section during the preceding fiscal year.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(g) DEFINITIONS.—In this section:

(1) COVERED ENTITY.—The term ''covered entity'' means a non-Federal entity that—

(A) is organized under the laws of the United States or of any jurisdiction within the United States; and

(B) is engaged in commercial space activities.

(2) LAUNCH SUPPORT FACILITIES.—The term ''launch support facilities'' has the meaning given the term in section 50501(7) of title 51.

(3) SPACE RECOVERY SUPPORT FACILITIES.—The term ''space recovery support facilities'' has the meaning given the term in section 50501(11) of title 51.

(4) SPACE TRANSPORTATION INFRASTRUCTURE.—The term ''space transportation infrastructure'' has the meaning given that term in section 50501(12) of title 51.

(Added Pub. L. 112–239, div. A, title IX, § 912(a), Jan. 2, 2013, 126 Stat. 1872.)

PRIOR PROVISIONS

A prior section 2276, acts Aug. 10, 1956, ch. 1041, 70A Stat. 126; Sept. 7, 1962, Pub. L. 87–651, title I, § 131, 76 Stat. 514, which related to inspection and audit of plants and books of contractors and provided criminal penalties for violations, was repealed by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

§ 2277. Report on foreign counter-space programs

(a) REPORT REQUIRED.—Not later than January 1 of each year, the Secretary of Defense and the Director of National Intelligence shall jointly submit to Congress a report on the counter-space programs of foreign countries.

(b) CONTENTS.—Each report required under subsection (a) shall include—

(1) an explanation of whether any foreign country has a counter-space program that could be a threat to the national security or commercial space systems of the United States; and

(2) the name of each country with a counter-space program described in paragraph (1).

(c) FORM.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), each report required under subsection (a) shall be submitted in unclassified form.

(2) CLASSIFIED ANNEX.—The Secretary of Defense and the Director of National Intelligence may submit to the covered congressional committees a classified annex to a report required under subsection (a) containing any classified information required to be submitted for such report.

(3) FOREIGN COUNTRY NAMES.—

(A) UNCLASSIFIED FORM.—Subject to subparagraph (B), each report required under subsection (a) shall include the information required under subsection (b)(2) in unclassified form.

(B) NATIONAL SECURITY WAIVER.—The Secretary of Defense and the Director of National Intelligence may waive the requirement under subparagraph (A) if the Secretary and the Director of National Intelligence jointly determine it is in the interests of national security to waive such requirement and submits to Congress an explanation of why the Secretary and the Director waived such requirement.

(d) COVERED CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''covered congressional committees'' means the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(Added Pub. L. 112–239, div. A, title IX, § 913(c)(1), Jan. 2, 2013, 126 Stat. 1875.)

PRIOR PROVISIONS

A prior section 2277, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to availability of appropriations, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

§ 2278. Notification of foreign interference of national security space

(a) NOTICE REQUIRED.—The Commander of the United States Strategic Command shall, with respect to each intentional attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability, provide to the appropriate congressional committees—

(1) not later than 48 hours after the Commander determines that there is reason to believe such attempt occurred, notice of such attempt; and

(2) not later than 10 days after the date on which the Commander determines that there is reason to believe such attempt occurred, a notification described in subsection (b) with respect to such attempt.

(b) NOTIFICATION DESCRIPTION.—A notification described in this subsection is a written notification that includes—

(1) the name and a brief description of the national security space capability that was impacted by an attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability;

(2) a description of such attempt, including the foreign actor, the date and time of such attempt, and any related capability outage and the mission impact of such outage; and

(3) any other information the Commander considers relevant.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''appropriate congressional committees'' means—

(1) the congressional defense committees; and

(2) with respect to a notice or notification related to an attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability that is intelligence-related, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(Added Pub. L. 113–66, div. A, title IX, § 911(a), Dec. 26, 2013, 127 Stat. 823.)

PRIOR PROVISIONS

A prior section 2278, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to purchases of sample aircraft, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

§ 2279. Foreign commercial satellite services

(a) PROHIBITION.—Except as provided in subsection (b), the Secretary of Defense may not enter into a contract for satellite services with a foreign entity if the Secretary reasonably believes that—

(1) the foreign entity is an entity in which the government of a covered foreign country

has an ownership interest that enables that government to affect satellite operations; or

(2) the foreign entity plans to or is expected to provide launch or other satellite services under the contract from a covered foreign country.

(b) NOTICE AND EXCEPTION.—The prohibition in subsection (a) shall not apply to a contract if—

(1) the Secretary determines it is in the national security of the United States to enter into such contract; and

(2) not later than 7 days before entering into such contract, the Secretary, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment for such contract that includes the following:

(A) The projected period of performance (including any period covered by options to extend the contract), the financial terms, and a description of the services to be provided under the contract.

(B) To the extent practicable, a description of the ownership interest that a covered foreign country has in the foreign entity providing satellite services to the Department of Defense under the contract and the launch or other satellite services that will be provided in a covered foreign country under the contract.

(C) A justification for entering into a contract with such foreign entity and a description of the actions necessary to eliminate the need to enter into such a contract with such foreign entity in the future.

(D) A risk assessment of entering into a contract with such foreign entity, including an assessment of mission assurance and security of information and a description of any measures necessary to mitigate risks found by such risk assessment.

(c) DELEGATION OF NOTICE AND EXCEPTION AUTHORITY.—The Secretary of Defense may only delegate the authority under subsection (b) to enter into a contract subject to the prohibition under subsection (a) to the Deputy Secretary of Defense, the Under Secretary of Defense for Policy, or the Under Secretary of Defense for Acquisition, Technology, and Logistics and such authority may not be further delegated.

(d) FORM OF ASSESSMENTS.—Each assessment under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

(e) COVERED FOREIGN COUNTRY DEFINED.—In this section, the term ''covered foreign country'' means a country described in section 1261(c)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 2019).

(Added Pub. L. 113–66, div. A, title XVI, § 1602(a)(1), Dec. 26, 2013, 127 Stat. 941.)

REFERENCES IN TEXT

Section 1261(c)(2) of the National Defense Authorization Act for Fiscal Year 2013, referred to in subsec. (e), is section 1261(c)(2) of Pub. L. 112–239, which is set out in a note under section 2778 of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 2279, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to restrictions on alien employees of contractors as to access to plans and specifications, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

§ 2279a. Principal Advisor on Space Control

(a) IN GENERAL.—The Secretary of Defense shall designate a senior official of the Department of Defense or a military department to serve as the Principal Space Control Advisor, who, in addition to the other duties of such senior official, shall act as the principal advisor to the Secretary on space control activities.

(b) RESPONSIBILITIES.—The Principal Space Control Advisor shall be responsible for the following:

(1) Supervision of space control activities related to the development, procurement, and employment of, and strategy relating to, space control capabilities.

(2) Oversight of policy, resources, personnel, and acquisition and technology relating to space control activities.

(c) CROSS-FUNCTIONAL TEAM.—The Principal Space Control Advisor shall integrate the space control expertise and perspectives of appropriate organizational entities of the Office of the Secretary of Defense, the Joint Staff, the military departments, the Defense Agencies, and the combatant commands, by establishing and maintaining a cross-functional team of subject-matter experts who are otherwise assigned or detailed to those entities.

(Added Pub. L. 114–92, div. A, title XVI, § 1602(a), Nov. 25, 2015, 129 Stat. 1096.)

§ 2279b. Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise

(a) ESTABLISHMENT.—There is within the Department of Defense a council to be known as the ''Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise'' (in this section referred to as the ''Council'').

(b) MEMBERSHIP.—The members of the Council shall be as follows:

(1) The Under Secretary of Defense for Policy.

(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(3) The Vice Chairman of the Joint Chiefs of Staff.

(4) The Commander of the United States Strategic Command.

(5) The Commander of the United States Northern Command.

(6) The Commander of United States Cyber Command.

(7) The Director of the National Security Agency.

(8) The Chief Information Officer of the Department of Defense.

(9) The Secretaries of the military departments, who shall be ex officio members.

(10) Such other officers of the Department of Defense as the Secretary may designate.

(c) CO-CHAIR.—The Council shall be co-chaired by the Under Secretary of Defense for Acquisi-

tion, Technology, and Logistics and the Vice Chairman of the Joint Chiefs of Staff.

(d) RESPONSIBILITIES.—(1) The Council shall be responsible for oversight of the Department of Defense positioning, navigation, and timing enterprise, including positioning, navigation, and timing services provided to civil, commercial, scientific, and international users.

(2) In carrying out the responsibility for oversight of the Department of Defense positioning, navigation, and timing enterprise as specified in paragraph (1), the Council shall be responsible for the following:

(A) Oversight of performance assessments (including interoperability).

(B) Vulnerability identification and mitigation.

(C) Architecture development.

(D) Resource prioritization.

(E) Such other responsibilities as the Secretary of Defense shall specify for purposes of this section.

(e) ANNUAL REPORTS.—At the same time each year that the budget of the President is submitted to Congress under section 1105(a) of title 31, the Council shall submit to the congressional defense committees a report on the activities of the Council. Each report shall include the following:

(1) A description and assessment of the activities of the Council during the previous fiscal year.

(2) A description of the activities proposed to be undertaken by the Council during the period covered by the current future-years defense program under section 221 of this title.

(3) Any changes to the requirements of the Department of Defense positioning, navigation, and timing enterprise made during the previous year, along with an explanation for why the changes were made and a description of the effects of the changes to the capability of such enterprise.

(4) A breakdown of each program element in such budget that relates to the Department of Defense positioning, navigation, and timing enterprise, including how such program element relates to the operation and sustainment, research and development, procurement, or other activity of such enterprise.

(f) BUDGET AND FUNDING MATTERS.—(1) Not later than 30 days after the President submits to Congress the budget for a fiscal year under section 1105(a) of title 31, the Commander of the United States Strategic Command shall submit to the Chairman of the Joint Chiefs of Staff an assessment of—

(A) whether such budget allows the Federal Government to meet the required capabilities of the Department of Defense positioning, navigation, and timing enterprise during the fiscal year covered by the budget and the four subsequent fiscal years; and

(B) if the Commander determines that such budget does not allow the Federal Government to meet such required capabilities, a description of the steps being taken to meet such required capabilities.

(2) Not later than 30 days after the date on which the Chairman of the Joint Chiefs of Staff receives the assessment of the Commander of the United States Strategic Command under paragraph (1), the Chairman shall submit to the congressional defense committees—

(A) such assessment as it was submitted to the Chairman; and

(B) any comments of the Chairman.

(3) If a House of Congress adopts a bill authorizing or appropriating funds for the activities of the Department of Defense positioning, navigation, and timing enterprise that, as determined by the Council, provides insufficient funds for such activities for the period covered by such bill, the Council shall notify the congressional defense committees of the determination.

(g) NOTIFICATION OF ANOMALIES.—(1) The Secretary of Defense shall submit to the congressional defense committees written notification of an anomaly in the Department of Defense positioning, navigation, and timing enterprise that is reported to the Secretary or the Council by not later than 14 days after the date on which the Secretary or the Council learns of such anomaly, as the case may be.

(2) In this subsection, the term ''anomaly'' means any unplanned, irregular, or abnormal event, whether unexplained or caused intentionally or unintentionally by a person or a system.

(h) TERMINATION.—The Council shall terminate on the date that is 10 years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.

(Added Pub. L. 114–92, div. A, title XVI, §1603(a), Nov. 25, 2015, 129 Stat. 1096.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (h), is the date of enactment of Pub. L. 114–92, which was approved Nov. 25, 2015.

CHAPTER 136—PROVISIONS RELATING TO SPECIFIC PROGRAMS

Sec.
2281. Global Positioning System.
2282. Authority to build the capacity of foreign security forces.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title XII, §1205(a)(2), Dec. 19, 2014, 128 Stat. 3536, added item 2282.

2011—Pub. L. 112–81, div. A, title X, §1061(13)(B), Dec. 31, 2011, 125 Stat. 1583, struck out item 2282 ''B–2 bomber: annual report''.

2000—Pub. L. 106–398, §1 [[div. A], title I, §131(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–29, added item 2282.

§ 2281. Global Positioning System

(a) SUSTAINMENT AND OPERATION FOR MILITARY PURPOSES.—The Secretary of Defense shall provide for the sustainment of the capabilities of the Global Positioning System (hereinafter in this section referred to as the ''GPS''), and the operation of basic GPS services, that are beneficial for the national security interests of the United States. In doing so, the Secretary shall—

(1) develop appropriate measures for preventing hostile use of the GPS so as to make it unnecessary for the Secretary to use the selective availability feature of the system con-

tinuously while not hindering the use of the GPS by the United States and its allies for military purposes; and

(2) ensure that United States armed forces have the capability to use the GPS effectively despite hostile attempts to prevent the use of the system by such forces.

(b) SUSTAINMENT AND OPERATION FOR CIVILIAN PURPOSES.—The Secretary of Defense shall provide for the sustainment and operation of the GPS Standard Positioning Service for peaceful civil, commercial, and scientific uses on a continuous worldwide basis free of direct user fees. In doing so, the Secretary—

(1) shall provide for the sustainment and operation of the GPS Standard Positioning Service in order to meet the performance requirements of the Federal Radionavigation Plan prepared jointly by the Secretary of Defense and the Secretary of Transportation pursuant to subsection (c);

(2) shall coordinate with the Secretary of Transportation regarding the development and implementation by the Government of augmentations to the basic GPS that achieve or enhance uses of the system in support of transportation;

(3) shall coordinate with the Secretary of Commerce, the United States Trade Representative, and other appropriate officials to facilitate the development of new and expanded civil and commercial uses for the GPS;

(4) shall develop measures for preventing hostile use of the GPS in a particular area without hindering peaceful civil use of the system elsewhere; and

(5) may not agree to any restriction on the Global Positioning System proposed by the head of a department or agency of the United States outside the Department of Defense in the exercise of that official's regulatory authority that would adversely affect the military potential of the Global Positioning System.

(c) FEDERAL RADIONAVIGATION PLAN.—The Secretary of Defense and the Secretary of Transportation shall jointly prepare the Federal Radionavigation Plan. The plan shall be revised and updated not less often than every two years. The plan shall be prepared in accordance with the requirements applicable to such plan as first prepared pursuant to section 507 of the International Maritime Satellite Telecommunications Act[1] (47 U.S.C. 756). The plan, and any amendment to the plan, shall be published in the Federal Register.

(d) DEFINITIONS.—In this section:

(1) The term ''basic GPS services'' means the following components of the Global Positioning System that are operated and maintained by the Department of Defense:

(A) The constellation of satellites.

(B) The navigation payloads that produce the Global Positioning System signals.

(C) The ground stations, data links, and associated command and control facilities.

(2) The term ''GPS Standard Positioning Service'' means the civil and commercial service provided by the basic Global Positioning System as defined in the 1996 Federal Radionavigation Plan (published jointly by the Secretary of Defense and the Secretary of Transportation in July 1997).

(Added Pub. L. 105–85, div. A, title X, §1074(d)(1), Nov. 18, 1997, 111 Stat. 1909; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title IX, §914, Nov. 24, 2003, 117 Stat. 1567; Pub. L. 111–84, div. A, title X, §1032, Oct. 28, 2009, 123 Stat. 2448; Pub. L. 112–239, div. A, title X, §1064, Jan. 2, 2013, 126 Stat. 1941.)

REFERENCES IN TEXT

Section 507 of the International Maritime Satellite Telecommunications Act, referred to in subsec. (c), is section 507 of Pub. L. 87–624 which was classified to section 756 of Title 47, Telecommunications, prior to repeal by Pub. L. 103–414, title III, §304(b)(5), Oct. 25, 1994, 108 Stat. 4298.

AMENDMENTS

2013—Subsecs. (d), (e). Pub. L. 112–239 redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to biennial reports on the Global Positioning System.

2009—Subsec. (d)(1). Pub. L. 111–84, §1032(a)(1), in introductory provisions, substituted ''the Deputy Secretary of Defense and the Deputy Secretary of Transportation, in their capacity as co-chairs of the National Executive Committee for Space-Based Positioning, Navigation, and Timing,'' for ''the Secretary of Defense'' and ''the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on Armed Services, Energy and Commerce, and Transportation and Infrastructure of the House of Representatives'' for ''the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives''.

Subsec. (d)(1)(B)(ii). Pub. L. 111–84, §1032(b), inserted ''validated'' before ''performance requirements'' and ''in accordance with Office of Management and Budget Circular A–109'' after ''Plan''.

Subsec. (d)(2). Pub. L. 111–84, §1032(a)(2), added par. (2) and struck out former par. (2), which read as follows: ''In preparing the parts of each such report required under subparagraphs (C), (D), (E), (F), and (G) of paragraph (1), the Secretary of Defense shall consult with the Secretary of State, the Secretary of Commerce, and the Secretary of Transportation.''

2003—Subsec. (d)(1)(C). Pub. L. 108–136, §914(a)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''The most recent determination by the President regarding continued use of the selective availability feature of the system and the expected date of any change or elimination of the use of that feature.''

Subsec. (d)(1)(D). Pub. L. 108–136, §914(a)(3), redesignated subpar. (E) as (D) and substituted ''Progress and challenges in'' for ''Any progress made toward''. Former subpar. (D) redesignated (C).

Subsec. (d)(1)(E). Pub. L. 108–136, §914(a)(4), added subpar. (E). Former subpar. (E) redesignated (D).

Subsec. (d)(1)(F). Pub. L. 108–136, §914(a)(4), added subpar. (F) and struck out former subpar. (F) which read as follows: ''Any progress made toward protecting GPS from disruption and interference.''

Subsec. (d)(2). Pub. L. 108–136, §914(b), inserted ''(C),'' after ''under subparagraphs''.

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Com-

[1] See References in Text note below.

mittee on National Security'' in introductory provisions.

QUARTERLY REPORTS ON GLOBAL POSITIONING SYSTEM III SPACE SEGMENT, GLOBAL POSITIONING SYSTEM OPERATIONAL CONTROL SEGMENT, AND MILITARY GLOBAL POSITIONING SYSTEM USER EQUIPMENT ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title XVI, § 1621, Nov. 25, 2015, 129 Stat. 1109, provided that:

''(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], and every 90 days thereafter, the Secretary of the Air Force shall submit to the Comptroller General of the United States a report and supporting documentation on the Global Positioning System III space segment, the Global Positioning System operational control segment, and the Military Global Positioning System user equipment acquisition programs.

''(b) ELEMENTS.—Each report required by subsection (a) shall include, with respect to an acquisition program specified in that subsection, the following:

''(1) A statement of the status of the program with respect to cost, schedule, and performance.

''(2) A description of any changes to the requirements of the program.

''(3) A description of any technical risks impacting the cost, schedule, and performance of the program.

''(4) An assessment of how such risks are to be addressed and the costs associated with such risks.

''(5) An assessment of the extent to which the segments of the program are synchronized.

''(c) BRIEFINGS BY COMPTROLLER GENERAL.—The Comptroller General shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on a report submitted under subsection (a)—

''(1) in the case of the first such report, not later than 30 days after receiving that report; and

''(2) as the Comptroller General considers appropriate thereafter.

''(d) TERMINATION.—The requirement under subsection (a) shall terminate with respect to an acquisition program specified in that subsection on the date on which that program reaches initial operational capability.''

LIMITATION ON CONSTRUCTION ON UNITED STATES TERRITORY OF SATELLITE POSITIONING GROUND MONITORING STATIONS OF FOREIGN GOVERNMENTS

Pub. L. 113–66, div. A, title XVI, § 1602(b), Dec. 26, 2013, 127 Stat. 943, provided that:

''(1) CERTIFICATION.—

''(A) IN GENERAL.—The President may not authorize or permit the construction of a global navigation satellite system ground monitoring station directly or indirectly controlled by a foreign government (including a ground monitoring station owned, operated, or controlled on behalf of a foreign government) in the territory of the United States unless the Secretary of Defense and the Director of National Intelligence jointly certify to the appropriate congressional committees that such ground monitoring station will not possess the capability or potential to be used for the purpose of gathering intelligence in the United States or improving any foreign weapon system.

''(B) FORM.—Each certification under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.

''(2) NATIONAL SECURITY WAIVER.—The Secretary of Defense and the Director of National Intelligence may jointly waive the certification requirement in paragraph (1) for a ground monitoring station if—

''(A) the Secretary and the Director jointly determine that the waiver is in the vital interests of the national security of the United States; and

''(B) the Secretary and the Director ensure that—

''(i) all data collected or transmitted from ground monitoring stations covered by the waiver are not encrypted;

''(ii) all persons involved in the construction, operation, and maintenance of such ground monitoring stations are United States persons;

''(iii) such ground monitoring stations are not located in geographic proximity to sensitive United States national security sites;

''(iv) the United States approves all equipment to be located at such ground monitoring stations;

''(v) appropriate actions are taken to ensure that any such ground monitoring stations do not pose a cyber espionage or other threat, including intelligence or counterintelligence, to the national security of the United States; and

''(vi) any improvements to such ground monitoring stations do not reduce or compete with the advantages of Global Positioning System technology for users.

''(3) WAIVER REPORT.—For each waiver under paragraph (2), the Secretary of Defense and the Director of National Intelligence, in consultation with the Secretary of State, shall jointly submit to the appropriate congressional committees a report containing—

''(A) the reason why it is not possible to provide the certification under paragraph (1) for the ground monitoring stations covered by such waiver;

''(B) an assessment of the impact of the exercise of authority under paragraph (2) with respect to such ground monitoring stations on the national security of the United States;

''(C) a description of the means to be used to mitigate any such impact to the United States for the duration that such ground monitoring stations are operated in the territory of the United States; and

''(D) any other information in connection with the waiver that the Secretary of Defense and the Director of National Intelligence, in consultation with the Secretary of State, consider appropriate.

''(4) NOTICE.—Not later than 30 days before the exercise of the authority to waive under paragraph (2) the certification requirement under paragraph (1) for a ground monitoring station, the Secretary of Defense and the Director of National Intelligence shall jointly provide to the appropriate congressional committees notice of the exercise of such authority and the report required under paragraph (3) with respect to such ground monitoring station.

''(5) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

''(B) the Committee on Armed Services, the committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

''(6) SUNSET.—Effective on the date that is five years after the date of the enactment of this Act [Dec. 26, 2013], paragraphs (1) through (5) are repealed.''

USE OF FUNDS FOR GLOBAL POSITIONING SYSTEM

Pub. L. 112–10, div. A, title VIII, § 8068, Apr. 15, 2011, 125 Stat. 73, provided that: ''Funds available to the Department of Defense for the Global Positioning System during the current fiscal year, and hereafter, may be used to fund civil requirements associated with the satellite and ground control segments of such system's modernization program.''

LIMITATION ON USE OF FUNDS FOR PURCHASING GLOBAL POSITIONING SYSTEM USER EQUIPMENT

Pub. L. 111–383, div. A, title IX, § 913, Jan. 7, 2011, 124 Stat. 4328, as amended by Pub. L. 114–92, div. A, title XVI, § 1605, Nov. 25, 2015, 129 Stat. 1099, provided that:

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), none of the funds authorized to be appro-

priated or otherwise made available by this Act or any other Act for the Department of Defense may be obligated or expended to purchase user equipment for the Global Positioning System during fiscal years after fiscal year 2017 unless the equipment is capable of receiving the military code (commonly known as the 'M code') from the Global Positioning System.

''(b) EXCEPTION.—The limitation under subsection (a) shall not apply with respect to the purchase of passenger vehicles or commercial vehicles in which Global Positioning System equipment is installed.

''(c) WAIVER.—The Secretary of Defense may waive the limitation under subsection (a) if the Secretary determines that—

''(1) suitable user equipment capable of receiving the military code from the Global Positioning System is not available; or

''(2) with respect to a purchase of user equipment, the Department of Defense does not require that user equipment to be capable of receiving the military code from the Global Positioning System.

''(d) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The Secretary of Defense may not delegate the authority to make a waiver under subsection (c) to an official below the level of the Secretaries of the military departments or the Under Secretary of Defense for Acquisition, Technology, and Logistics.''

AUTHORIZATION OF INTERAGENCY SUPPORT FOR GLOBAL POSITIONING SYSTEM

Pub. L. 106–405, §8, Nov. 1, 2000, 114 Stat. 1753, as amended by Pub. L. 109–364, div. A, title IX, §911, Oct. 17, 2006, 120 Stat. 2354, provided that: ''The use of multiagency funding and other forms of support is hereby authorized for the functions and activities of the following organizations established pursuant to the United States Space-Based Position, Navigation, and Timing Policy issued December 8, 2004 (and any successor organization, to the extent the successor organization performs the functions of the specified organization):

''(1) The interagency committee known as the National Space-Based Positioning, Navigation, and Timing Executive Committee.

''(2) The support office for the committee specified in paragraph (1) known as the National Space-Based Positioning, Navigation, and Timing Coordination Office.

''(3) The Federal advisory committee known as the National Space-Based Positioning, Navigation, and Timing Advisory Board.''

ENHANCED GLOBAL POSITIONING SYSTEM PROGRAM

Pub. L. 105–261, div. A, title II, §218, Oct. 17, 1998, 112 Stat. 1951, provided that:

''(a) POLICY ON PRIORITY FOR DEVELOPMENT OF ENHANCED GPS SYSTEM.—The development of an enhanced Global Positioning System is an urgent national security priority.

''(b) DEVELOPMENT REQUIRED.—To fulfill the requirements described in section 279(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 243) [set out as a note below] and section 2281 of title 10, United States Code, the Secretary of Defense shall develop an enhanced Global Positioning System in accordance with the priority declared in subsection (a). The enhanced Global Positioning System shall include the following elements:

''(1) An evolved satellite system that includes increased signal power and other improvements such as regional-level directional signal enhancements.

''(2) Enhanced receivers and user equipment that are capable of providing military users with direct access to encrypted Global Positioning System signals.

''(3) To the extent funded by the Secretary of Transportation, additional civil frequencies and other enhancements for civil users.

''(c) SENSE OF CONGRESS REGARDING FUNDING.—It is the sense of Congress that—

''(1) the Secretary of Defense should ensure that the future-years defense program provides for sufficient funding to develop and deploy an enhanced Global Positioning System in accordance with the priority declared in subsection (a); and

''(2) the Secretary of Transportation should provide sufficient funding to support additional civil frequencies for the Global Positioning System and other enhancements of the system for civil users.

''(d) PLAN FOR DEVELOPMENT OF ENHANCED GLOBAL POSITIONING SYSTEM.—Not later than April 15, 1999, the Secretary of Defense shall submit to Congress a plan for carrying out the requirements of subsection (b).

''(e) DELAYED EFFECTIVE DATE FOR LIMITATION ON PROCUREMENT OF SYSTEMS NOT GPS-EQUIPPED.—[Amended section 152(b) of Pub. L. 103–160, set out as a note below.]

''(f) FUNDING FROM AUTHORIZED APPROPRIATIONS FOR FISCAL YEAR 1999.—Of the amounts authorized to be appropriated under section 201(3) [112 Stat. 1946], $44,000,000 shall be available to establish and carry out an enhanced Global Positioning System program.''

SUSTAINMENT AND OPERATION OF GLOBAL POSITIONING SYSTEM

Pub. L. 105–85, div. A, title X, §1074(a), (b), Nov. 18, 1997, 111 Stat. 1907, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Global Positioning System (consisting of a constellation of satellites and associated facilities capable of providing users on earth with a highly precise statement of their location on earth) makes significant contributions to the attainment of the national security and foreign policy goals of the United States, the safety and efficiency of international transportation, and the economic growth, trade, and productivity of the United States.

''(2) The infrastructure for the Global Positioning System (including both space and ground segments of the infrastructure) is vital to the effectiveness of United States and allied military forces and to the protection of the national security interests of the United States.

''(3) In addition to having military uses, the Global Positioning System has essential civil, commercial, and scientific uses.

''(4) As a result of the increasing demand of civil, commercial, and scientific users of the Global Positioning System—

''(A) there has emerged in the United States a new commercial industry to provide Global Positioning System equipment and related services to the many and varied users of the system; and

''(B) there have been rapid technical advancements in Global Positioning System equipment and services that have contributed significantly to reductions in the cost of the Global Positioning System and increases in the technical capabilities and availability of the system for military uses.

''(5) It is in the national interest of the United States for the United States—

''(A) to support continuation of the multiple-use character of the Global Positioning System;

''(B) to promote broader acceptance and use of the Global Positioning System and the technological standards that facilitate expanded use of the system for civil purposes;

''(C) to coordinate with other countries to ensure (i) efficient management of the electromagnetic spectrum used by the Global Positioning System, and (ii) protection of that spectrum in order to prevent disruption of signals from the system and interference with that portion of the electromagnetic spectrum used by the system; and

''(D) to encourage open access in all international markets to the Global Positioning System and supporting equipment, services, and techniques.

''(b) INTERNATIONAL COOPERATION.—Congress urges the President to promote the security of the United

States and its allies, the public safety, and commercial interests by taking the following steps:

''(1) Undertaking a coordinated effort within the executive branch to seek to establish the Global Positioning System, and augmentations to the system, as a worldwide resource.

''(2) Seeking to enter into international agreements to establish signal and service standards that protect the Global Positioning System from disruption and interference.

''(3) Undertaking efforts to eliminate any barriers to, and other restrictions of foreign governments on, peaceful uses of the Global Positioning System.

''(4) Requiring that any proposed international agreement involving nonmilitary use of the Global Positioning System or any augmentation to the system not be agreed to by the United States unless the proposed agreement has been reviewed by the Secretary of State, the Secretary of Defense, the Secretary of Transportation, and the Secretary of Commerce (acting as the Interagency Global Positioning System Executive Board established by Presidential Decision Directive NSTC–6, dated March 28, 1996).''

ACCESS TO GLOBAL POSITIONING SYSTEM

Pub. L. 104–106, div. A, title II, § 279, Feb. 10, 1996, 110 Stat. 243, provided that:

''(a) CONDITIONAL PROHIBITION ON USE OF SELECTIVE AVAILABILITY FEATURE.—Except as provided in subsection (b), after May 1, 1996, the Secretary of Defense may not (through use of the feature known as 'selective availability') deny access of non-Department of Defense users to the full capabilities of the Global Positioning System.

''(b) PLAN.—Subsection (a) shall cease to apply upon submission by the Secretary of Defense to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives of a plan for enhancement of the Global Positioning System that provides for—

''(1) development and acquisition of effective capabilities to deny hostile military forces the ability to use the Global Positioning System without hindering the ability of United States military forces and civil users to have access to and use of the system, together with a specific date by which those capabilities could be operational; and

''(2) development and acquisition of receivers for the Global Positioning System and other techniques for weapons and weapon systems that provide substantially improved resistance to jamming and other forms of electronic interference or disruption, together with a specific date by which those receivers and other techniques could be operational with United States military forces.''

LIMITATION ON PROCUREMENT OF SYSTEMS NOT GPS-EQUIPPED

Pub. L. 103–160, div. A, title I, § 152(b), Nov. 30, 1993, 107 Stat. 1578, as amended by Pub. L. 105–261, div. A, title II, § 218(e), Oct. 17, 1998, 112 Stat. 1952; Pub. L. 109–163, div. A, title II, § 260(a), Jan. 6, 2006, 119 Stat. 3185, provided that: ''After September 30, 2007, funds may not be obligated to modify or procure any Department of Defense aircraft, ship, armored vehicle, or indirect-fire weapon system that is not equipped with a Global Positioning System receiver.''

[Pub. L. 109–163, div. A, title II, § 260(b), Jan. 6, 2006, 119 Stat. 3186, provided that: ''The amendment made by subsection (a) [amending section 152(b) of Pub. L. 103–160, set out above] shall be deemed to have taken effect at the close of September 30, 2005, and any obligation or expenditure of funds by the Department of Defense during the period beginning on October 1, 2005, and ending on the date of the enactment of this Act [Jan. 6, 2006] to modify or procure a Department of Defense aircraft, ship, armored vehicle, or indirect-fire weapon system that is not equipped with a Global Positioning System receiver is hereby ratified with respect to the provision of law specified in subsection (a).'']

§ 2282. Authority to build the capacity of foreign security forces

(a) AUTHORITY.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized to conduct or support a program or programs as follows:

(1) To build the capacity of a foreign country's national military forces in order for that country to—

(A) conduct counterterrorism operations; or

(B) participate in or support on-going allied or coalition military or stability operations that benefit the national security interests of the United States.

(2) To build the capacity of a foreign country's national maritime or border security forces to conduct counterterrorism operations.

(3) To build the capacity of a foreign country's national-level security forces that have among their functional responsibilities a counterterrorism mission in order for such forces to conduct counterterrorism operations.

(b) TYPES OF CAPACITY BUILDING.—

(1) AUTHORIZED ELEMENTS.—A program under subsection (a) may include the provision of equipment, supplies, training, defense services, and small-scale military construction.

(2) REQUIRED ELEMENTS.—A program under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Respect for civilian control of the military.

(c) LIMITATIONS.—

(1) ANNUAL FUNDING LIMITATION.—The Secretary of Defense may use amounts specifically authorized and appropriated or otherwise made available to carry out programs under this section on an annual basis to carry out programs authorized by subsection (a).

(2) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of assistance described in subsection (b) that is otherwise prohibited by any provision of law.

(3) LIMITATION ON ELIGIBLE COUNTRIES.—The Secretary of Defense may not use the authority in subsection (a) to provide assistance described in subsection (b) to any foreign country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

(4) AVAILABILITY OF FUNDS FOR ACTIVITIES ACROSS FISCAL YEARS.—

(A) IN GENERAL.—Amounts made available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in the fiscal year such amounts are made available but end in the next fiscal year.

(B) ACHIEVEMENT OF FULL OPERATIONAL CAPABILITY.—If, in accordance with subparagraph (A), equipment is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for supplies, training, defense services, and small-

scale military construction associated with such equipment and necessary to ensure that the recipient unit achieves full operational capability for such equipment may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next fiscal year.

(5) LIMITATIONS ON AVAILABILITY OF FUNDS FOR SMALL-SCALE MILITARY CONSTRUCTION.—

(A) ACTIVITIES UNDER PARTICULAR PROGRAMS.—The amount that may be obligated or expended for small-scale military construction activities under any particular program authorized under subsection (a) may not exceed $750,000.

(B) ACTIVITIES UNDER ALL PROGRAMS.—The amount that may be obligated or expended for small-scale military construction activities during a fiscal year for all programs authorized under subsection (a) during that fiscal year may not exceed up to five percent of the amount made available in such fiscal year to carry out the authority in subsection (a).

(d) FORMULATION AND EXECUTION OF PROGRAM.—The Secretary of Defense and the Secretary of State shall jointly formulate any program under subsection (a). The Secretary of Defense shall coordinate with the Secretary of State in the implementation of any program under subsection (a).

(e) CONGRESSIONAL NOTIFICATION.—

(1) IN GENERAL.—Not less than 15 days before initiating activities under a program under subsection (a), the Secretary of Defense shall submit to the appropriate committees of Congress a notice of the following:

(A) The country whose capacity to engage in activities in subsection (a) will be built under the program.

(B) The budget, implementation timeline with milestones, anticipated delivery schedule for assistance, military department responsible for management and associated program executive office, and completion date for the program.

(C) The source and planned expenditure of funds to complete the program.

(D) A description of the arrangements, if any, for the sustainment of the program and the source of funds to support sustainment of the capabilities and performance outcomes achieved under the program beyond its completion date, if applicable.

(E) A description of the program objectives and assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient unit.

(F) Information, including the amount, type, and purpose, on the assistance provided the country during the three preceding fiscal years under each of the following programs, accounts, or activities:

(i) A program under this section.

(ii) The Foreign Military Financing program under the Arms Export Control Act.

(iii) Peacekeeping Operations.

(iv) The International Narcotics Control and Law Enforcement (INCLE) program under section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291).

(v) Nonproliferation, Anti-Terrorism, Demining, and Related Programs (NADR).

(vi) Counterdrug activities authorized by section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note) and section 1033 of the National Defense Authorization Act for Fiscal Year 1998.

(vii) Any other significant program, account, or activity for the provision of security assistance that the Secretary of Defense and the Secretary of State consider appropriate.

(G) An assessment of the capacity of the recipient country to absorb assistance under the program.

(H) An assessment of the manner in which the program fits into the theater security cooperation strategy of the applicable geographic combatant command.

(2) COORDINATION WITH SECRETARY OF STATE.—Any notice under paragraph (1) shall be prepared in coordination with the Secretary of State.

(f) ASSESSMENTS OF PROGRAMS.—Amounts available to conduct or support programs under subsection (a) shall be available to the Secretary of Defense to conduct assessments and determine the effectiveness of such programs in building the operational capacity and performance of the recipient units concerned.

(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 113–291, div. A, title XII, §1205(a)(1), Dec. 19, 2014, 128 Stat. 3533.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (e)(1)(F)(ii), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, 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.

Section 1033 of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (e)(1)(F)(vi), is section 1033 of Pub. L. 105–85, title X, Nov. 18, 1997, 111 Stat. 1881, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 2282, added Pub. L. 106–398, §1 [[div. A], title I, §131(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–28; amended Pub. L. 108–136, div. A, title X, §1031(a)(14), Nov. 24, 2003, 117 Stat. 1597, related to annual report on the B–2 bomber aircraft, prior to repeal

by Pub. L. 112–81, div. A, title X, §1061(13)(A), Dec. 31, 2011, 125 Stat. 1583.

AUTHORITY TO PROVIDE SUPPORT TO NATIONAL MILITARY FORCES OF ALLIED COUNTRIES FOR COUNTER-TERRORISM OPERATIONS IN AFRICA

Pub. L. 114–92, div. A, title XII, §1207, Nov. 25, 2015, 129 Stat. 1040, provided that:

''(a) IN GENERAL.—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide, on a nonreimbursable basis, logistic support, supplies, and services to the national military forces of an allied country conducting counterterrorism operations in Africa if the Secretary of Defense determines that the provision of such logistic support, supplies, and services, on a nonreimbursable basis, is—

''(1) in the national security interests of the United States; and

''(2) critical to the timely and effective participation of such national military forces in such operations.

''(b) NOTICE TO CONGRESS ON SUPPORT PROVIDED.—Not later than 15 days after providing logistic support, supplies, or services under subsection (a), 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 notice setting forth the following:

''(1) The determination of the Secretary specified in subsection (a).

''(2) The type of logistic support, supplies, or services provided.

''(3) The national military forces supported.

''(4) The purpose of the operations for which such support was provided, and the objectives of such support.

''(5) The estimated cost of such support.

''(6) The intended duration of such support.

''(c) LIMITATIONS.—

''(1) IN GENERAL.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of support that is otherwise prohibited by any other provision of law.

''(2) AMOUNT.—The aggregate amount of logistic support, supplies, and services provided under subsection (a) in any fiscal year may not exceed $100,000,000.

''(d) REPORTS.—Not later than six months after the date of the enactment of this Act [Nov. 25, 2015], and every six months thereafter through the expiration date in subsection (f) of the authority provided by this section, the Secretary of Defense shall submit to the congressional defense committees a report setting forth a description of the use of the authority provided by this section during the six-month period ending on the date of such report. Each report shall include the following:

''(1) An assessment of the extent to which the support provided under this section during the period covered by such report facilitated the national military forces of allied countries so supported in conducting counterterrorism operations in Africa.

''(2) A description of any efforts by countries that received such support to address, as practicable, the requirements of their forces for logistics support, supplies, or services for conducting counterterrorism operations in Africa, including under acquisition and cross-servicing agreements.

''(e) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES DEFINED.—In this section, the term 'logistic support, supplies, and services' has the meaning given that term in section 2350(1) of title 10, United States Code.

''(f) EXPIRATION.—The authority provided by this section may not be exercised after September 30, 2018.''

TRAINING FOR EASTERN EUROPEAN NATIONAL MILITARY FORCES IN THE COURSE OF MULTILATERAL EXERCISES

Pub. L. 114–92, div. A, title XII, §1251, Nov. 25, 2015, 129 Stat. 1070, provided that:

''(a) AUTHORITY.—The Secretary of Defense may provide the training specified in subsection (b), and pay the incremental expenses incurred by a country as the direct result of participation in such training, for the national military forces provided for under subsection (c).

''(b) TYPES OF TRAINING.—The training provided to the national military forces of a country under subsection (a) shall be limited to training that is—

''(1) provided in the course of the conduct of a multilateral exercise in which the United States Armed Forces are a participant;

''(2) comparable to or complimentary of the types of training the United States Armed Forces receive in the course of such multilateral exercise; and

''(3) for any purpose as follows:

''(A) To enhance and increase the interoperability of the military forces to be trained to increase their ability to participate in coalition efforts led by the United States or the North Atlantic Treaty Organization (NATO).

''(B) To increase the capacity of such military forces to respond to external threats.

''(C) To increase the capacity of such military forces to respond to hybrid warfare.

''(D) To increase the capacity of such military forces to respond to calls for collective action within the North Atlantic Treaty Organization.

''(c) ELIGIBLE COUNTRIES.—

''(1) IN GENERAL.—Training may be provided under subsection (a) to the national military forces of the countries determined by the Secretary of Defense, with the concurrence of the Secretary of State, to be appropriate recipients of such training from among the countries as follows:

''(A) Countries that are a signatory to the Partnership for Peace Framework Documents, but not a member of the North Atlantic Treaty Organization.

''(B) Countries that became a member of the North Atlantic Treaty Organization after January 1, 1999.

''(2) ELIGIBLE COUNTRIES.—Before providing training under subsection (a), the Secretary of Defense shall, in coordination with the Secretary of State, submit to the Committees on Armed Services of the Senate and the House of Representatives a list of the countries determined pursuant to paragraph (1) to be eligible for the provision of training under subsection (a).

''(d) FUNDING OF INCREMENTAL EXPENSES.—

''(1) ANNUAL FUNDING.—Of the amounts specified in paragraph (2) for a fiscal year, up to a total of $28,000,000 may be used to pay incremental expenses under subsection (a) in that fiscal year.

''(2) AMOUNTS.—The amounts specified in this paragraph are as follows:

''(A) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Army, and available for the Combatant Commands Direct Support Program for that fiscal year.

''(B) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Defense-wide, and available for the Wales Initiative Fund for that fiscal year.

''(3) AVAILABILITY OF FUNDS FOR ACTIVITIES ACROSS FISCAL YEARS.—Amounts available in a fiscal year pursuant to this subsection may be used for incremental expenses of training that begins in that fiscal year and ends in the next fiscal year.

''(e) BRIEFING TO CONGRESS ON USE OF AUTHORITY.—Not later that 90 days after the end of each fiscal year in which the authority in subsection (a) is used, the Secretary shall brief the Committees on Armed Services of the Senate and the House of Representatives on the use of the authority during such fiscal year, including each country with which training under the authority was conducted and the types of training provided.

''(f) CONSTRUCTION OF AUTHORITY.—The authority provided in subsection (a) is in addition to any other authority provided by law authorizing the provision of

training for the national military forces of a foreign country, including section 2282 of title 10, United States Code.

''(g) INCREMENTAL EXPENSES DEFINED.—In this section, the term 'incremental expenses' means the reasonable and proper cost of the goods and services that are consumed by a country as a direct result of that country's participation in training under the authority of this section, including rations, fuel, training ammunition, and transportation. Such term does not include pay, allowances, and other normal costs of a country's personnel.

''(h) TERMINATION OF AUTHORITY.—The authority under this section shall terminate on September 30, 2017. Any activity under this section initiated before that date may be completed, but only using funds available for fiscal years 2016 through 2017.''

SOUTH CHINA SEA INITIATIVE

Pub. L. 114–92, div. A, title XII, §1263, Nov. 25, 2015, 129 Stat. 1073, provided that:

''(a) ASSISTANCE AND TRAINING.—

''(1) IN GENERAL.—The Secretary of Defense is authorized, with the concurrence of the Secretary of State, for the purpose of increasing maritime security and maritime domain awareness of foreign countries along the South China Sea—

''(A) to provide assistance to national military or other security forces of such countries that have among their functional responsibilities maritime security missions; and

''(B) to provide training to ministry, agency, and headquarters level organizations for such forces.

''(2) DESIGNATION OF ASSISTANCE AND TRAINING.—The provision of assistance and training under this section may be referred to as the 'South China Sea Initiative'.

''(b) RECIPIENT COUNTRIES.—The foreign countries that may be provided assistance and training under subsection (a) are the following:

''(1) Indonesia.

''(2) Malaysia,[.]

''(3) The Philippines.

''(4) Thailand.

''(5) Vietnam.

''(c) TYPES OF ASSISTANCE AND TRAINING.—

''(1) AUTHORIZED ELEMENTS OF ASSISTANCE.—Assistance provided under subsection (a)(1)(A) may include the provision of equipment, supplies, training, and small-scale military construction.

''(2) REQUIRED ELEMENTS OF ASSISTANCE AND TRAINING.—Assistance and training provided under subsection (a) shall include elements that promote the following:

''(A) Observance of and respect for human rights and fundamental freedoms.

''(B) Respect for legitimate civilian authority within the country to which the assistance is provided.

''(d) PRIORITIES FOR ASSISTANCE AND TRAINING.—In developing programs for assistance or training to be provided under subsection (a), the Secretary of Defense shall accord a priority to assistance, training, or both that will enhance the maritime capabilities of the recipient foreign country, or a regional organization of which the recipient country is a member, to respond to emerging threats to maritime security.

''(e) INCREMENTAL EXPENSES OF PERSONNEL OF CERTAIN OTHER COUNTRIES FOR TRAINING.—

''(1) AUTHORITY FOR PAYMENT.—If the Secretary of Defense determines that the payment of incremental expenses in connection with training described in subsection (a)(1)(B) will facilitate the participation in such training of organization personnel of foreign countries specified in paragraph (2), the Secretary may use amounts available under subsection (f) for assistance and training under subsection (a) for the payment of such incremental expenses.

''(2) COVERED COUNTRIES.—The foreign countries specified in this paragraph are the following:

''(A) Brunei.

''(B) Singapore.

''(C) Taiwan.

''(f) AVAILABILITY OF FUNDS.—

''(1) IN GENERAL.—Of the amounts authorized to be appropriated for fiscal year 2016 for the Department of Defense, $50,000,000 may be available for the provision of assistance and training under subsection (a).

''(2) NOTICE ON SOURCE OF FUNDS.—If the Secretary of Defense uses funds available to the Department pursuant to paragraph (1) to provide assistance and training under subsection (a) during a fiscal half-year of fiscal year 2016, not later than 30 days after the end of such fiscal half-year, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a notice on the account or accounts providing such funds.

''(g) NOTICE TO CONGRESS ON ASSISTANCE AND TRAINING.—

''(1) IN GENERAL.—Not later than 15 days before exercising the authority under subsection (a) or (e) with respect to a recipient foreign country, the Secretary of Defense shall submit to the appropriate committees of Congress a notification containing the following:

''(A) The recipient foreign country.

''(B) A detailed justification of the program for the provision of the assistance or training concerned, and its relationship to United States security interests.

''(C) The budget for the program, including a timetable of planned expenditures of funds to implement the program, an implementation timeline for the program with milestones (including anticipated delivery schedules for any assistance under the program), the military department or component responsible for management of the program, and the anticipated completion date for the program.

''(D) A description of the arrangements, if any, to support host nation sustainment of any capability developed pursuant to the program, and the source of funds to support sustainment efforts and performance outcomes to be achieved under the program beyond its completion date, if applicable.

''(E) A description of the program objectives and an assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient force.

''(F) Such other matters as the Secretary considers appropriate.

''(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

''(h) EXPIRATION.—Assistance and training may not be provided under this section after September 30, 2020.''

TRAINING OF SECURITY FORCES AND ASSOCIATED SECURITY MINISTRIES OF FOREIGN COUNTRIES TO PROMOTE RESPECT FOR THE RULE OF LAW AND HUMAN RIGHTS

Pub. L. 113–291, div. A, title XII, §1206, Dec. 19, 2014, 128 Stat. 3538, provided that:

''(a) IN GENERAL.—The Secretary of Defense is authorized to conduct human rights training of security forces and associated security ministries of foreign countries.

''(b) CONSTRUCTION WITH LIMITATION ON USE OF FUNDS.—Human rights training authorized by this section may be conducted for security forces otherwise prohibited from receiving such training under any provision of law only if—

''(1) such training is conducted in the country of origin of the security forces;

''(2) such training is withheld from any individual of a unit when there is credible information that such individual has committed a gross violation of human rights or has commanded a unit that has committed a gross violation of human rights;

''(3) such training may be considered a corrective step, but is not sufficient for meeting the accountability requirement under the exception established in subsection (b) of section 2249e of title 10, United States Code (as added by section 1204(a) of this Act); and

''(4) reasonable efforts have been made to assist the foreign country to take all necessary corrective steps regarding a gross violation of human rights with respect to the unit, including using funds authorized by this Act [see Tables for classification] to provide technical assistance or other types of support for accountability.

''(c) ROLE OF THE SECRETARY OF STATE.—

''(1) CONCURRENCE.—Training activities may be conducted under this section only with the concurrence of the Secretary of State.

''(2) CONSULTATION.—The Secretary of Defense shall consult with the Secretary of State on the content of the training, the methods of instruction to be provided, and the intended beneficiaries of training conducted under this section.

''(d) AUTHORIZED ACTIVITIES.—Human rights training authorized by this section may include associated activities and expenses necessary for the conduct of training and assessments designed to further the purposes of this section, including technical assistance or other types of support for accountability.

''(e) ANNUAL REPORTS.—Not later than March 31 each year through 2020, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the use of the authority in this section during the preceding fiscal year. Each report shall include information on any human rights training (as defined in subsection (f)) or other assistance that was provided during the fiscal year to foreign security forces.

''(f) DEFINITIONS.—In this section

''(1) The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

''(2) The term 'human rights training' means training for the purpose of directly improving the conduct of foreign security forces to—

''(A) prevent gross violations of human rights and support accountability for such violations;

''(B) strengthen compliance with the laws of armed conflict and respect for civilian control over the military;

''(C) promote and assist in the establishment of a military justice system and other mechanisms for accountability; and

''(D) prevent the use of child soldiers.

''(g) SUNSET.—The authority in subsection (a) shall expire on September 30, 2020.''

CHAPTER 137—PROCUREMENT GENERALLY

Sec.
[2301. Repealed.]
2302. Definitions.
2302a. Simplified acquisition threshold.
2302b. Implementation of simplified acquisition procedures.
2302c. Implementation of electronic commerce capability.
2302d. Major system: definitional threshold amounts.
2303. Applicability of chapter.
[2303a. Repealed.]
2304. Contracts: competition requirements.
2304a. Task and delivery order contracts: general authority.
2304b. Task order contracts: advisory and assistance services.
2304c. Task and delivery order contracts: orders.
2304d. Task and delivery order contracts: definitions.
2304e. Contracts: prohibition on competition between Department of Defense and small businesses and certain other entities.
2305. Contracts: planning, solicitation, evaluation, and award procedures.
2305a. Design-build selection procedures.
2306. Kinds of contracts.
2306a. Cost or pricing data: truth in negotiations.
2306b. Multiyear contracts: acquisition of property.
2306c. Multiyear contracts: acquisition of services.
2307. Contract financing.
2308. Buy-to-budget acquisition: end items.
2309. Allocation of appropriations.
2310. Determinations and decisions.
2311. Assignment and delegation of procurement functions and responsibilities.
2312. Remission of liquidated damages.
2313. Examination of records of contractor.
2313a. Defense Contract Audit Agency: annual report.
2314. Laws inapplicable to agencies named in section 2303 of this title.
2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes.
2316. Disclosure of identity of contractor.
[2317. Repealed.]
2318. Advocates for competition.
2319. Encouragement of new competitors.
2320. Rights in technical data.
2321. Validation of proprietary data restrictions.
[2322. Repealed.]
2323. Contract goal for small disadvantaged businesses and certain institutions of higher education.
2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education.
2324. Allowable costs under defense contracts.
2325. Restructuring costs.
2326. Undefinitized contractual actions: restrictions.
2327. Contracts: consideration of national security objectives.
2328. Release of technical data under Freedom of Information Act: recovery of costs.
[2329. Repealed.]
2330. Procurement of contract services: management structure.
2330a. Procurement of services: tracking of purchases.
2331. Procurement of services: contracts for professional and technical services.
2332. Share-in-savings contracts.
2333. Joint policies on requirements definition, contingency program management, and contingency contracting.
2334. Independent cost estimation and cost analysis.
2335. Prohibition on collection of political information.
[2336. Repealed.]
2337. Life-cycle management and product support.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title III, § 351(c)(1), Dec. 19, 2014, 128 Stat. 3347, struck out item 2336 ''Intergovernmental support agreements with State and local governments''.

2013—Pub. L. 112–239, div. A, title III, § 331(b), title VIII, § 823(a)(2), Jan. 2, 2013, 126 Stat. 1697, 1832, added items 2336 and 2337.

2011—Pub. L. 112–81, div. A, title VIII, §805(b), 823(b), Dec. 31, 2011, 125 Stat. 1486, 1503, added items 2313a and 2335.

2009—Pub. L. 111–23, title I, §101(b)(2), May 22, 2009, 123 Stat. 1709, added item 2334.

2008—Pub. L. 110–181, div. A, title X, §1063(a)(10), Jan. 28, 2008, 122 Stat. 322, added item 2333 and struck out former item 2333 ''Joint policies on requirements definition, contingency contracting, and program management''.

2006—Pub. L. 109–364, div. A, title VIII, §854(a)(2), Oct. 17, 2006, 120 Stat. 2346, added item 2333.

Pub. L. 109–163, div. A, title VIII, §812(a)(2), Jan. 6, 2006, 119 Stat. 3378, substituted ''Procurement of contract services: management structure'' for ''Procurement of services: management structure'' in item 2330.

2002—Pub. L. 107–347, title II, §210(a)(2), Dec. 17, 2002, 116 Stat. 2934, added item 2332.

Pub. L. 107–314, div. A, title VIII, §801(a)(2), Dec. 2, 2002, 116 Stat. 2602, added item 2308.

2001—Pub. L. 107–107, div. A, title VIII, §801(g)(2), Dec. 28, 2001, 115 Stat. 1178, added items 2330, 2330a, and 2331 and struck out former item 2331 ''Contracts for professional and technical services''.

2000—Pub. L. 106–398, §1 [[div. A], title VIII, §802(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, added item 2306c.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(3), Oct. 17, 1998, 112 Stat. 2135, substituted ''electronic commerce capability'' for ''FACNET capability'' in item 2302c.

1997—Pub. L. 105–85, div. A, title VIII, §804(a)(2), title X, §1073(a)(48)(B), Nov. 18, 1997, 111 Stat. 1833, 1903, substituted ''contracts: acquisition of property'' for ''contracts'' in item 2306b and added item 2325.

1996—Pub. L. 104–201, div. A, title VIII, §805(b), Sept. 23, 1996, 110 Stat. 2606, added item 2302d.

Pub. L. 104–106, div. D, title XLI, §4105(a)(2), title XLIII, §4321(b)(6)(B), Feb. 10, 1996, 110 Stat. 647, 672, redesignated item 2304a, relating to contracts: prohibition on competition between Department of Defense and small businesses and certain other entities, as 2304e and added item 2305a.

1994—Pub. L. 103–355, title I, §§1004(a)(2), 1022(a)(2), 1501(b), 1503(a)(2), (b)(2), 1506(b), title II, §§2001(i), 2201(a)(2), title IV, §§4002(b), 4203(a)(2), title VIII, §8104(b)(2), title IX, §9002(b), Oct. 13, 1994, 108 Stat. 3253, 3260, 3296–3298, 3303, 3318, 3338, 3346, 3391, 3402, struck out items 2301 ''Congressional defense procurement policy'', 2308 ''Assignment and delegation of procurement functions and responsibilities'', 2325 ''Preference for nondevelopmental items'', and 2329 ''Production special tooling and production special test equipment: contract terms and conditions'', added items 2302a to 2302c, 2304a relating to task and delivery order contracts: general authority, 2304b to 2304d, and 2306b, and substituted ''Contract financing'' for ''Advance payments'' in item 2307, ''Assignment and delegation of procurement functions and responsibilities'' for ''Delegation'' in item 2311, and ''Examination of records of contractor'' for ''Examination of books and records of contractor'' in item 2313.

1993—Pub. L. 103–160, div. A, title VIII, §§828(a)(1), 848(a)(2), Nov. 30, 1993, 107 Stat. 1713, 1725, added item 2304a and struck out item 2317 ''Encouragement of competition and cost savings''.

1992—Pub. L. 102–484, div. A, title VIII, §801(a)(2), (g)(2), title X, §1052(25)(B), div. D, title XLII, §4271(b)(2), Oct. 23, 1992, 106 Stat. 2442, 2445, 2500, 2695, struck out items 2322 ''Limitation on small business set-asides'' and 2330 ''Integrated financing policy'' and added items 2323 and 2323a.

1990—Pub. L. 101–510, div. A, title VIII, §§804(b), 834(a)(2), Nov. 5, 1990, 104 Stat. 1591, 1614, struck out item 2323 ''Commercial pricing for spare or repair parts'' and added item 2331.

1988—Pub. L. 100–456, div. A, title VIII, §801(a)(2), Sept. 29, 1988, 102 Stat. 2007, added item 2330.

1987—Pub. L. 100–180, div. A, title VIII, §810(a)(2), Dec. 4, 1987, 101 Stat. 1132, added item 2329.

Pub. L. 100–26, §7(a)(7)(B)(ii), (b)(9)(B), Apr. 21, 1987, 101 Stat. 278, 280, transferred item 2305a ''Major programs: competitive alternative sources'', to chapter 144 as item 2438 and substituted ''Release of technical data under Freedom of Information Act: recovery of costs'' for ''Release of technical data'' in item 2328.

Pub. L. 100–26, §5(4), (6), made technical amendments to directory language of sections 926(a)(2) and 954(a)(2), respectively, of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title XIII, §1343(a)(12), Nov. 14, 1986, 100 Stat. 3993, substituted ''competitors'' for ''competition'' in item 2319.

Pub. L. 99–500, §101(c) [title X, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–138, 1783–141, 1783–155, 1783–165, 1783–169, 1783–173, and Pub. L. 99–591, §101(c) [title X, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–138, 3341–141, 3341–155, 3341–165, 3341–169, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2), Nov. 14, 1986, 100 Stat. 3917, 3921, 3935, 3945, 3949, 3953, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, §5(4), (6), Apr. 21, 1987, 101 Stat. 274, amended chapter analysis identically striking out '': cost or pricing data: truth in negotiations'' after ''contracts'' in item 2306, substituting ''spare or repair parts'' for ''supplies'' in item 2323, and adding items 2306a and 2325 to 2328.

1985—Pub. L. 99–145, title IX, §§911(a)(2), 912(a)(2), Nov. 8, 1985, 99 Stat. 685, 686, added items 2305a and 2324.

1984—Pub. L. 98–577, title III, §302(c)(2), Oct. 30, 1984, 98 Stat. 3077, struck out item 2303a ''Publication of proposed regulations''.

Pub. L. 98–525, title XII, §1217, Oct. 19, 1984, 98 Stat. 2599, added items 2303a and 2317 to 2323.

Pub. L. 98–369, div. B, title VII, §2727(a), July 18, 1984, 98 Stat. 1194, substituted ''Congressional defense procurement policy'' for ''Declaration of policy'' in item 2301, ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in item 2304, ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' in item 2305, and ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in item 2306.

1982—Pub. L. 97–295, §1(26)(B), Oct. 12, 1982, 96 Stat. 1291, added item 2316.

1981—Pub. L. 97–86, title IX, §908(a)(2), Dec. 1, 1981, 95 Stat. 1118, added item 2315.

1980—Pub. L. 96–513, title V, §511(75), Dec. 12, 1980, 94 Stat. 2926, inserted ''formal'' before ''advertising'' in item 2304.

[§ 2301. Repealed. Pub. L. 103–355, title I, §1501(a), Oct. 13, 1994, 108 Stat. 3296]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 127; Dec. 1, 1981, Pub. L. 97–86, title IX, §909(a), 95 Stat. 1118; July 18, 1984, Pub. L. 98–369, div. B, title VII, §2721, 98 Stat. 1185; Oct. 18, 1986, Pub. L. 99–500, §101(c) [title X, §925(a)], 100 Stat. 1783–82, 1783–153, and Oct. 30, 1986, Pub. L. 99–591, §101(c) [title X, §925(a)], 100 Stat. 3341–82, 3341–153; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, §925(a), 100 Stat. 3933, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, §3(5), 101 Stat. 273; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, §808(a), 106 Stat. 2449, related to Congressional defense procurement policy.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2302. Definitions

In this chapter:

(1) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(2) The term ''competitive procedures'' means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

(A) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(B) the competitive selection for award of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(i) participation in the program has been open to all responsible sources; and

(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;

(D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(E) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

(3) The following terms have the meanings provided such terms in chapter 1 of title 41:

(A) The term ''procurement''.
(B) The term ''procurement system''.
(C) The term ''standards''.
(D) The term ''full and open competition''.
(E) The term ''responsible source''.
(F) The term ''item''.
(G) The term ''item of supply''.
(H) The term ''supplies''.
(I) The term ''commercial item''.
(J) The term ''nondevelopmental item''.
(K) The term ''commercial component''.
(L) The term ''component''.

(4) The term ''technical data'' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(5) The term ''major system'' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a ''major system'' by the head of the agency responsible for the system.

(6) The term ''Federal Acquisition Regulation'' means the Federal Acquisition Regulation issued pursuant to section 1303(a)(1) of title 41.

(7) The term ''simplified acquisition threshold'' has the meaning provided that term in section 134 of title 41, except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in such section.

(8) The term ''humanitarian or peacekeeping operation'' means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(9) The term ''nontraditional defense contractor'', with respect to a procurement or with respect to a transaction authorized under section 2371(a) or 2371b of this title, means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 127; Pub. L. 85–568, title III, § 301(b), July 29, 1958, 72 Stat. 432; Pub. L. 85–861, § 1(43A), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 96–513, title V, § 511(74), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–369, div. B, title VII, § 2722(a), July 18, 1984, 98 Stat. 1186; Pub. L. 98–525, title XII, § 1211, Oct. 19, 1984, 98 Stat. 2589; Pub. L. 98–577, title V, § 504(b)(3), Oct. 30, 1984, 98 Stat. 3087; Pub. L. 99–661, div. A, title XIII, § 1343(a)(13), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title VIII, § 853(b)(1), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 102–25, title VII, § 701(d)(1), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 805, Dec. 5, 1991, 105 Stat. 1417; Pub. L. 103–355, title I, § 1502, Oct. 13, 1994, 108 Stat. 3296; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(3), Feb. 10, 1996, 110 Stat. 672; Pub. L. 104–201, div. A, title VIII, §§ 805(a)(1), 807(a), Sept. 23, 1996, 110 Stat. 2605, 2606; Pub. L. 105–85, div. A, title VIII, § 803(b), Nov. 18, 1997, 111 Stat. 1832; Pub. L. 107–217, § 3(b)(2), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–350, § 5(b)(8), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 111–383, div. A, title VIII, § 866(g)(1), Jan. 7, 2011, 124 Stat. 4298; Pub. L. 113–291, div. A, title X, § 1071(a)(2), Dec. 19, 2014, 128 Stat. 3504; Pub. L.

114–92, div. A, title VIII, §815(b), Nov. 25, 2015, 129 Stat. 896.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2302	41:158 (less clause (b)).	Feb. 19, 1948, ch. 65, §9 (less clause (b)), 62 Stat. 24.

In clause (1), the words ''(if any)'' are omitted as surplusage. The words ''Secretary of the Treasury'' are substituted for the words ''Commandant, United States Coast Guard, Treasury Department'', since the functions of the Coast Guard and its officers, while operating under the Department of the Treasury, were vested in the Secretary of the Treasury by 1950 Reorganization Plan No. 26, effective July 31, 1950, 64 Stat. 1280. Under that plan the Secretary of the Treasury was authorized to delegate any of those functions to the agencies and employees of the Department of the Treasury.

Clauses (2) and (3) are inserted for clarity, and are based on the usage of those terms throughout the revised chapter.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2302(3)	[No source].	[No source].

The amendments reflect section 1(44) of the bill [amending section 2305 of Title 10].

AMENDMENTS

2015—Par. (9). Pub. L. 114–92 amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''The term 'nontraditional defense contractor', with respect to a procurement or with respect to a transaction authorized under section 2371(a) of this title, means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any of the following for the Department of Defense:

''(A) Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to chapter 15 of title 41 and the regulations implementing such chapter.

''(B) Any other contract in excess of $500,000 under which the contractor is required to submit certified cost or pricing data under section 2306a of this title.''

2014—Par. (7). Pub. L. 113–291, §1071(a)(2)(A), substituted ''such section'' for ''section 4 of such Act''.

Par. (9)(A). Pub. L. 113–291, §1071(a)(2)(B), substituted ''chapter 15 of title 41'' for ''section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422)'' and ''such chapter'' for ''such section''.

2011—Par. (3). Pub. L. 111–350, §5(b)(8)(A), substituted ''chapter 1 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' in introductory provisions.

Par. (6). Pub. L. 111–350, §5(b)(8)(B), substituted ''section 1303(a)(1) of title 41'' for ''section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1))''.

Par. (7). Pub. L. 111–350, §5(b)(8)(C), substituted ''section 134 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

Par. (9). Pub. L. 111–383 added par. (9).

2002—Par. (1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Par. (2)(A). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)''.

1997—Pars. (7), (8). Pub. L. 105–85 struck out ''(A)'' before ''The term 'simplified'' in par. (7), redesignated par. (7)(B) as par. (8), and substituted ''The'' for ''In subparagraph (A), the'' in that par.

1996—Par. (3)(K). Pub. L. 104–106 inserted period at end.

Par. (5). Pub. L. 104–201, §805(a)(1), substituted ''A system shall be considered a major system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a 'major system' by the head of the agency responsible for the system.'' for ''A system shall be considered a major system if (A) the Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (B) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a 'major system' established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled 'Major Systems Acquisitions', whichever is greater; or (C) the system is designated a 'major system' by the head of the agency responsible for the system.''

Par. (7). Pub. L. 104–201, §807(a), designated existing provisions as subpar. (A), inserted ''or a humanitarian or peacekeeping operation'' after ''contingency operation'', and added subpar. (B).

1994—Par. (3). Pub. L. 103–355, §1502(1), added par. (3) and struck out former par. (3) which read as follows: ''The terms 'full and open competition' and 'responsible source' have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).''

Par. (7). Pub. L. 103–355, §1502(2), added par. (7) and struck out former par. (7) which read as follows: ''The term 'small purchase threshold' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000.''

1991—Par. (7). Pub. L. 102–190 inserted before period '', except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000''.

Pub. L. 102–25 added par. (7).

1989—Par. (6). Pub. L. 101–189 added par. (6).

1987—Pub. L. 100–26, §7(k)(2)(A), inserted ''The term'' after each par. designation except par. (3) and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''(40 U.S.C.'' for ''(41 U.S.C.''.

1984—Pub. L. 98–369 amended section generally, substituting in cl. (1) ''the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force'' for ''the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force'', in cl. (2) definition of ''competitive procedures'' for a definition of ''negotiate'', and in cl. (3) definition of the terms ''full and open competition'' and ''responsible source'' for a definition of ''formal advertising''.

Cl. (2)(D), (E). Pub. L. 98–577 added subpars. (D) and (E).

Cls. (4), (5). Pub. L. 98–525 added cls. (4) and (5).

1980—Cl. (1). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1958—Cl. (1). Pub. L. 85–568 substituted ''Administrator of the National Aeronautics and Space Administration'' for ''Executive Secretary of the National Advisory Committee for Aeronautics'', in cl. (1).

Cl. (3). Pub. L. 85–861 substituted ''section 2305 of this title'' for ''section 2305(a) and (b) of this title''.

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.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIV, § 4401, Feb. 10, 1996, 110 Stat. 678, provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this division [div. D (§§ 4001–4402) of Pub. L. 104–106, see Tables for classification], this division and the amendments made by this division shall take effect on the date of the enactment of this Act [Feb. 10, 1996].

''(b) APPLICABILITY OF AMENDMENTS.—

''(1) SOLICITATIONS, UNSOLICITED PROPOSALS, AND RELATED CONTRACTS.—An amendment made by this division shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 4402 [110 Stat. 678] to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

''(2) OTHER MATTERS.—An amendment made by this division shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any matter related to—

''(A) a contract that is in effect on the date described in paragraph (3);

''(B) an offer under consideration on the date described in paragraph (3); or

''(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

''(3) DEMARCATION DATE.—The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be January 1, 1997, or any earlier date that is not within 30 days after the date on which such final regulations are published.''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–355, title X, § 10001, Oct. 13, 1994, 108 Stat. 3404, provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act [see Tables for classification] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 13, 1994].

''(b) APPLICABILITY OF AMENDMENTS.—(1) An amendment made by this Act shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 10002 [108 Stat. 3404, formerly set out as a Regulations note under section 251 of former Title 41, Public Contracts] to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

''(2) An amendment made by this Act shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 10002 to implement such amendment, with respect to any matter related to—

''(A) a contract that is in effect on the date described in paragraph (3);

''(B) an offer under consideration on the date described in paragraph (3); or

''(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

''(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations [Oct. 1, 1995, see 60 F.R. 48231, Sept. 18, 1995]. The date so specified shall be October 1, 1995, or any earlier date that is not within 30 days after the date on which such final regulations are published.

''(c) IMMEDIATE APPLICABILITY OF CERTAIN AMENDMENTS.—Notwithstanding subsection (b), the amendments made by the following provisions of this Act apply on and after the date of the enactment of this Act [Oct. 13, 1994]: sections 1001, 1021, 1031, 1051, 1071, 1092, 1201, 1506(a), 1507, 1554, 2002(a), 2191, 3062(a), 3063, 3064, 3065(a)(1), 3065(b), 3066, 3067, 6001(a), 7101, 7103, 7205, and 7206, the provisions of subtitles A, B, and C of title III [§§ 3001–3025], and the provisions of title V [see Tables for classification].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title VII, § 2751, July 18, 1984, 98 Stat. 1203, provided that:

''(a) Except as provided in subsection (b), the amendments made by this title [see Tables for classification] shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985.

''(b) The amendments made by section 2713 [amending section 759 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 759 of former Title 40] and subtitle D [enacting sections 3551 to 3556 of Title 31, Money and Finance] shall apply with respect to any protest filed after January 14, 1985.''

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.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–568, title III, § 301(e), July 29, 1958, 72 Stat. 433, provided that: ''This section [amending this section, section 2303 of this title, section 22–1 of former Title 5, and sections 511 to 513 and 515 of Title 50, War and National Defense, and enacting provisions set out as a note under section 2472 of Title 42, The Public Health and Welfare] shall take effect ninety days after the date of the enactment of this Act [July 29, 1958], or on any earlier date on which the Administrator [of the National Aeronautics and Space Administration] shall determine, and announce by proclamation published in the Federal Register, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it by this Act.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 900], Oct. 18, 1986, 100 Stat. 1783–82, 1783–130, Pub. L. 99–591, § 101(c) [title X, § 900], Oct. 30, 1986, 100 Stat. 3341–82, 3341–130, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 900, Nov. 14, 1986, 100 Stat. 3910, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''This title [enacting sections 133a, 2306a, 2325–2328, 2365–2367, 2397b, 2397c, 2408, 2409, 2416, and 2435–2437 of this title, amending sections 133, 134, 135, 138, 171, 1622, 2301, 2304, 2305, 2306, 2320, 2321, 2323, 2384, 2406, 2411, 2413, 2432, and 2433 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, sections 632, 637, and 644 of Title 15, Commerce and Trade, and section 416 of Title 41, Public Contracts, renumbering section 2416 as 2417 of this title, enacting provisions set out as notes under sections 113, 1621, 2304, 2305, 2306a, 2320, 2323, 2325–2328, 2365–2367, 2384, 2397b, 2406, 2408, 2409, 2416, 2432, 2435–2437 of this title and section 632 of Title 15, amending provisions set out as a note under this section, and repealing provisions set out as notes under section 2304 and 2397a of this title] may be cited as the 'Defense Acquisition Improvement Act of 1986'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, § 901, Nov. 8, 1985, 99 Stat. 682, provided that: ''This title [enacting sections 1621 to 1624, 2305a, 2324, 2397a, and 2406 of this title, amending sections 2304, 2313, 2320, 2323, 2397, and 2411 to 2415 of this title, section 759 of former Title 40, Public Buildings, Property, and Works, sections 253 and 418a of Title 41, Public Contracts, and former section 2168 of the former Appendix to Title 50, War and National Defense, enacting provisions set out as notes under this section and sections 139, 139c, 1622 to 1624, 2304, 2305a, 2307, 2324, 2397a, and 2411 of this title, section 287 of Title 18, Crimes and Criminal Procedure, section 3729 of Title 31, Money and Finance, and former section 2168 of the

former Appendix to Title 50, and amending provisions set out as a note under section 418a of Title 41] may be cited as the 'Defense Procurement Improvement Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–525, title XII, §1201, Oct. 19, 1984, 98 Stat. 2588, provided that: ''This title [enacting sections 2303a, 2317 to 2323, 2384a, 2402 to 2405, and 2411 to 2416 of this title, amending sections 139a, 139b, 2302, 2305, 2311, 2384, and 2401 of this title, enacting provisions set out as notes under this section and sections 139, 139a, 2303a, 2305, 2318, 2319, 2322, 2323, 2384, 2384a, 2392, and 2402 of this title, amending provisions set out as notes under sections 2392, 2401, and 2452 of this title, and repealing provisions set out as notes under section 2304 of this title] may be cited as the 'Defense Procurement Reform Act of 1984'.''

MIDDLE TIER OF ACQUISITION FOR RAPID PROTOTYPING AND RAPID FIELDING

Pub. L. 114–92, div. A, title VIII, §804, Nov. 25, 2015, 129 Stat. 882, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition, Technology, and Logistics, in consultation with the Comptroller of the Department of Defense and the Vice Chairman of the Joint Chiefs of Staff, shall establish guidance for a 'middle tier' of acquisition programs that are intended to be completed in a period of two to five years.

''(b) ACQUISITION PATHWAYS.—The guidance required by subsection (a) shall cover the following two acquisition pathways:

''(1) RAPID PROTOTYPING.—The rapid prototyping pathway shall provide for the use of innovative technologies to rapidly develop fieldable prototypes to demonstrate new capabilities and meet emerging military needs. The objective of an acquisition program under this pathway shall be to field a prototype that can be demonstrated in an operational environment and provide for a residual operational capability within five years of the development of an approved requirement.

''(2) RAPID FIELDING.—The rapid fielding pathway shall provide for the use of proven technologies to field production quantities of new or upgraded systems with minimal development required. The objective of an acquisition program under this pathway shall be to begin production within six months and complete fielding within five years of the development of an approved requirement.

''(c) EXPEDITED PROCESS.—

''(1) IN GENERAL.—The guidance required by subsection (a) shall provide for a streamlined and coordinated requirements, budget, and acquisition process that results in the development of an approved requirement for each program in a period of not more than six months from the time that the process is initiated. Programs that are subject to the guidance shall not be subject to the Joint Capabilities Integration and Development System Manual and Department of Defense Directive 5000.01, except to the extent specifically provided in the guidance.

''(2) RAPID PROTOTYPING.—With respect to the rapid prototyping pathway, the guidance shall include—

''(A) a merit-based process for the consideration of innovative technologies and new capabilities to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

''(B) a process for developing and implementing acquisition and funding strategies for the program;

''(C) a process for cost-sharing with the military departments on rapid prototype projects, to ensure an appropriate commitment to the success of such projects;

''(D) a process for demonstrating and evaluating the performance of fieldable prototypes developed pursuant to the program in an operational environment; and

''(E) a process for transitioning successful prototypes to new or existing acquisition programs for production and fielding under the rapid fielding pathway or the traditional acquisition system.

''(3) RAPID FIELDING.—With respect to the rapid fielding pathway, the guidance shall include—

''(A) a merit-based process for the consideration of existing products and proven technologies to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

''(B) a process for demonstrating performance and evaluating for current operational purposes the proposed products and technologies;

''(C) a process for developing and implementing acquisition and funding strategies for the program; and

''(D) a process for considering lifecycle costs and addressing issues of logistics support and system interoperability.

''(4) STREAMLINED PROCEDURES.—The guidance for the programs may provide for any of the following streamlined procedures:

''(A) The service acquisition executive of the military department concerned shall appoint a program manager for such program from among candidates from among civilian employees or members of the Armed Forces who have significant and relevant experience managing large and complex programs.

''(B) The program manager for each program shall report with respect to such program directly, without intervening review or approval, to the service acquisition executive of the military department concerned.

''(C) The service acquisition executive of the military department concerned shall evaluate the job performance of such manager on an annual basis. In conducting an evaluation under this paragraph, a service acquisition executive shall consider the extent to which the manager has achieved the objectives of the program for which the manager is responsible, including quality, timeliness, and cost objectives.

''(D) The program manager of a defense streamlined program shall be authorized staff positions for a technical staff, including experts in business management, contracting, auditing, engineering, testing, and logistics, to enable the manager to manage the program without the technical assistance of another organizational unit of an agency to the maximum extent practicable.

''(E) The program manager of a defense streamlined program shall be authorized, in coordination with the users of the equipment and capability to be acquired and the test community, to make trade-offs among life-cycle costs, requirements, and schedules to meet the goals of the program.

''(F) The service acquisition executive, acting in coordination with the defense acquisition executive, shall serve as the milestone decision authority for the program.

''(G) The program manager of a defense streamlined program shall be provided a process to expeditiously seek a waiver from Congress from any statutory or regulatory requirement that the program manager determines adds little or no value to the management of the program.

''(d) RAPID PROTOTYPING FUND.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a fund to be known as the 'Department of Defense Rapid Prototyping Fund' to provide funds, in addition to other funds that may be available for acquisition programs under the rapid prototyping pathway established pursuant to this section. The Fund shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Fund shall consist of amounts appropriated to

the Fund and amounts credited to the Fund pursuant to section 828 of this Act [set out as a note under section 2430 of this title].

''(2) TRANSFER AUTHORITY.—Amounts available in the Fund may be transferred to a military department for the purpose of carrying out an acquisition program under the rapid prototyping pathway established pursuant to this section. Any amount so transferred shall be credited to the account to which it is transferred. The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

''(3) CONGRESSIONAL NOTICE.—The senior official designated to manage the Fund shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of all transfers under paragraph (2). Each notification shall specify the amount transferred, the purpose of the transfer, and the total projected cost and estimated cost to complete the acquisition program to which the funds were transferred.''

USE OF ALTERNATIVE ACQUISITION PATHS TO ACQUIRE CRITICAL NATIONAL SECURITY CAPABILITIES

Pub. L. 114–92, div. A, title VIII, § 805, Nov. 25, 2015, 129 Stat. 885, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall establish procedures for alternative acquisition pathways to acquire capital assets and services that meet critical national security needs. The procedures shall—

''(1) be separate from existing acquisition procedures;

''(2) be supported by streamlined contracting, budgeting, and requirements processes;

''(3) establish alternative acquisition paths based on the capabilities being bought and the time needed to deploy these capabilities; and

''(4) maximize the use of flexible authorities in existing law and regulation.''

SECRETARY OF DEFENSE WAIVER OF ACQUISITION LAWS TO ACQUIRE VITAL NATIONAL SECURITY CAPABILITIES

Pub. L. 114–92, div. A, title VIII, § 806, Nov. 25, 2015, 129 Stat. 885, provided that:

''(a) WAIVER AUTHORITY.—The Secretary of Defense is authorized to waive any provision of acquisition law or regulation described in subsection (c) for the purpose of acquiring a capability that would not otherwise be available to the Armed Forces of the United States, upon a determination that—

''(1) the acquisition of the capability is in the vital national security interest of the United States;

''(2) the application of the law or regulation to be waived would impede the acquisition of the capability in a manner that would undermine the national security of the United States; and

''(3) the underlying purpose of the law or regulation to be waived can be addressed in a different manner or at a different time.

''(b) DESIGNATION OF RESPONSIBLE OFFICIAL.—Whenever the Secretary of Defense makes a determination under subsection (a)(1) that the acquisition of a capability is in the vital national security interest of the United States, the Secretary shall designate a senior official of the Department of Defense who shall be personally responsible and accountable for the rapid and effective acquisition and deployment of the needed capability. The Secretary shall provide the designated official such authority as the Secretary determines necessary to achieve this objective, and may use the waiver authority in subsection (a) for this purpose.

''(c) ACQUISITION LAWS AND REGULATIONS.—

''(1) IN GENERAL.—Upon a determination described in subsection (a), the Secretary of Defense is authorized to waive any provision of law or regulation addressing—

''(A) the establishment of a requirement or specification for the capability to be acquired;

''(B) research, development, test, and evaluation of the capability to be acquired;

''(C) production, fielding, and sustainment of the capability to be acquired; or

''(D) solicitation, selection of sources, and award of contracts for the capability to be acquired.

''(2) LIMITATIONS.—Nothing in this subsection authorizes the waiver of—

''(A) the requirements of this section;

''(B) any provision of law imposing civil or criminal penalties; or

''(C) any provision of law governing the proper expenditure of appropriated funds.

''(d) REPORT TO CONGRESS.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] at least 30 days before exercising the waiver authority under subsection (a). Each such notice shall include—

''(1) an explanation of the basis for determining that the acquisition of the capability is in the vital national security interest of the United States;

''(2) an identification of each provision of law or regulation to be waived; and

''(3) for each provision identified pursuant to paragraph (2)—

''(A) an explanation of why the application of the provision would impede the acquisition in a manner that would undermine the national security of the United States; and

''(B) a description of the time or manner in which the underlying purpose of the law or regulation to be waived will be addressed.

''(e) NONDELEGATION.—The authority of the Secretary to waive provisions of laws and regulations under subsection (a) is nondelegable.''

CONSIDERATION OF POTENTIAL PROGRAM COST INCREASES AND SCHEDULE DELAYS RESULTING FROM OVERSIGHT OF DEFENSE ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title VIII, § 881, Nov. 25, 2015, 129 Stat. 942, provided that:

''(a) AVOIDANCE OF UNNECESSARY COST INCREASES AND SCHEDULE DELAYS.—The Director of Operational Test and Evaluation, the Deputy Chief Management Officer, the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, the Inspector General of the Department of Defense, and the heads of other defense audit, testing, acquisition, and management agencies shall ensure that policies, procedures, and activities implemented by their offices and agencies in connection with defense acquisition program oversight do not result in unnecessary increases in program costs or cost estimates or delays in schedule or schedule estimates.

''(b) CONSIDERATION OF PRIVATE SECTOR BEST PRACTICES.—In considering potential cost increases and schedule delays as a result of oversight efforts pursuant to subsection (a), the officials described in such subsection shall consider private sector best practices with respect to oversight implementation.''

PROCUREMENT OF PERSONAL PROTECTIVE EQUIPMENT

Pub. L. 114–92, div. A, title VIII, § 884, Nov. 25, 2015, 129 Stat. 948, provided that: ''The Secretary of Defense shall ensure that the Secretaries of the Army, Navy, and Air Force, in procuring an item of personal protective equipment or a critical safety item, use source selection criteria that is predominately based on technical qualifications of the item and not predominately based on price to the maximum extent practicable if the level of quality or failure of the item could result in death or severe bodily harm to the user, as determined by the Secretaries.''

PROHIBITION ON CONTRACTING WITH THE ENEMY

Pub. L. 113–291, div. A, title VIII, subtitle E, Dec. 19, 2014, 128 Stat. 3450, provided that:

''SEC. 841. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY.

''(a) IDENTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense shall, in conjunction with the Di-

rector of National Intelligence and in consultation with the Secretary of State, establish in each covered combatant command a program to identify persons and entities within the area of responsibility of such command that—

''(1) provide funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency directly or indirectly to a covered person or entity; or

''(2) fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a covered person or entity.

''(b) NOTICE OF IDENTIFIED PERSONS AND ENTITIES.—

''(1) NOTICE.—Upon the identification of a person or entity as being described by subsection (a), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) shall be notified, in writing, of such identification of the person or entity.

''(2) RESPONSIVE ACTIONS.—Upon receipt of a notice under paragraph (1), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) may notify the heads of contracting activities, or other appropriate officials of the agency or command, in writing of such identification.

''(3) MAKING OF NOTIFICATIONS.—Any written notification pursuant to this subsection shall be made in accordance with procedures established to implement the revisions of regulations required by this section.

''(c) AUTHORITY TO TERMINATE OR VOID CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND TO RESTRICT FUTURE AWARD.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to provide that, upon notice from the head of an executive agency (or the designee of such head) or the commander of a covered combatant command (or the specified deputies of the commander) pursuant to subsection (b), the head of contracting activity of an executive agency, or other appropriate official, may do the following:

''(1) Restrict the award of contracts, grants, or cooperative agreements of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement would provide funds received under such contract, grant, or cooperative agreement directly or indirectly to a covered person or entity.

''(2) Terminate for default any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contractor, or the recipient of the grant or cooperative agreement, has failed to exercise due diligence to ensure that none of the funds received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity.

''(3) Void in whole or in part any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement provides funds directly or indirectly to a covered person or entity.

''(d) CLAUSE.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to require that—

''(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date that is 270 days after the date of the enactment of this Act; and

''(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of an executive agency that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

''(2) CLAUSE DESCRIBED.—The clause described in this paragraph is a clause that—

''(A) requires the contractor, or the recipient of the grant or cooperative agreement, to exercise due diligence to ensure that none of the funds, including goods and services, received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity; and

''(B) notifies the contractor, or the recipient of the grant or cooperative agreement, of the authority of the head of contracting activity, or other appropriate official, to terminate or void the contract, grant, or cooperative agreement, in whole or in part, as provided in subsection (c).

''(3) TREATMENT AS VOID.—For purposes of this section:

''(A) A contract, grant, or cooperative agreement that is void is unenforceable as contrary to public policy.

''(B) A contract, grant, or cooperative agreement that is void in part is unenforceable as contrary to public policy with regard to a segregable task or effort under the contract, grant, or cooperative agreement.

''(4) PUBLIC COMMENT.—The President shall ensure that the process for revising regulations required by paragraph (1) shall include an opportunity for public comment, including an opportunity for comment on standards of due diligence required by this section.

''(e) REQUIREMENTS FOLLOWING CONTRACT ACTIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised as follows:

''(1) To require that any head of contracting activity, or other appropriate official, taking an action under subsection (c) to terminate, void, or restrict a contract, grant, or cooperative agreement notify in writing the contractor or recipient of the grant or cooperative agreement, as applicable, of the action.

''(2) To permit the contractor or recipient of a grant or cooperative agreement subject to an action taken under subsection (c) to terminate or void the contract, grant, or cooperative agreement, as the case may be, an opportunity to challenge the action by requesting an administrative review of the action under the procedures of the executive agency concerned not later than 30 days after receipt of notice of the action.

''(f) ANNUAL REVIEW; PROTECTION OF CLASSIFIED INFORMATION.—

''(1) ANNUAL REVIEW.—The Secretary of Defense, in conjunction with the Director of National Intelligence and in consultation with the Secretary of State shall, on an annual basis, review the lists of persons and entities previously covered by a notice under subsection (b) as having been identified as described by subsection (a) in order to determine whether or not such persons and entities continue to warrant identification as described by subsection (a). If a determination is made pursuant to such a review that a person or entity no longer warrants identification as described by subsection (a), the Secretary of Defense shall notify the head of the executive agency concerned (or the designee of such head) and the com-

mander of the covered combatant command concerned (or the specified deputies of the commander) in writing of such determination.

''(2) PROTECTION OF CLASSIFIED INFORMATION.—Classified information relied upon to make an identification in accordance with subsection (a) may not be disclosed to a contractor or a recipient of a grant or cooperative agreement with respect to which an action is taken pursuant to the authority provided in subsection (c), or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

''(g) DELEGATION OF CERTAIN RESPONSIBILITIES.—

''(1) COMBATANT COMMAND RESPONSIBILITIES.—The commander of a covered combatant command may delegate the responsibilities in this section to any deputies of the commander specified by the commander for purposes of this section. Any delegation of responsibilities under this paragraph shall be made in writing.

''(2) NONDELEGATION OF RESPONSIBILITY FOR CERTAIN ACTIONS.—The authority provided by subsection (c) to terminate, void, or restrict contracts, grants, and cooperative agreements, in whole or in part, may not be delegated below the level of head of contracting activity, or equivalent official for purposes of grants or cooperative agreements.

''(h) ADDITIONAL RESPONSIBILITIES OF EXECUTIVE AGENCIES.—

''(1) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—The Secretary of Defense shall, in consultation with the Director of the Office of Management and Budget, carry out a program through which agency components may provide information to heads of executive agencies (or the designees of such heads) and the commanders of the covered combatant commands (or the specified deputies of the commanders) relating to persons or entities who may be providing funds, including goods and services, received under contracts, grants, or cooperative agreements of the executive agencies directly or indirectly to a covered person or entity. The program shall be designed to facilitate and encourage the sharing of risk and threat information between executive agencies and the covered combatant commands.

''(2) INCLUSION OF INFORMATION ON CONTRACT ACTIONS IN FAPIIS AND OTHER SYSTEMS.—Upon the termination, voiding, or restriction of a contract, grant, or cooperative agreement of an executive agency under subsection (c), the head of contracting activity of the executive agency shall provide for the inclusion in the Federal Awardee Performance and Integrity Information System (FAPIIS), or other formal system of records on contractors or entities, of appropriate information on the termination, voiding, or restriction, as the case may be, of the contract, grant, or cooperative agreement.

''(3) REPORTS.—The head of contracting activity that receives a notice pursuant to subsection (b) shall submit to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specified deputies) a report on the action, if any, taken by the head of contracting activity pursuant to subsection (c), including a determination not to terminate, void, or restrict the contract, grant, or cooperative agreement as otherwise authorized by subsection (c).

''(i) REPORTS.—

''(1) IN GENERAL.—Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authorities in this section in the preceding calendar year, including the following:

''(A) For each instance in which an executive agency exercised the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

''(i) The executive agency taking such action.

''(ii) An explanation of the basis for the action taken.

''(iii) The value of the contract, grant, or cooperative agreement voided or terminated.

''(iv) The value of all contracts, grants, or cooperative agreements of the executive agency in force with the person or entity concerned at the time the contract, grant, or cooperative agreement was terminated or voided.

''(B) For each instance in which an executive agency did not exercise the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

''(i) The executive agency concerned.

''(ii) An explanation of the basis for not taking the action.

''(2) FORM.—Any report under this subsection may, at the election of the Director—

''(A) be submitted in unclassified form, but with a classified annex; or

''(B) be submitted in classified form.

''(j) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—The provisions of this section do not apply to contracts, grants, and cooperative agreements that are performed entirely inside the United States.

''(k) NATIONAL SECURITY EXCEPTION.—Nothing in this section shall apply to the authorized intelligence or law enforcement activities of the United States Government.

''(*l*) CONSTRUCTION WITH OTHER AUTHORITIES.—Except as provided in subsection (m), the authorities in this section shall be in addition to, and not to the exclusion of, any other authorities available to executive agencies to implement policies and purposes similar to those set forth in this section.

''(m) COORDINATION WITH CURRENT AUTHORITIES.—

''(1) REPEAL OF SUPERSEDED AUTHORITY RELATED TO CENTCOM.—[Repealed section 841 of Pub. L. 112–81, effective 270 days after Dec. 19, 2014. See below.]

''(2) REPEAL OF SUPERSEDED AUTHORITY RELATED TO DEPARTMENT OF DEFENSE.—[Repealed section 831 of Pub. L. 113–66, effective 270 days after Dec. 19, 2014. See below.]

''(3) USE OF SUPERSEDED AUTHORITIES IN IMPLEMENTATION OF REQUIREMENTS.—In providing for the implementation of the requirements of this section by the Department of Defense, the Secretary of Defense may use and modify for that purpose the regulations and procedures established for purposes of the implementation of the requirements of section 841 of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112–81] and section 831 of the National Defense Authorization Act for Fiscal Year 2014 [Pub. L. 113–66].

''(n) SUNSET.—The provisions of this section shall cease to be effective on December 31, 2019.

''SEC. 842. ADDITIONAL ACCESS TO RECORDS.

''(a) CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], applicable regulations shall be revised to provide that, except as provided under subsection (c)(1), the clause described in paragraph (2) may, as appropriate, be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date of the enactment of this Act.

''(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the head of the executive agency concerned, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee

under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds, including goods and services, available under the contract, grant, or cooperative agreement are not provided directly or indirectly to a covered person or entity.

''(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer, or comparable official responsible for a grant or cooperative agreement, upon a finding by the commander of a covered combatant command (or the specified deputies of the commander) or the head of an executive agency (or the designee of such head) that there is reason to believe that funds, including goods and services, available under the contract, grant, or cooperative agreement concerned may have been provided directly or indirectly to a covered person or entity.

''(4) FLOWDOWN.—A clause described in paragraph (2) may also be included in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of $50,000.

''(b) REPORTS.—

''(1) IN GENERAL.—Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authority provided by this section in the preceding calendar year.

''(2) ELEMENTS.—Each report under this subsection shall identify, for the calendar year covered by such report, each instance in which an executive agency exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken.

''(3) FORM.—Any report under this subsection may be submitted in classified form.

''(c) RELATIONSHIP TO EXISTING AUTHORITIES APPLICABLE TO CENTCOM.—

''(1) APPLICABILITY.—This section shall not apply to contracts, grants, or cooperative agreements covered under section 842 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1513; 10 U.S.C. 2313 note).

''(2) EXTENSION OF CURRENT AUTHORITIES APPLICABLE TO CENTCOM.—[Amended section 842(d)(1) of Pub. L. 112–81, set out as a note under section 2313 of this title.]

''SEC. 843. DEFINITIONS.

''In this subtitle:

''(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

''(2) CONTINGENCY OPERATION.—THE TERM 'CONTINGENCY OPERATION' HAS THE MEANING GIVEN THAT TERM IN SECTION 101(A)(13) OF TITLE 10, UNITED STATES CODE.

''(3) CONTRACT.—The term 'contract' includes a contract for commercial items but is not limited to a contract for commercial items.

''(4) COVERED COMBATANT COMMAND.—The term 'covered combatant command' means the following:

''(A) The United States Africa Command.

''(B) The United States Central Command.

''(C) The United States European Command.

''(D) The United States Pacific Command.

''(E) The United States Southern Command.

''(F) The United States Transportation Command.

''(5) COVERED CONTRACT, GRANT, OR COOPERATIVE AGREEMENT DEFINED.—The term 'covered contract, grant, or cooperative agreement' means a contract, grant, or cooperative agreement with an estimated value in excess of $50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

''(6) COVERED PERSON OR ENTITY.—The term 'covered person or entity' means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

''(7) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given that term in section 133 of title 41, United States Code.

''(8) HEAD OF CONTRACTING ACTIVITY.—The term 'head of contracting activity' has the meaning described in section 1.601 of the Federal Acquisition Regulation.

''(9) UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.—The term 'Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards' means the guidance issued by the Office of Management and Budget in part 200 of chapter II of title 2 of the Code of Federal Regulations.''

Pub. L. 113–66, div. A, title VIII, §831, Dec. 26, 2013, 127 Stat. 810, related to prohibition on contracting with the enemy, prior to repeal by Pub. L. 113–291, div. A, title VIII, §841(m)(2), Dec. 19, 2014, 128 Stat. 3454, effective 270 days after Dec. 19, 2014.

Pub. L. 112–81, div. A, title VIII, §841, Dec. 31, 2011, 125 Stat. 1510, related to prohibition on contracting with the enemy in the United States Central Command theater of operations, prior to repeal by Pub. L. 113–291, div. A, title VIII, §841(m)(1), Dec. 19, 2014, 128 Stat. 3454, effective 270 days after Dec. 19, 2014.

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES FOR UNITED STATES SPECIAL OPERATIONS COMMAND

Pub. L. 113–291, div. A, title VIII, §851, Dec. 19, 2014, 128 Stat. 3457, provided that:

''(a) AUTHORITY TO ESTABLISH PROCEDURES.—The Secretary may prescribe procedures for the rapid acquisition and deployment of items for the United States Special Operations Command that are currently under development by the Department of Defense or available from the commercial sector and are—

''(1) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations;

''(2) needed to avoid significant risk of loss of life or mission failure; or

''(3) needed to avoid collateral damage risk where the absence of collateral damage is a requirement for mission success.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communication between the Commander of the United States Special Operations Command and the acquisition and research and development communities, including—

''(A) a process for the Commander to communicate needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to propose items that meet the needs communicated by the Commander.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying items proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of an item;

''(B) a process for developing an acquisition and funding strategy for the deployment of an item; and

''(C) a process for making deployment determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(c) TESTING REQUIREMENT.—

''(1) IN GENERAL.—The process for demonstrating performance and evaluating for current operational purposes the existing capability of an item prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with expedited procedures prescribed by the Director of Operational Testing and Evaluation; and

''(B) a requirement to provide information to the deployment decision-making authority about any deficiency of the item in meeting the original requirements for the item (as stated in an operational requirements document or similar document).

''(2) DEFICIENCY NOT A DETERMINING FACTOR.—The process may not include a requirement for any deficiency of an item to be the determining factor in deciding whether to deploy the item.

''(3) ADDITIONAL REQUIREMENT IN CASE OF DEFICIENCY.—In the case of any deficiency of an item, a decision to deploy the item may be made only if the Commander of the United States Special Operations Command determines that, for reasons of national security, the deficiency of the item is acceptable.

''(d) LIMITATION.—The quantity of items of a system procured using the procedures prescribed pursuant to this section may not exceed the number established for low-rate initial production for the system. Any such items shall be counted for purposes of the number of items of the system that may be procured through low-rate initial production.

''(e) ANNUAL FUNDING LIMITATION.—Of the funds available to the Commander of the United States Special Operations Command in any given fiscal year, not more than $50,000,000 may be used to procure items under this section.

''(f) RELATIONSHIP TO OTHER RAPID ACQUISITION AUTHORITY.—The Commander of the United States Special Operations Command may not use the authority under this section at the same time the Commander uses the authority under section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 2302 note).

''(g) CONGRESSIONAL NOTIFICATIONS.—

''(1) NOTIFICATION BEFORE PROCEDURES GO INTO EFFECT.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] at least 30 days before the procedures prescribed pursuant to this section are made effective.

''(2) NOTIFICATION AFTER USE OF PROCEDURES.—The Secretary of Defense shall notify the congressional defense committees not later than 48 hours after each use of the procedures prescribed pursuant to this section.''

CONSIDERATION OF CORROSION CONTROL IN PRELIMINARY DESIGN REVIEW

Pub. L. 113–291, div. A, title VIII, §852, Dec. 19, 2014, 128 Stat. 3458, provided that: ''The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that Department of Defense Instruction 5000.02 and other applicable guidance require full consideration, during preliminary design review for a product, of metals, materials, and technologies that effectively prevent or control corrosion over the life cycle of the product.''

EQUIPMENT DISPOSAL

Pub. L. 113–66, div. A, title XV, §1531(d), Dec. 26, 2013, 127 Stat. 938, as amended by Pub. L. 113–291, div. A, title XV, §1532(d), Dec. 19, 2014, 128 Stat. 3614, provided that:

''(1) ACCEPTANCE OF CERTAIN EQUIPMENT.—The Secretary of Defense may accept equipment procured using funds authorized under this Act [see Tables for classification] or prior Acts that was transferred to the security forces of Afghanistan and returned by such forces to the United States if the Secretary provides written notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the Secretary's intention to accept such equipment.

''(2) TREATMENT AS DEPARTMENT OF DEFENSE STOCKS.—The equipment described in paragraph (1), and equipment not yet transferred to the security forces of Afghanistan that is determined by the Commander, Combined Security Transition Command-Afghanistan (or the Commander's designee) to no longer be required for transfer to such forces, may be treated as stocks of the Department of Defense upon notification to the congressional defense committees of such treatment.''

DEPARTMENT OF DEFENSE POLICY ON CONTRACTOR PROFITS

Pub. L. 112–239, div. A, title VIII, §804, Jan. 2, 2013, 126 Stat. 1826, provided that:

''(a) REVIEW OF GUIDELINES ON PROFITS.—The Secretary of Defense shall review the profit guidelines in the Department of Defense Supplement to the Federal Acquisition Regulation in order to identify any modifications to such guidelines that are necessary to ensure an appropriate link between contractor profit and contractor performance. In conducting the review, the Secretary shall obtain the views of experts and interested parties in Government and the private sector.

''(b) MATTERS TO BE CONSIDERED.—In conducting the review required by subsection (a), the Secretary shall consider, at a minimum, the following:

''(1) Appropriate levels of profit needed to sustain competition in the defense industry, taking into account contractor investment and cash flow.

''(2) Appropriate adjustments to address contract and performance risk assumed by the contractor, taking into account the extent to which such risk is passed on to subcontractors.

''(3) Appropriate incentives for superior performance in delivering quality products and services in a timely and cost-effective manner, taking into account such factors as prime contractor cost reduction, control of overhead costs, subcontractor cost reduction, subcontractor management, and effective competition (including the use of small business) at the subcontract level.

''(c) MODIFICATION OF GUIDELINES.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary shall modify the profit guidelines described in subsection (a) to make such changes as the Secretary determines to be appropriate based on the review conducted pursuant to that subsection.''

EXTENSION OF CONTRACTOR CONFLICT OF INTEREST LIMITATIONS

Pub. L. 112–239, div. A, title VIII, §829, Jan. 2, 2013, 126 Stat. 1841, provided that:

''(a) ASSESSMENT OF EXTENSION OF LIMITATIONS TO CERTAIN ADDITIONAL FUNCTIONS AND CONTRACTS.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall review the guidance on personal conflicts of interest for contractor employees issued pursuant to section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4537) [see 41 U.S.C. 2303(b)] in order to determine whether it would be in the best interest of the Department of Defense and the taxpayers to extend such guidance to personal conflicts of interest by contractor personnel performing any of the following:

''(1) Functions other than acquisition functions that are closely associated with inherently governmental functions (as that term is defined in section 2383(b)(3) of title 10, United States Code).

''(2) Personal services contracts (as that term is defined in section 2330a(g)(5) [2330a(h)(5)] of title 10, United States Code).

''(3) Contracts for staff augmentation services (as that term is defined in section 808(d)(3) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1490)).

''(b) EXTENSION OF LIMITATIONS.—If the Secretary determines pursuant to the review under subsection (a) that the guidance on personal conflicts of interest should be extended, the Secretary shall revise the Defense Supplement to the Federal Acquisition Regulation to the extent necessary to achieve such extension.

''(c) RESULTS OF REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall document in writing the results of the review conducted under subsection (a), including, at a minimum—

''(1) the findings and recommendations of the review; and

''(2) the basis for such findings and recommendations.''

RESPONSIBILITY WITHIN DEPARTMENT OF DEFENSE FOR OPERATIONAL CONTRACT SUPPORT

Pub. L. 112–239, div. A, title VIII, §843, Jan. 2, 2013, 126 Stat. 1845, provided that:

''(a) GUIDANCE REQUIRED.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall develop and issue guidance establishing the chain of authority and responsibility within the Department of Defense for policy, planning, and execution of operational contract support.

''(b) ELEMENTS.—The guidance under subsection (a) shall, at a minimum—

''(1) specify the officials, offices, and components of the Department within the chain of authority and responsibility described in subsection (a);

''(2) identify for each official, office, and component specified under paragraph (1)—

''(A) requirements for policy, planning, and execution of contract support for operational contract support, including, at a minimum, requirements in connection with—

''(i) coordination of functions, authorities, and responsibilities related to operational contract support, including coordination with relevant Federal agencies;

''(ii) assessments of total force data in support of Department force planning scenarios, including the appropriateness of and necessity for the use of contractors for identified functions;

''(iii) determinations of capability requirements for nonacquisition community operational contract support, and identification of resources required for planning, training, and execution to meet such requirements; and

''(iv) determinations of policy regarding the use of contractors by function, and identification of the training exercises that will be required for operational contract support (including an assessment [of] whether or not such exercises will include contractors); and

''(B) roles, authorities, responsibilities, and lines of supervision for the achievement of the requirements identified under subparagraph (A); and

''(3) ensure that the chain of authority and responsibility described in subsection (a) is appropriately aligned with, and appropriately integrated into, the structure of the Department for the conduct of overseas contingency operations, including the military departments, the Joint Staff, and the commanders of the unified combatant commands.''

DATA COLLECTION ON CONTRACT SUPPORT FOR FUTURE OVERSEAS CONTINGENCY OPERATIONS INVOLVING COMBAT OPERATIONS

Pub. L. 112–239, div. A, title VIII, §844, Jan. 2, 2013, 126 Stat. 1846, provided that:

''(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each issue guidance regarding data collection on contract support for future contingency operations outside the United States that involve combat operations.

''(b) ELEMENTS.—The guidance required by subsection (a) shall ensure that the Department of Defense, the Department of State, and the United States Agency for International Development take the steps necessary to ensure that each agency has the capability to collect and report, at a minimum, the following data regarding such contract support:

''(1) The total number of contracts entered into as of the date of any report.

''(2) The total number of such contracts that are active as of such date.

''(3) The total value of contracts entered into as of such date.

''(4) The total value of such contracts that are active as of such date.

''(5) An identification of the extent to which the contracts entered into as of such date were entered into using competitive procedures.

''(6) The total number of contractor personnel working under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date.

''(7) The total number of contractor personnel performing security functions under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date.

''(8) The total number of contractor personnel killed or wounded under any contracts entered into.

''(c) COMPTROLLER GENERAL REVIEW AND REPORT.—

''(1) REVIEW.—The Comptroller General of the United States shall review the data system or systems established to track contractor data pursuant to subsections (a) and (b). The review shall, with respect to each such data system, at a minimum—

''(A) identify each such data system and assess the resources needed to sustain such system;

''(B) determine if all such data systems are interoperable, use compatible data standards, and meet the requirements of section 2222 of title 10, United States Code; and

''(C) make recommendations on the steps that the Department of Defense, the Department of State, and the United States Agency for International Development should take to ensure that all such data systems—

''(i) meet the requirements of the guidance issued pursuant to subsections (a) and (b);

''(ii) are interoperable, use compatible data standards, and meet the requirements of section 2222 of such title; and

''(iii) are supported by appropriate business processes and rules to ensure the timeliness and reliability of data.

''(2) REPORT.—Not later than two years after the date of the enactment of this Act, the Comptroller General shall submit a report on the review required by paragraph (1) to the following committees:

''(A) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(B) The Committee on Foreign Relations and the Committee on Homeland Security and Governmental Affairs of the Senate.

''(C) The Committee on Foreign Affairs and the Committee on Oversight and Government Reform of the House of Representatives.''

REQUIREMENTS FOR RISK ASSESSMENTS RELATED TO CONTRACTOR PERFORMANCE

Pub. L. 112–239, div. A, title VIII, §846, Jan. 2, 2013, 126 Stat. 1848, provided that:

''(a) RISK ASSESSMENTS FOR CONTRACTOR PERFORMANCE IN OPERATIONAL OR CONTINGENCY PLANS.—The Secretary of Defense shall require that a risk assessment on reliance on contractors be included in operational or contingency plans developed by a commander of a combatant command in executing the responsibilities prescribed in section 164 of title 10, United States Code.

Such risk assessments shall address, at a minimum, the potential risks listed in subsection (c).

''(b) COMPREHENSIVE RISK ASSESSMENTS AND MITIGATION PLANS FOR CONTRACTOR PERFORMANCE IN SUPPORT OF OVERSEAS CONTINGENCY OPERATIONS.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), not later than six months after the commencement or designation of a contingency operation outside the United States that includes or is expected to include combat operations, the head of each covered agency shall perform a comprehensive risk assessment and develop a risk mitigation plan for operational and political risks associated with contractor performance of critical functions in support of the operation for such covered agency.

''(2) EXCEPTIONS.—Except as provided in paragraph (3), a risk assessment and risk mitigation plan shall not be required under paragraph (1) for an overseas contingency operation if—

''(A) the operation is not expected to continue for more than one year; and

''(B) the total amount of obligations for contracts for support of the operation for the covered agency is not expected to exceed $250,000,000.

''(3) TERMINATION OF EXCEPTIONS.—Notwithstanding paragraph (2), the head of a covered agency shall perform a risk assessment and develop a risk mitigation plan under paragraph (1) for an overseas contingency operation with regard to which a risk assessment and risk mitigation plan has not previously been performed under paragraph (1) not later than 60 days after the date on which—

''(A) the operation has continued for more than one year; or

''(B) the total amount of obligations for contracts for support of the operation for the covered agency exceeds $250,000,000.

''(c) COMPREHENSIVE RISK ASSESSMENTS.—A comprehensive risk assessment under subsection (b) shall consider, at a minimum, risks relating to the following:

''(1) The goals and objectives of the operation (such as risks from contractor behavior or performance that may injure innocent members of the local population or offend their sensibilities).

''(2) The continuity of the operation (such as risks from contractors refusing to perform or being unable to perform when there may be no timely replacements available).

''(3) The safety of military and civilian personnel of the United States if the presence or performance of contractor personnel creates unsafe conditions or invites attack.

''(4) The safety of contractor personnel employed by the covered agency.

''(5) The managerial control of the Government over the operation (such as risks from over-reliance on contractors to monitor other contractors or inadequate means for Government personnel to monitor contractor performance).

''(6) The critical organic or core capabilities of the Government, including critical knowledge or institutional memory of key operations areas and subject-matter expertise.

''(7) The ability of the Government to control costs, avoid organizational or personal conflicts of interest, and minimize waste, fraud, and abuse.

''(d) RISK MITIGATION PLANS.—A risk mitigation plan under subsection (b) shall include, at a minimum, the following:

''(1) For each high-risk area identified in the comprehensive risk assessment for the operation performed under subsection (b)—

''(A) specific actions to mitigate or reduce such risk, including the development of alternative capabilities to reduce reliance on contractor performance of critical functions;

''(B) measurable milestones for the implementation of planned risk mitigation or risk reduction measures; and

''(C) a process for monitoring, measuring, and documenting progress in mitigating or reducing risk.

''(2) A continuing process for identifying and addressing new and changed risks arising in the course of the operation, including the periodic reassessment of risks and the development of appropriate risk mitigation or reduction plans for any new or changed high-risk area identified.

''(e) CRITICAL FUNCTIONS.—For purposes of this section, critical functions include, at a minimum, the following:

''(1) Private security functions, as that term is defined in section 864(a)(6) of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110–181] (10 U.S.C. 2302 note).

''(2) Training and advising Government personnel, including military and security personnel, of a host nation.

''(3) Conducting intelligence or information operations.

''(4) Any other functions that are closely associated with inherently governmental functions, including the functions set forth in section 7.503(d) of the Federal Acquisition Regulation.

''(5) Any other functions that are deemed critical to the success of the operation.

''(f) COVERED AGENCY.—In this section, the term 'covered agency' means the Department of Defense, the Department of State, and the United States Agency for International Development.''

REQUIREMENT FOR FOCUS ON URGENT OPERATIONAL NEEDS AND RAPID ACQUISITION

Pub. L. 112–239, div. A, title IX, § 902, Jan. 2, 2013, 126 Stat. 1865, provided that:

''(a) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE FOR FOCUS ON URGENT OPERATIONAL NEEDS AND RAPID ACQUISITION.—

''(1) IN GENERAL.—The Secretary of Defense, after consultation with the Secretaries of the military departments, shall designate a senior official in the Office of the Secretary of Defense as the principal official of the Department of Defense responsible for leading the Department's actions on urgent operational needs and rapid acquisition, in accordance with this section.

''(2) STAFF AND RESOURCES.—The Secretary shall assign to the senior official designated under paragraph (1) appropriate staff and resources necessary to carry out the official's functions under this section.

''(b) RESPONSIBILITIES.—The senior official designated under subsection (a) shall be responsible for the following:

''(1) Acting as an advocate within the Department of Defense for issues related to the Department's ability to rapidly respond to urgent operational needs, including programs funded and carried out by the military departments.

''(2) Improving visibility of urgent operational needs throughout the Department, including across the military departments, the Defense Agencies, and all other entities and processes in the Department that address urgent operational needs.

''(3) Ensuring that tools and mechanisms are used to track, monitor, and manage the status of urgent operational needs within the Department, from validation through procurement and fielding, including a formal feedback mechanism for the Armed Forces to provide information on how well fielded solutions are meeting urgent operational needs.

''(c) URGENT OPERATIONAL NEEDS DEFINED.—In this section, the term 'urgent operational needs' means capabilities that are determined by the Secretary of Defense, pursuant to the review process required by section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 [Pub. L. 111–383] (10 U.S.C. 2302 note), to be suitable for rapid fielding in response to urgent operational needs.''

PROCUREMENT OF TENTS OR OTHER TEMPORARY STRUCTURES

Pub. L. 112–81, div. A, title III, § 368, Dec. 31, 2011, 125 Stat. 1381, provided that:

''(a) IN GENERAL.—In procuring tents or other temporary structures for use by the Armed Forces, and in establishing or maintaining an alternative source for such tents and structures, the Secretary of Defense shall award contracts that provide the best value to the United States. In determining the best value to the United States under this section, the Secretary shall consider the total life-cycle costs of such tents or structures, including the costs associated with any equipment or fuel needed to heat or cool such tents or structures.

''(b) INTERAGENCY PROCUREMENT.—The requirements of this section shall apply to any agency or department of the United States that procures tents or other temporary structures on behalf of the Department of Defense.''

INCLUSION OF DATA ON CONTRACTOR PERFORMANCE IN PAST PERFORMANCE DATABASES FOR SOURCE SELECTION DECISIONS

Pub. L. 112–81, div. A, title VIII, §806, Dec. 31, 2011, 125 Stat. 1487, as amended by Pub. L. 112–239, div. A, title X, §1076(a)(11), Jan. 2, 2013, 126 Stat. 1948, provided that:

''(a) STRATEGY ON INCLUSION REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall develop a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used for making source selection decisions.

''(b) ELEMENTS.—The strategy required by subsection (a) shall, at a minimum—

''(1) establish standards for the timeliness and completeness of past performance submissions for purposes of databases described in subsection (a);

''(2) assign responsibility and management accountability for the completeness of past performance submissions for such purposes; and

''(3) ensure that past performance submissions for such purposes are consistent with award fee evaluations in cases where such evaluations have been conducted.

''(c) CONTRACTOR COMMENTS.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall revise the Defense Supplement to the Federal Acquisition Regulation to require the following:

''(1) That affected contractors are provided, in a timely manner, information on contractor performance to be included in past performance databases in accordance with subsection (a).

''(2) That such contractors are afforded up to 14 calendar days, from the date of delivery of the information provided in accordance with paragraph (1), to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in such databases.

''(3) That agency evaluations of contractor past performance, including any information submitted under paragraph (2), are included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information provided in accordance with paragraph (1).

''(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a contractor from submitting comments, rebuttals, or additional information pertaining to past performance after the period described in subsection (c)(2) has elapsed or to prohibit a contractor from challenging a past performance evaluation in accordance with applicable laws, regulations, or procedures.

''(e) COMPTROLLER GENERAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 31, 2011], the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken by the Under Secretary of Defense for Acquisition, Technology, and Logistics pursuant to this section, including an assessment of the extent to which such actions have achieved the objectives of this section.''

DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS

Pub. L. 112–81, div. A, title VIII, §818(a)–(g), Dec. 31, 2011, 125 Stat. 1493–1496, as amended by Pub. L. 112–239, div. A, title VIII, §833, Jan. 2, 2013, 126 Stat. 1844; Pub. L. 113–291, div. A, title VIII, §817, Dec. 19, 2014, 128 Stat. 3432; Pub. L. 114–92, div. A, title VIII, §885, Nov. 25, 2015, 129 Stat. 948, provided that:

''(a) ASSESSMENT OF DEPARTMENT OF DEFENSE POLICIES AND SYSTEMS.—The Secretary of Defense shall conduct an assessment of Department of Defense acquisition policies and systems for the detection and avoidance of counterfeit electronic parts.

''(b) ACTIONS FOLLOWING ASSESSMENT.—Not later than 180 days after the date of the enactment of the [probably should be ''this''] Act [Dec. 31, 2011], the Secretary shall, based on the results of the assessment required by subsection (a)—

''(1) establish Department-wide definitions of the terms 'counterfeit electronic part' and 'suspect counterfeit electronic part', which definitions shall include previously used parts represented as new;

''(2) issue or revise guidance applicable to Department components engaged in the purchase of electronic parts to implement a risk-based approach to minimize the impact of counterfeit electronic parts or suspect counterfeit electronic parts on the Department, which guidance shall address requirements for training personnel, making sourcing decisions, ensuring traceability of parts, inspecting and testing parts, reporting and quarantining counterfeit electronic parts and suspect counterfeit electronic parts, and taking corrective actions (including actions to recover costs as described in subsection (c)(2));

''(3) issue or revise guidance applicable to the Department on remedial actions to be taken in the case of a supplier who has repeatedly failed to detect and avoid counterfeit electronic parts or otherwise failed to exercise due diligence in the detection and avoidance of such parts, including consideration of whether to suspend or debar a supplier until such time as the supplier has effectively addressed the issues that led to such failures;

''(4) establish processes for ensuring that Department personnel who become aware of, or have reason to suspect, that any end item, component, part, or material contained in supplies purchased by or for the Department contains counterfeit electronic parts or suspect counterfeit electronic parts provide a report in writing within 60 days to appropriate Government authorities and to the Government-Industry Data Exchange Program (or a similar program designated by the Secretary); and

''(5) establish a process for analyzing, assessing, and acting on reports of counterfeit electronic parts and suspect counterfeit electronic parts that are submitted in accordance with the processes under paragraph (4).

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to address the detection and avoidance of counterfeit electronic parts.

''(2) CONTRACTOR RESPONSIBILITIES.—The revised regulations issued pursuant to paragraph (1) shall provide that—

''(A) covered contractors who supply electronic parts or products that include electronic parts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and for any rework or corrective action that may be required to remedy the use or inclusion of such parts; and

''(B) the cost of counterfeit electronic parts and suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable costs under Department contracts, unless—

''(i) the covered contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by the Department of Defense pursuant to subsection (e)(2)(B);

''(ii) the counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation or were obtained by the covered contractor in accordance with regulations described in paragraph (3); and

''(iii) the covered contractor discovers the counterfeit electronic parts or suspect counterfeit electronic parts and provides timely notice to the Government pursuant to paragraph (4).

''(3) TRUSTED SUPPLIERS.—The revised regulations issued pursuant to paragraph (1) shall—

''(A) require that the Department and Department contractors and subcontractors at all tiers—

''(i) obtain electronic parts that are in production or currently available in stock from the original manufacturers of the parts or their authorized dealers, or from suppliers identified as trusted suppliers in accordance with regulations issued pursuant to subparagraph (C) or (D) who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

''(ii) obtain electronic parts that are not in production or currently available in stock from suppliers identified as trusted suppliers in accordance with regulations issued pursuant to subparagraph (C) or (D); and

''(iii) obtain electronic parts from alternate suppliers if such parts are not available from original manufacturers, their authorized dealers, or suppliers identified as trusted suppliers in accordance with regulations prescribed pursuant to subparagraph (C) or (D);

''(B) establish requirements for notification of the Department, and for inspection, testing, and authentication of electronic parts that the Department or a Department contractor or subcontractor obtains from any source other than a source described in clause (i) or (ii) of subparagraph (A), if obtaining the electronic parts in accordance with such clauses is not possible;

''(C) establish qualification requirements, consistent with the requirements of section 2319 of title 10, United States Code, pursuant to which the Department may identify as trusted suppliers those that have appropriate policies and procedures in place to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

''(D) authorize Department contractors and subcontractors to identify and use additional trusted suppliers, provided that—

''(i) the standards and processes for identifying such trusted suppliers comply with established industry standards;

''(ii) the contractor or subcontractor assumes responsibility for the authenticity of parts provided by such suppliers as provided in paragraph (2); and

''(iii) the selection of such trusted suppliers is subject to review, audit, and approval by appropriate Department officials.

''(4) REPORTING REQUIREMENT.—The revised regulations issued pursuant to paragraph (1) shall require that any Department contractor or subcontractor who becomes aware, or has reason to suspect, that any end item, component, part, or material contained in supplies purchased by the Department, or purchased by a contractor or subcontractor for delivery to, or on behalf of, the Department, contains counterfeit electronic parts or suspect counterfeit electronic parts report in writing within 60 days to appropriate Government authorities and the Government-Industry Data Exchange Program (or a similar program designated by the Secretary).

''(5) CONSTRUCTION OF COMPLIANCE WITH REPORTING REQUIREMENT.—A Department contractor or subcontractor that provides a written report required under this subsection shall not be subject to civil liability on the basis of such reporting, provided the contractor or subcontractor made a reasonable effort to determine that the end item, component, part, or material concerned contained counterfeit electronic parts or suspect counterfeit electronic parts.

''(d) INSPECTION PROGRAM.—The Secretary of Homeland Security shall establish and implement a risk-based methodology for the enhanced targeting of electronic parts imported from any country, after consultation with the Secretary of Defense as to sources of counterfeit electronic parts and suspect counterfeit electronic parts in the supply chain for products purchased by the Department of Defense.

''(e) IMPROVEMENT OF CONTRACTOR SYSTEMS FOR DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall implement a program to enhance contractor detection and avoidance of counterfeit electronic parts.

''(2) ELEMENTS.—The program implemented pursuant to paragraph (1) shall—

''(A) require covered contractors that supply electronic parts or systems that contain electronic parts to establish policies and procedures to eliminate counterfeit electronic parts from the defense supply chain, which policies and procedures shall address—

''(i) the training of personnel;

''(ii) the inspection and testing of electronic parts;

''(iii) processes to abolish counterfeit parts proliferation;

''(iv) mechanisms to enable traceability of parts;

''(v) use of trusted suppliers;

''(vi) the reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts;

''(vii) methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit;

''(viii) the design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

''(ix) the flow down of counterfeit avoidance and detection requirements to subcontractors; and

''(B) establish processes for the review and approval of contractor systems for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts, which processes shall be comparable to the processes established for contractor business systems under section 893 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4311; 10 U.S.C. 2302 note).

''(f) DEFINITIONS.—In subsections (a) through (e) of this section:

''(1) The term 'covered contractor' has the meaning given that term in section 893(f)(2) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011.

''(2) The term 'electronic part' means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.

''(g) INFORMATION SHARING.—

''(1) IN GENERAL.—If United States Customs and Border Protection suspects a product of being imported in violation of section 42 of the Lanham Act [15 U.S.C. 1124], and subject to any applicable bonding requirements, the Secretary of the Treasury may share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels, with the rightholders of the trademarks suspected of being copied or simulated for purposes of determining whether the products are prohibited from importation pursuant to such section.

''(2) SUNSET.—This subsection shall expire on the date of the enactment of the Customs Facilitation and Trade Enforcement Reauthorization Act of 2012.

''(3) LANHAM ACT DEFINED.—In this subsection, the term 'Lanham Act' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' or the 'Lanham Act') [15 U.S.C. 1051 et seq.].''

REACH-BACK CONTRACTING AUTHORITY FOR OPERATION ENDURING FREEDOM AND OPERATION NEW DAWN

Pub. L. 112–81, div. A, title VIII, §843, Dec. 31, 2011, 125 Stat. 1514, provided that:

''(a) AUTHORITY TO DESIGNATE LEAD CONTRACTING ACTIVITY.—The Under Secretary of Defense for Acquisition, Technology, and Logistics may designate a single contracting activity inside the United States to act as the lead contracting activity with authority for use of domestic capabilities in support of overseas contracting for Operation Enduring Freedom and Operation New Dawn. The contracting activity so designated shall be known as the 'lead reach-back contracting authority' for such operations.

''(b) LIMITED AUTHORITY FOR USE OF OUTSIDE-THE-UNITED-STATES-THRESHOLDS.—The head of the contracting authority designated pursuant to subsection (a) may, when awarding a contract inside the United States for performance in the theater of operations for Operation Enduring Freedom or Operation New Dawn, use the overseas increased micro-purchase threshold and the overseas increased simplified acquisition threshold in the same manner and to the same extent as if the contract were to be awarded and performed outside the United States.

''(c) DEFINITIONS.—In this section:

''(1) The term 'overseas increased micro-purchase threshold' means the amount specified in paragraph (1)(B) of section 1903(b) of title 41, United States Code.

''(2) The term 'overseas increased simplified acquisition threshold' means the amount specified in paragraph (2)(B) of section 1903(b) of title 41, United States Code.''

COMPETITION AND REVIEW OF CONTRACTS FOR PROPERTY OR SERVICES IN SUPPORT OF A CONTINGENCY OPERATION

Pub. L. 112–81, div. A, title VIII, §844(a), (b), Dec. 31, 2011, 125 Stat. 1515, provided that:

''(a) CONTRACTING GOALS.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall—

''(1) establish goals for competition in contracts awarded by the Secretary of Defense for the procurement of property or services to be used outside the United States in support of a contingency operation; and

''(2) develop processes by which to measure and monitor such competition, including in task-order categories for services, construction, and supplies.

''(b) ANNUAL REVIEW OF CERTAIN CONTRACTS.—For each year the Logistics Civil Augmentation Program contract, or other similar omnibus contract awarded by the Secretary of Defense for the procurement of property or services to be used outside the United States in support of a contingency operation, is in force, the Secretary shall require a competition advocate of the Department of Defense to conduct an annual review of each such contract.''

CONTRACTS FOR COMMERCIAL IMAGING SATELLITE CAPACITIES

Pub. L. 111–383, div. A, title I, §127, Jan. 7, 2011, 124 Stat. 4161, provided that:

''(a) TELESCOPE REQUIREMENTS UNDER CONTRACTS AFTER 2010.—Except as provided in subsection (b), any contract for additional commercial imaging satellite capability or capacity entered into by the Department of Defense after December 31, 2010, shall require that the imaging telescope providing such capability or capacity under such contract has an aperture of not less than 1.5 meters.

''(b) WAIVER.—The Secretary of Defense may waive the limitation in subsection (a) if—

''(1) the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written certification that the waiver is in the national security interests of the United States; and

''(2) a period of 30 days has elapsed following the date on which the certification under paragraph (1) is submitted.

''(c) CONTINUATION OF CURRENT CONTRACTS.—The limitation in subsection (a) may not be construed to prohibit or prevent the Secretary of Defense from continuing or maintaining current commercial imaging satellite capability or capacity in orbit or under contract by December 31, 2010.''

REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS

Pub. L. 111–383, div. A, title VIII, §804, Jan. 7, 2011, 124 Stat. 4256, provided that:

''(a) REVIEW OF RAPID ACQUISITION PROCESS REQUIRED.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall complete a review of the process for the fielding of capabilities in response to urgent operational needs and submit a report on the review to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(2) REVIEW AND REPORT REQUIREMENTS.—The review pursuant to this section shall include consideration of various improvements to the acquisition process for rapid fielding of capabilities in response to urgent operational needs. For each improvement, the report on the review shall discuss—

''(A) the Department's review of the improvement;

''(B) if the improvement is being implemented by the Department, a schedule for implementing the improvement; and

''(C) if the improvement is not being implemented by the Department, an explanation of why the improvement is not being implemented.

''(3) IMPROVEMENTS TO BE CONSIDERED.—The improvements that shall be considered during the review are the following:

''(A) Providing a streamlined, expedited, and tightly integrated iterative approach to—

''(i) the identification and validation of urgent operational needs;

''(ii) the analysis of alternatives and identification of preferred solutions;

''(iii) the development and approval of appropriate requirements and acquisition documents;

''(iv) the identification and minimization of development, integration, and manufacturing risks;

''(v) the consideration of operation and sustainment costs;

''(vi) the allocation of appropriate funding; and

''(vii) the rapid production and delivery of required capabilities.

''(B) Clearly defining the roles and responsibilities of the Office of the Secretary of Defense, the Joint Chiefs of Staff, the military departments, and other components of the Department of Defense for carrying out all phases of the process.

''(C) Designating a senior official within the Office of the Secretary of Defense with primary responsibility for making recommendations to the Secretary on the use of the authority provided by subsections (c) and (d) of section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314] (10 U.S.C. 2302 note), as amended by section 803 of this Act, in appropriate circumstances.

''(D) Establishing a target date for the fielding of a capability pursuant to each validated urgent operational need.

''(E) Implementing a system for—

''(i) documenting key process milestones, such as funding, acquisition, fielding, and assessment decisions and actions; and

''(ii) tracking the cost, schedule, and performance of acquisitions conducted pursuant to the process.

''(F) Establishing a formal feedback mechanism for the commanders of the combatant commands to provide information to the Joint Chiefs of Staff and senior acquisition officials on how well fielded solutions are meeting urgent operational needs.

''(G) Establishing a dedicated source of funding for the rapid fielding of capabilities in response to urgent operational needs.

''(H) Issuing guidance to provide for the appropriate transition of capabilities acquired through rapid fielding into the traditional budget, requirements, and acquisition process for purposes of contracts for follow-on production, sustainment, and logistics support.

''(I) Such other improvements as the Secretary considers appropriate.

''(b) DISCRIMINATING URGENT OPERATIONAL NEEDS FROM TRADITIONAL REQUIREMENTS.—

''(1) EXPEDITED REVIEW PROCESS.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall develop and implement an expedited review process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through the traditional acquisition process.

''(2) ELEMENTS.—The review process developed and implemented pursuant to paragraph (1) shall—

''(A) apply to the rapid fielding of capabilities in response to joint urgent operational need statements and to other urgent operational needs statements generated by the military departments and the combatant commands;

''(B) identify officials responsible for making determinations described in paragraph (1);

''(C) establish appropriate time periods for making such determinations;

''(D) set forth standards and criteria for making such determinations based on considerations of urgency, risk, and life-cycle management;

''(E) establish appropriate thresholds for the applicability of the review process, or of elements of the review process; and

''(F) authorize appropriate officials to make exceptions from standards and criteria established under subparagraph (D) in exceptional circumstances.

''(3) COVERED CAPABILITIES.—The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that—

''(A) can be fielded within a period of two to 24 months;

''(B) do not require substantial development effort;

''(C) are based on technologies that are proven and available; and

''(D) can appropriately be acquired under fixed price contracts.

''(4) INCLUSION IN REPORT.—The Secretary shall include a description of the expedited review process implemented pursuant to paragraph (1) in the report required by subsection (a).''

STANDARDS AND CERTIFICATION FOR PRIVATE SECURITY CONTRACTORS

Pub. L. 111–383, div. A, title VIII, § 833, Jan. 7, 2011, 124 Stat. 4276, provided that:

''(a) REVIEW OF THIRD-PARTY STANDARDS AND CERTIFICATION PROCESSES.—Not later than 90 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall—

''(1) determine whether the private sector has developed—

''(A) operational and business practice standards applicable to private security contractors; and

''(B) third-party certification processes for determining whether private security contractors adhere to standards described in subparagraph (A); and

''(2) review any standards and processes identified pursuant to paragraph (1) to determine whether the application of such standards and processes will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations.

''(b) REVISED REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall revise the regulations promulgated under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) to ensure that such regulations—

''(1) establish criteria for defining standard practices for the performance of private security functions, which shall reflect input from industry representatives as well as the Inspector General of the Department of Defense; and

''(2) establish criteria for weapons training programs for contractors performing private security functions, including minimum requirements for weapons training programs of instruction and minimum qualifications for instructors for such programs.

''(c) INCLUSION OF THIRD-PARTY STANDARDS AND CERTIFICATIONS IN REVISED REGULATIONS.—

''(1) STANDARDS.—If the Secretary determines that the application of operational and business practice standards identified pursuant to subsection (a)(1)(A) will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations, the revised regulations promulgated pursuant to subsection (b) shall incorporate a requirement to comply with such standards, subject to such exceptions as the Secretary may determine to be necessary.

''(2) CERTIFICATIONS.—If the Secretary determines that the application of a third-party certification process identified pursuant to subsection (a)(1)(B) will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations, the revised regulations promulgated pursuant to subsection (b) may provide for the consideration of such certifications as a factor in the evaluation of proposals for award of a covered contract for the provision of private security functions, subject to such exceptions as the Secretary may determine to be necessary.

''(d) DEFINITIONS.—In this section:

''(1) COVERED CONTRACT.—The term 'covered contract' means—

''(A) a contract of the Department of Defense for the performance of services;

''(B) a subcontract at any tier under such a contract; or

''(C) a task order or delivery order issued under such a contract or subcontract.

''(2) CONTRACTOR.—The term 'contractor' means, with respect to a covered contract, the contractor or subcontractor carrying out the covered contract.

''(3) PRIVATE SECURITY FUNCTIONS.—The term 'private security functions' means activities engaged in by a contractor under a covered contract as follows:

''(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

''(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

''(e) EXCEPTION.—The requirements of this section shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.''

PILOT PROGRAM ON ACQUISITION OF MILITARY PURPOSE NONDEVELOPMENTAL ITEMS

Pub. L. 111–383, div. A, title VIII, §866(a)–(f), Jan. 7, 2011, 124 Stat. 4296–4298, as amended by Pub. L. 113–66, div. A, title VIII, §814, Dec. 26, 2013, 127 Stat. 808; Pub. L. 113–291, div. A, title X, §1071(b)(1)(B), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 114–92, div. A, title VIII, §892, Nov. 25, 2015, 129 Stat. 952, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary of Defense may carry out a pilot program to assess the feasability [sic] and advisability of acquiring military purpose nondevelopmental items in accordance with this section.

''(2) SCOPE OF PROGRAM.—Under the pilot program, the Secretary may enter into contracts for the acquisition of military purpose nondevelopmental items in accordance with the requirements set forth in subsection (b).

''(b) CONTRACT REQUIREMENTS.—Each contract entered into under the pilot program—

''(1) shall be a firm, fixed price contract, or a firm, fixed price contract with an economic price adjustment clause;

''(2) shall be in an amount not in excess of $100,000,000, including all options;

''(3) shall provide—

''(A) for the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

''(B) that failure to make delivery as provided for under subparagraph (A) may result in the termination of such contract for default; and

''(4) shall be—

''(A) exempt from the requirement to submit certified cost or pricing data under section 2306a of title 10, United States Code, and the cost accounting standards under chapter 15 of title 41, United States Code; and

''(B) subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations, as provided in section 2306a(d) of title 10, United States Code.

''(c) REGULATIONS.—If the Secretary establishes the pilot program authorized under subsection (a), the Secretary shall prescribe regulations governing such pilot program. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation and shall include the contract clauses and procedures necessary to implement such program.

''(d) REPORTS.—

''(1) REPORTS ON PROGRAM ACTIVITIES.—Not later than 60 days after the end of any fiscal year in which the pilot program is in effect, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program. The report shall be in unclassified form but may include a classified annex. Each report shall include, for each contract entered into under the pilot program in the preceding fiscal year, the following:

''(A) The contractor.

''(B) The item or items to be acquired.

''(C) The military purpose to be served by such item or items.

''(D) The amount of the contract.

''(E) The actions taken by the Department of Defense to ensure that the price paid for such item or items is fair and reasonable.

''(2) PROGRAM ASSESSMENT.—If the Secretary establishes the pilot program authorized under subsection (a), not later than four years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report setting forth the assessment of the Comptroller General of the extent to which the pilot program—

''(A) enabled the Department to acquire items that otherwise might not have been available to the Department;

''(B) assisted the Department in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and

''(C) protected the interests of the United States in paying fair and reasonable prices for the item or items acquired.

''(e) DEFINITIONS.—In this section:

''(1) The term 'military purpose nondevelopmental item' means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. For purposes of this paragraph, an item shall not be considered to be developed exclusively at private expense if development of the item was paid for in whole or in part through—

''(A) independent research and development costs or bid and proposal costs that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

''(B) foreign government funding.

''(2) The term 'nondevelopmental item'—

''(A) has the meaning given that term in section 110 of title 41, United States Code; and

''(B) also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement in subsection (b)(3)(A).

''(3) The term 'nontraditional defense contractor' has the meaning given that term in section 2302(9) of title 10, United States Code (as added by subsection (g)).

''(4) The terms 'independent research and developments costs' and 'bid and proposal costs' have the meaning given such terms in section 31.205–18 of the Federal Acquisition Regulation.

''(f) SUNSET.—

''(1) IN GENERAL.—The authority to carry out the pilot program shall expire on December 31, 2019.

''(2) CONTINUATION OF CURRENT CONTRACTS.—The expiration under paragraph (1) of the authority to carry out the pilot program shall not affect the validity of any contract awarded under the pilot program before the date of the expiration of the pilot program under that paragraph.''

CONTRACTOR BUSINESS SYSTEMS

Pub. L. 111–383, div. A, title VIII, §893, Jan. 7, 2011, 124 Stat. 4311, as amended by Pub. L. 112–81, div. A, title VIII, §816, Dec. 31, 2011, 125 Stat. 1493; Pub. L. 113–291, div. A, title X, §1071(b)(1)(C), Dec. 19, 2014, 128 Stat. 3505, provided that:

''(a) IMPROVEMENT PROGRAM.—Not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall develop and initiate a program for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of Department of Defense programs by the contractor and by the Department.

''(b) APPROVAL OR DISAPPROVAL OF BUSINESS SYSTEMS.—The program developed pursuant to subsection (a) shall—

''(1) include system requirements for each type of contractor business system covered by the program;

''(2) establish a process for reviewing contractor business systems and identifying significant deficiencies in such systems;

''(3) identify officials of the Department of Defense who are responsible for the approval or disapproval of contractor business systems;

''(4) provide for the approval of any contractor business system that does not have a significant deficiency; and

''(5) provide for—

''(A) the disapproval of any contractor business system that has a significant deficiency; and

''(B) reduced reliance on, and enhanced scrutiny of, data provided by a contractor business system that has been disapproved.

''(c) REMEDIAL ACTIONS.—The program developed pursuant to subsection (a) shall provide the following:

''(1) In the event a contractor business system is disapproved pursuant to subsection (b)(5), appropriate officials of the Department of Defense will be available to work with the contractor to develop a corrective action plan defining specific actions to be taken to address the significant deficiencies identified in the system and a schedule for the implementation of such actions.

''(2) An appropriate official of the Department of Defense may withhold up to 10 percent of progress payments, performance-based payments, and interim payments under covered contracts from a covered contractor, as needed to protect the interests of the Department and ensure compliance, if one or more of the contractor business systems of the contractor has been disapproved pursuant to subsection (b)(5) and has not subsequently received approval.

''(3) The amount of funds to be withheld under paragraph (2) shall be reduced if a contractor adopts an effective corrective action plan pursuant to paragraph (1) and is effectively implementing such plan.

''(d) GUIDANCE AND TRAINING.—The program developed pursuant to subsection (a) shall provide guidance and training to appropriate government officials on the data that is produced by contractor business systems and the manner in which such data should be used to effectively manage Department of Defense programs.

''(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit an official of the Department of Defense from reviewing, approving, or disapproving a contractor business system pursuant to any applicable law or regulation in force as of the date of the enactment of this Act during the period between the date of the enactment of this Act and the date on which the Secretary implements the requirements of this section with respect to such system.

''(f) DEFINITIONS.—In this section:

''(1) The term 'contractor business system' means an accounting system, estimating system, purchasing system, earned value management system, material management and accounting system, or property management system of a contractor.

''(2) The term 'covered contractor' means a contractor that is subject to the cost accounting standards under chapter 15 of title 41, United States Code.

''(3) The term 'covered contract' means a contract that is subject to the cost accounting standards promulgated pursuant to section 1502 of title 41, United States Code, that could be affected if the data produced by a contractor business system has a significant deficiency.

''(4) The term 'significant deficiency', in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Defense and the contractor to rely upon information produced by the system that is needed for management purposes.

''(g) DEFENSE CONTRACT AUDIT AGENCY LEGAL RESOURCES AND EXPERTISE.—

''(1) REQUIREMENT.—The Secretary of Defense shall ensure that—

''(A) the Defense Contract Audit Agency has sufficient legal resources and expertise to conduct its work in compliance with applicable Department of Defense policies and procedures; and

''(B) such resources and expertise are provided in a manner that is consistent with the audit independence of the Defense Contract Audit Agency.

''(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the steps taken to comply with the requirements of this subsection.''

LIFE-CYCLE MANAGEMENT AND PRODUCT SUPPORT

Pub. L. 111–84, div. A, title VIII, § 805, Oct. 28, 2009, 123 Stat. 2403, which directed the Secretary of Defense to issue comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems and required each major weapon system to be supported by a product support manager, was repealed by Pub. L. 112–239, div. A, title VIII, § 823(b), Jan. 2, 2013, 126 Stat. 1832.

CONTRACT AUTHORITY FOR ADVANCED COMPONENT DEVELOPMENT OR PROTOTYPE UNITS

Pub. L. 111–84, div. A, title VIII, § 819, Oct. 28, 2009, 123 Stat. 2409, as amended by Pub. L. 113–291, div. A, title VIII, § 811, Dec. 19, 2014, 128 Stat. 3428, provided that:

''(a) AUTHORITY.—A contract initially awarded from the competitive selection of a proposal resulting from a general solicitation referred to in section 2302(2)(B) of title 10, United States Code, may contain a contract line item or contract option for—

''(1) the provision of advanced component development, prototype, or initial production of technology developed under the contract; or

''(2) the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract.

''(b) LIMITATIONS.—

''(1) MINIMAL AMOUNT.—A contract line item or contract option described in subsection (a)(2) shall require the delivery of the minimal amount of initial or additional prototype items to allow for the timely competitive solicitation and award of a follow-on development or production contract for those items.

''(2) TERM.—A contract line item or contract option described in subsection (a) shall be for a term of not more than 12 months.

''(3) DOLLAR VALUE OF WORK.—The dollar value of the work to be performed pursuant to a contract line item or contract option described in subsection (a) may not exceed the lesser of the amounts as follows:

''(A) The amount that is three times the dollar value of the work previously performed under the contract.

''(B) $20,000,000.

''(4) APPLICABILITY.—The authority provided in subsection (a) applies only to the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

''(5) TERMINATION OF AUTHORITY.—A military department or defense agency may not exercise a contract line item or contract option pursuant to the authority provided in subsection (a) after September 30, 2019.

''(c) REPORT.—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 the use of the authority provided by subsection (a) not later than March 1, 2013. The report shall, at a minimum, describe—

''(1) the number of times a contract line item or contract option was exercised under such authority, the dollar amount of each such line item or option, and the scope of each such line item or option;

''(2) the circumstances that rendered the military department or defense agency unable to solicit and award a follow-on development or production contract in a timely fashion, but for the use of such authority;

''(3) the extent to which such authority affected competition and technology transition; and

''(4) such recommendations as the Secretary considers appropriate, including any recommendations regarding the modification or extension of such authority.''

CONGRESSIONAL EARMARKS

Pub. L. 111–84, div. A, title X, §1062, Oct. 28, 2009, 123 Stat. 2468, provided that:

''(a) REPORT ON RECURRING EARMARKS.—

''(1) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], 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 regarding covered earmarks.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) An identification of each covered earmark that has been included in a national defense authorization Act for three or more consecutive fiscal years as of the date of the enactment of this Act.

''(B) A description of the extent to which competitive or merit-based procedures were used to award funding, or to enter into a contract, grant, or other agreement, pursuant to each covered earmark.

''(C) An identification of the specific contracting vehicle used for each covered earmark.

''(D) In the case of any covered earmark for which competitive or merit-based procedures were not used to award funding, or to enter into the contract, grant, or other agreement, a statement of the reasons competitive or merit-based procedures were not used.

''(b) DOD INSPECTOR GENERAL AUDIT OF CONGRESSIONAL EARMARKS.—The Inspector General of the Department of Defense shall conduct an audit of contracts, grants, or other agreements pursuant to congressional earmarks of Department of Defense funds to determine whether or not the recipients of such earmarks are complying with requirements of Federal law on the use of appropriated funds to influence, whether directly or indirectly, congressional action on any legislation or appropriation matter pending before Congress.

''(c) DEFINITIONS.—In this section:

''(1) The term 'congressional earmark' means any congressionally directed spending item (Senate) or congressional earmark (House of Representatives) on a list published in compliance with rule XLIV of the Standing Rules of the Senate or rule XXI of the Rules of the House of Representatives.

''(2) The term 'covered earmark' means any congressional earmark identified in the joint explanatory statement to accompany the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417) that was printed in the Congressional Record on September 23, 2008.

''(3) The term 'national defense authorization Act' means an Act authorizing funds for a fiscal year for the military activities of the Department of Defense, and for other purposes.''

CONSIDERATION OF TRADE-OFFS AMONG COST, SCHEDULE, AND PERFORMANCE OBJECTIVES IN DEPARTMENT OF DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, §201(a), May 22, 2009, 123 Stat. 1719, provided that:

''(1) IN GENERAL.—The Secretary of Defense shall ensure that mechanisms are developed and implemented to require consideration of trade-offs among cost, schedule, and performance objectives as part of the process for developing requirements for Department of Defense acquisition programs.

''(2) ELEMENTS.—The mechanisms required under this subsection shall ensure, at a minimum, that—

''(A) Department of Defense officials responsible for acquisition, budget, and cost estimating functions are provided an appropriate opportunity to develop estimates and raise cost and schedule matters before performance objectives are established for capabilities for which the Chairman of the Joint Requirements Oversight Council is the validation authority; and

''(B) the process for developing requirements is structured to enable incremental, evolutionary, or spiral acquisition approaches, including the deferral of technologies that are not yet mature and capabilities that are likely to significantly increase costs or delay production until later increments or spirals.''

AWARDS FOR DEPARTMENT OF DEFENSE PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF PRODUCTS AND SERVICES

Pub. L. 111–23, title III, §301, May 22, 2009, 123 Stat. 1730, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [May 22, 2009], the Secretary of Defense shall commence carrying out a program to recognize excellent performance by individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense in the acquisition of products and services for the Department of Defense.

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

''(1) Procedures for the nomination by the personnel of the military departments and the Defense Agencies of individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense for eligibility for recognition under the program.

''(2) Procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise, and are appointed in such manner, as the Secretary shall establish for purposes of the program.

''(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Secretary may award to any individual recognized pursuant to the program a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law.''

TRUSTED DEFENSE SYSTEMS

Pub. L. 110–417, [div. A], title II, §254, Oct. 14, 2008, 122 Stat. 4402, provided that:

''(a) VULNERABILITY ASSESSMENT REQUIRED.—The Secretary of Defense shall conduct an assessment of selected covered acquisition programs to identify vulnerabilities in the supply chain of each program's electronics and information processing systems that potentially compromise the level of trust in the systems. Such assessment shall—

''(1) identify vulnerabilities at multiple levels of the electronics and information processing systems of the selected programs, including microcircuits, software, and firmware;

''(2) prioritize the potential vulnerabilities and effects of the various elements and stages of the system supply chain to identify the most effective balance of investments to minimize the effects of compromise;

''(3) provide recommendations regarding ways of managing supply chain risk for covered acquisition programs; and

''(4) identify the appropriate lead person, and supporting elements, within the Department of Defense for the development of an integrated strategy for managing risk in the supply chain for covered acquisition programs.

''(b) ASSESSMENT OF METHODS FOR VERIFYING THE TRUST OF SEMICONDUCTORS PROCURED FROM COMMERCIAL SOURCES.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, in consultation with appropriate elements of the Department of Defense, the intelligence community, private industry, and academia, shall conduct an assessment of various methods of verifying the trust of semiconductors procured by the Department of Defense from commercial sources for use in mission-critical components of potentially vulnerable defense systems. The assessment shall include the following:

''(1) An identification of various methods of verifying the trust of semiconductors, including methods under development at the Defense Agencies, government laboratories, institutions of higher education, and in the private sector.

''(2) A determination of the methods identified under paragraph (1) that are most suitable for the Department of Defense.

''(3) An assessment of the additional research and technology development needed to develop methods of verifying the trust of semiconductors that meet the needs of the Department of Defense.

''(4) Any other matters that the Under Secretary considers appropriate.

''(c) STRATEGY REQUIRED.—

''(1) IN GENERAL.—The lead person identified under subsection (a)(4), in cooperation with the supporting elements also identified under such subsection, shall develop an integrated strategy—

''(A) for managing risk—

''(i) in the supply chain of electronics and information processing systems for covered acquisition programs; and

''(ii) in the procurement of semiconductors; and

''(B) that ensures dependable, continuous, long-term access and trust for all mission-critical semiconductors procured from both foreign and domestic sources.

''(2) REQUIREMENTS.—At a minimum, the strategy shall—

''(A) address the vulnerabilities identified by the assessment under subsection (a);

''(B) reflect the priorities identified by such assessment;

''(C) provide guidance for the planning, programming, budgeting, and execution process in order to ensure that covered acquisition programs have the necessary resources to implement all appropriate elements of the strategy;

''(D) promote the use of verification tools, as appropriate, for ensuring trust of commercially acquired systems;

''(E) increase use of trusted foundry services, as appropriate; and

''(F) ensure sufficient oversight in implementation of the plan.

''(d) POLICIES AND ACTIONS FOR ASSURING TRUST IN INTEGRATED CIRCUITS.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall—

''(1) develop policy requiring that trust assurance be a high priority for covered acquisition programs in all phases of the electronic component supply chain and integrated circuit development and production process, including design and design tools, fabrication of the semiconductors, packaging, final assembly, and test;

''(2) develop policy requiring that programs whose electronics and information systems are determined to be vital to operational readiness or mission effectiveness are to employ trusted foundry services to fabricate their custom designed integrated circuits, unless the Secretary specifically authorizes otherwise;

''(3) incorporate the strategies and policies of the Department of Defense regarding development and use of trusted integrated circuits into all relevant Department directives and instructions related to the acquisition of integrated circuits and programs that use such circuits; and

''(4) take actions to promote the use and development of tools that verify the trust in all phases of the integrated circuit development and production process of mission-critical parts acquired from non-trusted sources.

''(e) SUBMISSION TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], 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]—

''(1) the assessments required by subsections (a) and (b);

''(2) the strategy required by subsection (c); and

''(3) a description of the policies developed and actions taken under subsection (d).

''(f) DEFINITIONS.—In this section:

''(1) The term 'covered acquisition programs' means an acquisition program of the Department of Defense that is a major system for purposes of section 2302(5) of title 10, United States Code.

''(2) The terms 'trust' and 'trusted' refer, with respect to electronic and information processing systems, to the ability of the Department of Defense to have confidence that the systems function as intended and are free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during its life cycle.

''(3) The term 'trusted foundry services' means the program of the National Security Agency and the Department of Defense, or any similar program approved by the Secretary of Defense, for the development and manufacture of integrated circuits for critical defense systems in secure industrial environments.''

INCREASE OF DOMESTIC BREEDING OF MILITARY WORKING DOGS USED BY THE DEPARTMENT OF DEFENSE

Pub. L. 110–417, [div. A], title III, § 358, Oct. 14, 2008, 122 Stat. 4427, as amended by Pub. L. 111–84, div. A, title III, § 341, Oct. 28, 2009, 123 Stat. 2260; Pub. L. 111–383, div. A, title X, § 1075(e)(6), Jan. 7, 2011, 124 Stat. 4374; Pub. L. 112–81, div. A, title III, § 349, Dec. 31, 2011, 125 Stat. 1375; Pub. L. 114–92, div. A, title X, § 1073(h), Nov. 25, 2015, 129 Stat. 996, provided that:

''(a) INCREASED CAPACITY.—The Secretary of Defense, acting through the Executive Agent for Military Working Dogs (hereinafter in this section referred to as the 'Executive Agent'), shall—

''(1) identify the number of military working dogs required to fulfill the various missions of the Department of Defense for which such dogs are used, including force protection, facility and check point security, and explosives and drug detection;

''(2) take such steps as are practicable to ensure an adequate number of military working dog teams are available to meet and sustain the mission requirements identified in paragraph (1);

''(3) ensure that the Department's needs and performance standards with respect to military working dogs are readily available to dog breeders and trainers; and

''(4) coordinate with other Federal, State, or local agencies, nonprofit organizations, universities, or private sector entities, as appropriate, to increase the training capacity for military working dog teams.

''(b) MILITARY WORKING DOG PROCUREMENT.—The Secretary, acting through the Executive Agent, shall work to ensure that military working dogs are procured as efficiently as possible and at the best value to the Government, while maintaining the necessary level of quality and encouraging increased domestic breeding.

''(c) MILITARY WORKING DOG DEFINED.—For purposes of this section, the term 'military working dog' means a dog used in any official military capacity, as defined by the Secretary of Defense.''

COMPREHENSIVE AUDIT OF SPARE PARTS PURCHASES AND DEPOT OVERHAUL AND MAINTENANCE OF EQUIPMENT FOR OPERATIONS IN IRAQ AND AFGHANISTAN

Pub. L. 110–417, [div. A], title VIII, §852, Oct. 14, 2008, 122 Stat. 4543, provided that:

''(a) AUDITS REQUIRED.—The Army Audit Agency, the Navy Audit Service, and the Air Force Audit Agency shall each conduct thorough audits to identify potential waste, fraud, and abuse in the performance of the following:

''(1) Department of Defense contracts, subcontracts, and task and delivery orders for—

''(A) depot overhaul and maintenance of equipment for the military in Iraq and Afghanistan; and

''(B) spare parts for military equipment used in Iraq and Afghanistan; and

''(2) Department of Defense in-house overhaul and maintenance of military equipment used in Iraq and Afghanistan.

''(b) COMPREHENSIVE AUDIT PLAN.—

''(1) PLANS.—The Army Audit Agency, the Navy Audit Service, and the Air Force Audit Agency shall, in coordination with the Inspector General of the Department of Defense, develop a comprehensive plan for a series of audits to discharge the requirements of subsection (a).

''(2) INCORPORATION INTO REQUIRED AUDIT PLAN.—The plan developed under paragraph (1) shall be submitted to the Inspector General of the Department of Defense for incorporation into the audit plan required by section 842(b)(1) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 234; 10 U.S.C. 2302 note).

''(c) INDEPENDENT CONDUCT OF AUDIT FUNCTIONS.—All audit functions performed under this section, including audit planning and coordination, shall be performed in an independent manner.

''(d) AVAILABILITY OF RESULTS.—All audit reports resulting from audits under this section shall be made available to the Commission on Wartime Contracting in Iraq and Afghanistan established pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110–181] (122 Stat. 230).

''(e) CONSTRUCTION.—Nothing in this section shall be construed to require any agency of the Federal Government to duplicate audit work that an agency of the Federal Government has already performed.''

MOTOR CARRIER FUEL SURCHARGES

Pub. L. 110–417, [div. A], title VIII, §884, Oct. 14, 2008, 122 Stat. 4560, provided that:

''(a) PASS THROUGH TO COST BEARER.—The Secretary of Defense shall take appropriate actions to ensure that, to the maximum extent practicable, in all carriage contracts in which a fuel-related adjustment is provided for, any fuel-related adjustment is passed through to the person who bears the cost of the fuel that the adjustment relates to.

''(b) USE OF CONTRACT CLAUSE.—The actions taken by the Secretary under subsection (a) shall include the insertion of a contract clause, with appropriate flowdown requirements, into all contracts with motor carriers, brokers, or freight forwarders providing or arranging truck transportation or services in which a fuel-related adjustment is provided for.

''(c) DISCLOSURE.—The Secretary shall publicly disclose any decision by the Department of Defense to pay fuel-related adjustments under contracts (or a category of contracts) covered by this section.

''(d) REPORT.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the committees on Armed Services of the Senate and the House of Representatives a report on the actions taken in accordance with the requirements of subsection (a).''

SALES OF COMMERCIAL ITEMS TO NONGOVERNMENTAL ENTITIES

Pub. L. 110–181, div. A, title VIII, §815(b), Jan. 28, 2008, 122 Stat. 223, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall modify the regulations of the Department of Defense on the procurement of commercial items in order to clarify that the terms 'general public' and 'nongovernmental entities' in such regulations do not include the Federal Government or a State, local, or foreign government.''

INVESTIGATION OF WASTE, FRAUD, AND ABUSE IN WARTIME CONTRACTS AND CONTRACTING PROCESSES IN IRAQ AND AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, §842, Jan. 28, 2008, 122 Stat. 234, provided that:

''(a) AUDITS REQUIRED.—Thorough audits shall be performed in accordance with this section to identify potential waste, fraud, and abuse in the performance of—

''(1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and

''(2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.

''(b) AUDIT PLANS.—

''(1) The Department of Defense Inspector General shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(1), consistent with the requirements of subsection (g), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(2) The Special Inspector General for Iraq Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Iraq, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(3) The Special Inspector General for Afghanistan Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Afghanistan, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(c) PERFORMANCE OF AUDITS BY CERTAIN INSPECTORS GENERAL.—The Special Inspector General for Iraq Reconstruction, during such period as such office exists, the Special Inspector General for Afghanistan Reconstruction, during such period as such office exists, the Inspector General of the Department of Defense, the Inspector General of the Department of State, and the Inspector General of the United States Agency for International Development shall perform such audits as required by subsection (a) and identified in the audit plans developed pursuant to subsection (b) as fall within the respective scope of their duties as specified in law.

''(d) COORDINATION OF AUDITS.—The Inspectors General specified in subsection (c) shall work to coordinate the performance of the audits required by subsection

(a) and identified in the audit plans developed under subsection (b) including through councils and working groups composed of such Inspectors General.

''(e) JOINT AUDITS.—If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General agree that such audit or audits are best pursued jointly, such Inspectors General shall enter into a memorandum of understanding relating to the performance of such audit or audits.

''(f) SEPARATE AUDITS.—If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General do not agree that such audit or audits are best pursued jointly, such audit or audits shall be separately performed by one or more of the Inspectors General concerned.

''(g) SCOPE OF AUDITS OF CONTRACTS.—Audits conducted pursuant to subsection (a)(1) shall examine, at a minimum, one or more of the following issues:

''(1) The manner in which contract requirements were developed.

''(2) The procedures under which contracts or task or delivery orders were awarded.

''(3) The terms and conditions of contracts or task or delivery orders.

''(4) The staffing and method of performance of contractors, including cost controls.

''(5) The efficacy of Department of Defense management and oversight, including the adequacy of staffing and training of officials responsible for such management and oversight.

''(6) The flow of information from contractors to officials responsible for contract management and oversight.

''(h) SCOPE OF AUDITS OF OTHER CONTRACTS.—Audits conducted pursuant to subsection (a)(2) shall examine, at a minimum, one or more of the following issues:

''(1) The manner in which contract requirements were developed and contracts or task and delivery orders were awarded.

''(2) The manner in which the Federal agency exercised control over the performance of contractors.

''(3) The extent to which operational field commanders were able to coordinate or direct the performance of contractors in an area of combat operations.

''(4) The degree to which contractor employees were properly screened, selected, trained, and equipped for the functions to be performed.

''(5) The nature and extent of any incidents of misconduct or unlawful activity by contractor employees.

''(6) The nature and extent of any activity by contractor employees that was inconsistent with the objectives of operational field commanders.

''(7) The extent to which any incidents of misconduct or unlawful activity were reported, documented, investigated, and (where appropriate) prosecuted.

''(i) INDEPENDENT CONDUCT OF AUDIT FUNCTIONS.—All audit functions under this section, including audit planning and coordination, shall be performed by the relevant Inspectors General in an independent manner, without consultation with the Commission established pursuant to section 841 of this Act [122 Stat. 230]. All audit reports resulting from such audits shall be available to the Commission.''

CONTRACTS IN IRAQ AND AFGHANISTAN AND PRIVATE SECURITY CONTRACTS IN AREAS OF OTHER SIGNIFICANT MILITARY OPERATIONS

Pub. L. 111–383, div. A, title VIII, § 831(b), Jan. 7, 2011, 124 Stat. 4274, provided that:

''(1) DEADLINE FOR REGULATIONS.—Not later than 60 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall revise the regulations prescribed pursuant to section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) to incorporate the requirements of the amendments made by subsection (a).

''(2) COMMENCEMENT OF APPLICABILITY OF REVISIONS.—The revision of regulations under paragraph (1) shall apply to the following:

''(A) Any contract that is awarded on or after the date that is 120 days after the date of the enactment of this Act.

''(B) Any task or delivery order that is issued on or after the date that is 120 days after the date of the enactment of this Act pursuant to a contract that is awarded before, on, or after the date that is 120 days after the date of the enactment of this Act.

''(3) COMMENCEMENT OF INCLUSION OF CONTRACT CLAUSE.—A contract clause that reflects the revision of regulations required by the amendments made by subsection (a) shall be inserted, as required by such section 862, into the following:

''(A) Any contract described in paragraph (2)(A).

''(B) Any task or delivery order described in paragraph (2)(B).''

Pub. L. 111–383, div. A, title VIII, § 832(b), Jan. 7, 2011, 124 Stat. 4275, provided that:

''(1) DETERMINATION REQUIRED FOR CERTAIN AREAS.—Not later than 150 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall make a written determination for each of the following areas regarding whether or not the area constitutes an area of combat operations or an area of other significant military operations for purposes of designation as such an area under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note), as amended by this section:

''(A) The Horn of Africa region.

''(B) Yemen.

''(C) The Philippines.

''(2) SUBMISSION TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, 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 copy of each written determination under paragraph (1), together with an explanation of the basis for such determination.''

Pub. L. 110–417, [div. A], title VIII, § 854(b), Oct. 14, 2008, 122 Stat. 4545, provided that:

''(1) THROUGH MEMORANDUM OF UNDERSTANDING.—The memorandum of understanding required by section 861(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 253; 10 U.S.C. 2302 note) shall be modified to address the requirements under the amendment made by subsection (a) [amending Pub. L. 110–181, § 861(b), set out below] not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008].

''(2) AS CONDITION OF CURRENT AND FUTURE CONTRACTS.—The requirements under the amendment made by subsection (a) shall be included in each contract in Iraq or Afghanistan (as defined in section 864(a)(2) of Public Law 110–181; [10 U.S.C.] 2302 note) awarded on or after the date that is 180 days after the date of the enactment of this Act [Oct. 14, 2008]. Federal agencies shall make best efforts to provide for the inclusion of such requirements in covered contracts awarded before such date.''

Pub. L. 110–417, [div. A], title VIII, § 854(c), Oct. 14, 2008, 122 Stat. 4545, provided that: ''Beginning not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall make publicly available a numerical accounting of alleged offenses described in section 861(b)(6) of Public Law 110–181 [set out below] that have been reported under that section that occurred after the date of the enactment of this Act. The information shall be updated no less frequently than semi-annually.''

Pub. L. 110–181, div. A, title VIII, subtitle F, Jan. 28, 2008, 122 Stat. 253, as amended by Pub. L. 110–417, [div.

A], title VIII, §§853, 854(a), (d), Oct. 14, 2008, 122 Stat. 4544, 4545; Pub. L. 111–84, div. A, title VIII, §813(a)–(c), Oct. 28, 2009, 123 Stat. 2406, 2407; Pub. L. 111–383, div. A, title VIII, §§831(a), 832(a), (c), 835, title X, §1075(d)(9), Jan. 7, 2011, 124 Stat. 4273, 4275, 4276, 4279, 4373; Pub. L. 112–81, div. A, title VIII, §844(c), Dec. 31, 2011, 125 Stat. 1515; Pub. L. 112–239, div. A, title VIII, §847, Jan. 2, 2013, 126 Stat. 1850; Pub. L. 113–291, div. A, title X, §1071(b)(2)(D), Dec. 19, 2014, 128 Stat. 3506, provided that:

''SEC. 861. MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING.

''(a) MEMORANDUM OF UNDERSTANDING REQUIRED.—The Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall, not later than July 1, 2008, enter into a memorandum of understanding regarding matters relating to contracting for contracts in Iraq or Afghanistan.

''(b) MATTERS COVERED.—The memorandum of understanding required by subsection (a) shall address, at a minimum, the following:

''(1) Identification of the major categories of contracts in Iraq or Afghanistan being awarded by the Department of Defense, the Department of State, or the United States Agency for International Development.

''(2) Identification of the roles and responsibilities of each department or agency for matters relating to contracting for contracts in Iraq or Afghanistan.

''(3) Responsibility for establishing procedures for, and the coordination of, movement of contractor personnel in Iraq or Afghanistan.

''(4) Identification of common databases that will serve as repositories of information on contracts in Iraq or Afghanistan and contractor personnel in Iraq or Afghanistan, including agreement on the elements to be included in the databases, including, at a minimum—

''(A) with respect to each contract—

''(i) a brief description of the contract (to the extent consistent with security considerations);

''(ii) the total value of the contract; and

''(iii) whether the contract was awarded competitively; and

''(B) with respect to contractor personnel—

''(i) the total number of personnel employed on contracts in Iraq or Afghanistan;

''(ii) the total number of personnel performing security functions under contracts in Iraq or Afghanistan; and

''(iii) the total number of personnel working under contracts in Iraq or Afghanistan who have been killed or wounded.

''(5) Responsibility for maintaining and updating information in the common databases identified under paragraph (4).

''(6) Responsibility for the collection and referral to the appropriate Government agency of any information relating to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) or chapter 212 of title 18, United States Code (commonly referred to as the Military Extraterritorial Jurisdiction Act), including a clarification of responsibilities under section 802(a)(10) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), as amended by section 552 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364).

''(7) Mechanisms for ensuring that contractors are required to report offenses described in paragraph (6) that are alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

''(8) Responsibility for providing victim and witness protection and assistance to contractor personnel in connection with alleged offenses described in paragraph (6).

''(9) Development of a requirement that a contractor shall provide to all contractor personnel who will perform work on a contract in Iraq or Afghanistan, before beginning such work, information on the following:

''(A) How and where to report an alleged offense described in paragraph (6).

''(B) Where to seek the assistance required by paragraph (8).

''(c) IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING.—Not later than 120 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such policies or guidance and prescribe such regulations as are necessary to implement the memorandum of understanding for the relevant matters pertaining to their respective agencies.

''(d) COPIES PROVIDED TO CONGRESS.—

''(1) MEMORANDUM OF UNDERSTANDING.—Copies of the memorandum of understanding required by subsection (a) shall be provided to the relevant committees of Congress within 30 days after the memorandum is signed.

''(2) REPORT ON IMPLEMENTATION.—Not later than 180 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each provide a report to the relevant committees of Congress on the implementation of the memorandum of understanding.

''(3) DATABASES.—The Secretary of Defense, the Secretary of State, or the Administrator of the United States Agency for International Development shall provide access to the common databases identified under subsection (b)(4) to the relevant committees of Congress.

''(4) CONTRACTS.—Effective on the date of the enactment of this Act [Jan. 28, 2008], copies of any contracts in Iraq or Afghanistan awarded after December 1, 2007, shall be provided to any of the relevant committees of Congress within 15 days after the submission of a request for such contract or contracts from such committee to the department or agency managing the contract.

''SEC. 862. CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS OR OTHER SIGNIFICANT MILITARY OPERATIONS.

''(a) REGULATIONS ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, in coordination with the Secretary of State, shall prescribe regulations on the selection, training, equipping, and conduct of personnel performing private security functions under a covered contract in an area of combat operations or other significant military operations.

''(2) ELEMENTS.—The regulations prescribed under subsection (a) shall, at a minimum, establish—

''(A) a process for registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations or other significant military operations;

''(B) a process for authorizing and accounting for weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations or other significant military operations;

''(C) a process for the registration and identification of armored vehicles, helicopters, and other military vehicles operated by contractors performing private security functions in an area of combat operations or other significant military operations;

''(D) a process under which contractors are required to report all incidents, and persons other than contractors are permitted to report incidents, in which—

''(i) a weapon is discharged by personnel performing private security functions in an area of combat operations or other significant military operations;

''(ii) personnel performing private security functions in an area of combat operations or other significant military operations are killed or injured;

''(iii) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel;

''(iv) a weapon is discharged against personnel performing private security functions in an area of combat operations or other significant military operations or personnel performing such functions believe a weapon was so discharged; or

''(v) active, non-lethal countermeasures (other than the discharge of a weapon) are employed by the personnel performing private security functions in an area of combat operations or other significant military operations in response to a perceived immediate threat to such personnel;

''(E) a process for the independent review and, if practicable, investigation of—

''(i) incidents reported pursuant to subparagraph (D); and

''(ii) incidents of alleged misconduct by personnel performing private security functions in an area of combat operations or other significant military operations;

''(F) requirements for qualification, training, screening (including, if practicable, through background checks), and security for personnel performing private security functions in an area of combat operations or other significant military operations;

''(G) guidance to the commanders of the combatant commands on the issuance of—

''(i) orders, directives, and instructions to contractors performing private security functions relating to equipment, force protection, security, health, safety, or relations and interaction with locals;

''(ii) predeployment training requirements for personnel performing private security functions in an area of combat operations or other significant military operations, addressing the requirements of this section, resources and assistance available to contractor personnel, country information and cultural training, and guidance on working with host country nationals and military; and

''(iii) rules on the use of force for personnel performing private security functions in an area of combat operations or other significant military operations;

''(H) a process by which a commander of a combatant command may request an action described in subsection (b)(3); and

''(I) a process by which the training requirements referred to in subparagraph (G)(ii) shall be implemented.

''(3) AVAILABILITY OF ORDERS, DIRECTIVES, AND INSTRUCTIONS.—The regulations prescribed under subsection (a) shall include mechanisms to ensure the provision and availability of the orders, directives, and instructions referred to in paragraph (2)(G)(i) to contractors referred to in that paragraph, including through the maintenance of a single location (including an Internet website, to the extent consistent with security considerations) at or through which such contractors may access such orders, directives, and instructions.

''(b) CONTRACT CLAUSE ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.—

''(1) REQUIREMENT UNDER FAR.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Federal Acquisition Regulation issued in accordance with section 1303 of title 41, United States Code[,] shall be revised to require the insertion into each covered contract (or, in the case of a task order, the contract under which the task order is issued) of a contract clause addressing the selection, training, equipping, and conduct of personnel performing private security functions under such contract.

''(2) CLAUSE REQUIREMENT.—The contract clause required by paragraph (1) shall require, at a minimum, that the contractor concerned shall—

''(A) ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such contract comply with regulations prescribed under subsection (a), including any revisions or updates to such regulations, and follow the procedures established in such regulations for—

''(i) registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations or other significant military operations;

''(ii) authorizing and accounting of weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations or other significant military operations;

''(iii) registration and identification of armored vehicles, helicopters, and other military vehicles operated by contractors and subcontractors performing private security functions in an area of combat operations or other significant military operations; and

''(iv) the reporting of incidents in which—

''(I) a weapon is discharged by personnel performing private security functions in an area of combat operations or other significant military operations;

''(II) personnel performing private security functions in an area of combat operations or other significant military operations are killed or injured; or

''(III) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel;

''(B) ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such contract comply with—

''(i) qualification, training, screening (including, if practicable, through background checks), and security requirements established by the Secretary of Defense for personnel performing private security functions in an area of combat operations or other significant military operations;

''(ii) applicable laws and regulations of the United States and the host country, and applicable treaties and international agreements, regarding the performance of the functions of the contractor;

''(iii) orders, directives, and instructions issued by the applicable commander of a combatant command relating to equipment, force protection, security, health, safety, or relations and interaction with locals; and

''(iv) rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions in an area of combat operations or other significant military operations;

''(C) cooperate with any investigation conducted by the Department of Defense pursuant to subsection (a)(2)(E) by providing access to employees of the contractor and relevant information in the possession of the contractor regarding the incident concerned; and

''(D) ensure that the contract clause is included in subcontracts awarded to any subcontractor at any tier who is responsible for performing private security functions under the contract.

''(3) NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.—The contracting officer for a covered contract may direct the contractor, at its own expense, to remove

or replace any personnel performing private security functions in an area of combat operations or other significant military operations who violate or fail to comply with applicable requirements of the clause required by this subsection. If the violation or failure to comply is a gross violation or failure or is repeated, the contract may be terminated for default.

''(4) APPLICABILITY.—The contract clause required by this subsection shall be included in all covered contracts awarded on or after the date that is 180 days after the date of the enactment of this Act [Jan. 28, 2008]. Federal agencies shall make best efforts to provide for the inclusion of the contract clause required by this subsection in covered contracts awarded before such date.

''(5) INSPECTOR GENERAL REPORT ON PILOT PROGRAM ON IMPOSITION OF FINES FOR NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.—Not later than March 30, 2008, the Inspector General of the Department of Defense shall submit to Congress a report assessing the feasibility and advisability of carrying out a pilot program for the imposition of fines on contractors for personnel who violate or fail to comply with applicable requirements of the clause required by this section as a mechanism for enhancing the compliance of such personnel with the clause. The report shall include—

''(A) an assessment of the feasibility and advisability of carrying out the pilot program; and

''(B) if the Inspector General determines that carrying out the pilot program is feasible and advisable—

''(i) recommendations on the range of contracts and subcontracts to which the pilot program should apply; and

''(ii) a schedule of fines to be imposed under the pilot program for various types of personnel actions or failures.

''(c) OVERSIGHT.—It shall be the responsibility of the head of the contracting activity responsible for each covered contract to ensure that the contracting activity takes appropriate steps to assign sufficient oversight personnel to the contract to—

''(1) ensure that the contractor responsible for performing private security functions under such contract comply with the regulatory requirements prescribed pursuant to subsection (a) and the contract requirements established pursuant to subsection (b); and

''(2) make the determinations required by subsection (d).

''(d) REMEDIES.—The failure of a contractor under a covered contract to comply with the requirements of the regulations prescribed under subsection (a) or the contract clause inserted in a covered contract pursuant to subsection (b), as determined by the contracting officer for the covered contract—

''(1) shall be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of the past performance of the contractor for the purpose of a contract award decision, as provided in section 1126 of title 41, United States Code;

''(2) in the case of an award fee contract—

''(A) shall be considered in any evaluation of contract performance by the contractor for the relevant award fee period; and

''(B) may be a basis for reducing or denying award fees for such period, or for recovering all or part of award fees previously paid for such period; and

''(3) in the case of a failure to comply that is severe, prolonged, or repeated—

''(A) shall be referred to the suspension or debarment official for the appropriate agency; and

''(B) may be a basis for suspension or debarment of the contractor.

''(e) RULE OF CONSTRUCTION.—The duty of a contractor under a covered contract to comply with the requirements of the regulations prescribed under subsection (a) and the contract clause inserted into a covered contract pursuant to subsection (b), and the availability of the remedies provided in subsection (d), shall not be reduced or diminished by the failure of a higher or lower tier contractor under such contract to comply with such requirements, or by a failure of the contracting activity to provide the oversight required by subsection (c).

''(f) AREAS OF COMBAT OPERATIONS OR OTHER SIGNIFICANT MILITARY OPERATIONS.—

''(1) DESIGNATION.—The Secretary of Defense shall designate the areas constituting either an area of combat operations or other significant military operations for purposes of this section by not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008]. In making designations under this paragraph, the Secretary shall ensure that an area is not designated in whole or part as both an area of combat operations and an area of other significant military operations.

''(2) OTHER SIGNIFICANT MILITARY OPERATIONS.—For purposes of this section, the term 'other significant military operations' means activities, other than combat operations, as part of an overseas contingency operation that are carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.

''(3) PARTICULAR AREAS.—Iraq and Afghanistan shall be included in the areas designated as an area of combat operations or other significant military operations under paragraph (1).

''(4) ADDITIONAL AREAS.—The Secretary may designate any additional area as an area constituting an area of combat operations or other significant military operations for purposes of this section if the Secretary determines that the presence or potential of combat operations or other significant military operations in such area warrants designation of such area as an area of combat operations or other significant military operations for purposes of this section.

''(5) MODIFICATION OR ELIMINATION OF DESIGNATION.—The Secretary may modify or cease the designation of an area under this subsection as an area of combat operations or other significant military operations if the Secretary determines that combat operations or other significant military operations are no longer ongoing in such area.

''(g) LIMITATION.—With respect to an area of other significant military operations, the requirements of this section shall apply only upon agreement of the Secretary of Defense and the Secretary of State. An agreement of the Secretaries under this subsection may be made only on an area-by-area basis. With respect to an area of combat operations, the requirements of this section shall always apply.

''(h) EXCEPTIONS.—

''(1) INTELLIGENCE ACTIVITIES.—The requirements of this section shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.

''(2) NONGOVERNMENTAL ORGANIZATIONS.—The requirements of this section shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the agreement of the Secretaries under this paragraph on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.

''SEC. 863. ANNUAL JOINT REPORT ON CONTRACTING IN IRAQ AND AFGHANISTAN.

''(a) IN GENERAL.—Except as provided in subsection (f), every 12 months, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall

submit to the relevant committees of Congress a joint report on contracts in Iraq or Afghanistan.

''(b) PRIMARY MATTERS COVERED.—A report under this section shall, at a minimum, cover the following with respect to contracts in Iraq and Afghanistan during the reporting period:

''(1) Total number of contracts awarded.

''(2) Total number of active contracts.

''(3) Total value of all contracts awarded.

''(4) Total value of active contracts.

''(5) The extent to which such contracts have used competitive procedures.

''(6) Percentage of contracts awarded on a competitive basis as compared to established goals for competition in contingency contracting actions.

''(7) Total number of contractor personnel working on contracts at the end of each quarter of the reporting period.

''(8) Total number of contractor personnel who are performing security functions at the end of each quarter of the reporting period.

''(9) Total number of contractor personnel killed or wounded.

''(c) ADDITIONAL MATTERS COVERED.—A report under this section shall also cover the following:

''(1) The sources of information and data used to compile the information required under subsection (b).

''(2) A description of any known limitations of the data reported under subsection (b), including known limitations of the methodology and data sources used to compile the report.

''(3) Any plans for strengthening collection, coordination, and sharing of information on contracts in Iraq and Afghanistan through improvements to the common databases identified under section 861(b)(4).

''(d) REPORTING PERIOD.—A report under this section shall cover a period of not less than 12 months.

''(e) SUBMISSION OF REPORTS.—The Secretaries and the Administrator shall submit an initial report under this section not later than February 1, 2011, and shall submit an updated report by February 1 of every year thereafter until February 1, 2015.

''(f) EXCEPTION.—If the total annual amount of obligations for contracts in Iraq and Afghanistan combined is less than $250,000,000 for the reporting period, for all three agencies combined, the Secretaries and the Administrator may submit, in lieu of a report, a letter stating the applicability of this subsection, with such documentation as the Secretaries and the Administrator consider appropriate.

''(g) ESTIMATES.—In determining the total number of contractor personnel working on contracts under subsection (b)(6), the Secretaries and the Administrator may use estimates for any category of contractor personnel for which they determine it is not feasible to provide an actual count. The report shall fully disclose the extent to which estimates are used in lieu of an actual count.

''SEC. 864. DEFINITIONS AND OTHER GENERAL PROVISIONS.

''(a) DEFINITIONS.—In this subtitle:

''(1) MATTERS RELATING TO CONTRACTING.—The term 'matters relating to contracting', with respect to contracts in Iraq and Afghanistan, means all matters relating to awarding, funding, managing, tracking, monitoring, and providing oversight to contracts and contractor personnel.

''(2) CONTRACT IN IRAQ OR AFGHANISTAN.—The term 'contract in Iraq or Afghanistan' means a contract with the Department of Defense, the Department of State, or the United States Agency for International Development, a subcontract at any tier issued under such a contract, a task order or delivery order at any tier issued under such a contract, a grant, or a cooperative agreement (including a contract, subcontract, task order, delivery order, grant, or cooperative agreement issued by another Government agency for the Department of Defense, the Department of State, or the United States Agency for International Development), if the contract, subcontract, task order, delivery order, grant, or cooperative agreement involves worked [sic] performed in Iraq or Afghanistan for a period longer than 30 days.

''(3) COVERED CONTRACT.—The term 'covered contract' means—

''(A) a contract of a Federal agency for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862;

''(B) a subcontract at any tier under such a contract;

''(C) a task order or delivery order issued under such a contract or subcontract;

''(D) a grant for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862; or

''(E) a cooperative agreement for the performance of services in such an area of combat operations.

''(4) CONTRACTOR.—The term 'contractor', with respect to a covered contract, means—

''(A) in the case of a covered contract that is a contract, subcontract, task order, or delivery order, the contractor or subcontractor carrying out the covered contract;

''(B) in the case of a covered contract that is a grant, the grantee; and

''(C) in the case of a covered contract that is a cooperative agreement, the recipient.

''(5) CONTRACTOR PERSONNEL.—The term 'contractor personnel' means any person performing work under contract for the Department of Defense, the Department of State, or the United States Agency for International Development, in Iraq or Afghanistan, including individuals and subcontractors at any tier.

''(6) PRIVATE SECURITY FUNCTIONS.—The term 'private security functions' means activities engaged in by a contractor under a covered contract as follows:

''(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

''(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

''(7) RELEVANT COMMITTEES OF CONGRESS.—The term 'relevant committees of Congress' means each of the following committees:

''(A) The Committees on Armed Services of the Senate and the House of Representatives.

''(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

''(C) The Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

''(D) For purposes of contracts relating to the National Foreign Intelligence Program, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

''(b) CLASSIFIED INFORMATION.—Nothing in this subtitle shall be interpreted to require the handling of classified information or information relating to intelligence sources and methods in a manner inconsistent with any law, regulation, executive order, or rule of the House of Representatives or of the Senate relating to the handling or protection of such information.''

ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, §886, Jan. 28, 2008, 122 Stat. 266, as amended by Pub. L. 112–239, div. A, title VIII, §842, Jan. 2, 2013, 126 Stat. 1845; Pub. L. 114–92, div. A, title VIII, §886(a), Nov. 25, 2015, 129 Stat. 949, provided that:

''(a) IN GENERAL.—In the case of a product or service to be acquired in support of military operations or sta-

bility operations in Afghanistan (including security, transition, reconstruction, and humanitarian relief activities) for which the Secretary of Defense makes a determination described in subsection (b), and except as provided in subsection (d), the Secretary may conduct a procurement in which—

''(1) competition is limited to products or services that are from Afghanistan;

''(2) procedures other than competitive procedures are used to award a contract to a particular source or sources from Afghanistan; or

''(3) a preference is provided for products or services that are from Afghanistan.

''(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that—

''(1) the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan; or

''(2) it is in the national security interest of the United States to limit competition, use procedures other than competitive procedures, or provide a preference as described in subsection (a) because—

''(A) such limitation, procedure, or preference is necessary to provide a stable source of jobs in Afghanistan; and

''(B) such limitation, procedure, or preference will not adversely affect—

''(i) military operations or stability operations in Afghanistan; or

''(ii) the United States industrial base.

''(c) PRODUCTS, SERVICES, AND SOURCES FROM AFGHANISTAN.—For the purposes of this section:

''(1) A product is from Afghanistan if it is mined, produced, or manufactured in Afghanistan.

''(2) A service is from Afghanistan if it is performed in Afghanistan by citizens or permanent resident aliens of Afghanistan.

''(3) A source is from Afghanistan if it—

''(A) is located in Afghanistan; and

''(B) offers products or services that are from Afghanistan.

''(d) EXCLUSION OF ITEMS ON THE ABILITYONE PROCUREMENT CATALOG.—The authority under subsection (a) shall not be available for the procurement of any good that is contained in the procurement catalog described in section 8503(a) of title 41, United States Code, in Afghanistan if such good can be produced and delivered by a qualified nonprofit agency for the blind or a nonprofit agency for other severely disabled [sic] in a timely fashion to support mission requirements.''

[Pub. L. 112–239, div. A, title VIII, §842(1), Jan. 2, 2013, 126 Stat. 1845, which directed amendment of section 886 of Pub. L. 110–181, set out above, by striking ''Iraq or'' in section heading, was executed by striking ''Iraq and'', to reflect the probable intent of Congress.]

PREVENTION OF EXPORT CONTROL VIOLATIONS

Pub. L. 110–181, div. A, title VIII, §890, Jan. 28, 2008, 122 Stat. 269, as amended by Pub. L. 110–417, [div. A], title X, §1061(b)(6), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–383, div. A, title X, §1075(f)(6), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) PREVENTION OF EXPORT CONTROL VIOLATIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall prescribe regulations requiring any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act [22 U.S.C. 2751 et seq.] or the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.] (as continued in effect under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]) to comply with those Acts and applicable regulations with respect to such goods and technology, including the International Traffic in Arms Regulations and the Export Administration Regulations. Regulations prescribed under this subsection shall include a contract clause enforcing such requirement.

''(b) TRAINING ON EXPORT CONTROLS.—The Secretary of Defense shall ensure that any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act or the Export Administration Act of 1979 (as continued in effect under the International Emergency Economic Powers Act) is made aware of any relevant resources made available by the Department of State and the Department of Commerce to assist in compliance with the requirement established by subsection (a) and the need for a corporate compliance plan and periodic internal audits of corporate performance under such plan.

''(c) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report assessing the utility of—

''(1) requiring defense contractors (or subcontractors at any tier) to periodically report on measures taken to ensure compliance with the International Traffic in Arms Regulations and the Export Administration Regulations;

''(2) requiring periodic audits of defense contractors (or subcontractors at any tier) to ensure compliance with all provisions of the International Traffic in Arms Regulations and the Export Administration Regulations;

''(3) requiring defense contractors to maintain a corporate training plan to disseminate information to appropriate contractor personnel regarding the applicability of the Arms Export Control Act and the Export Administration Act of 1979; and

''(4) requiring a designated corporate liaison, available for training provided by the United States Government, whose primary responsibility would be contractor compliance with the Arms Export Control Act and the Export Administration Act of 1979.

''(d) DEFINITIONS.—In this section:

''(1) EXPORT ADMINISTRATION REGULATIONS.—The term 'Export Administration Regulations' means those regulations contained in parts 730 through 774 of title 15, Code of Federal Regulations (or successor regulations).

''(2) INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.—The term 'International Traffic in Arms Regulations' means those regulations contained in parts 120 through 130 of title 22, Code of Federal Regulations (or successor regulations).''

QUALITY CONTROL IN PROCUREMENT OF SHIP CRITICAL SAFETY ITEMS AND RELATED SERVICES

Pub. L. 109–364, div. A, title I, §130(a)–(c), Oct. 17, 2006, 120 Stat. 2110, provided that:

''(a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of the following:

''(1) Ship critical safety items.

''(2) Modifications, repair, and overhaul of ship critical safety items.

''(b) ELEMENTS.—The policy required under subsection (a) shall include requirements as follows:

''(1) That the head of the design control activity for ship critical safety items establish processes to identify and manage the procurement, modification, repair, and overhaul of such items.

''(2) That the head of the contracting activity for a ship critical safety item enter into a contract for the procurement, modification, repair, or overhaul of such item only with a source on a qualified manufacturers list or a source approved by the design control activity in accordance with section 2319 of title 10, United States Code (as amended by subsection (d)).

''(3) That the ship critical safety items delivered, and the services performed with respect to such items, meet all technical and quality requirements specified by the design control activity.

''(c) DEFINITIONS.—In this section, the terms 'ship critical safety item' and 'design control activity' have

the meanings given such terms in subsection (g) of section 2319 of title 10, United States Code (as so amended).''

PILOT PROGRAM ON TIME-CERTAIN DEVELOPMENT IN ACQUISITION OF MAJOR WEAPON SYSTEMS

Pub. L. 109–364, div. A, title VIII, § 812, Oct. 17, 2006, 120 Stat. 2317, as amended by Pub. L. 110–417, [div. A], title VIII, § 813(d)(3), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–84, div. A, title X, § 1073(c)(5), Oct. 28, 2009, 123 Stat. 2474, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a pilot program on the use of time-certain development in the acquisition of major weapon systems.

''(b) PURPOSE OF PILOT PROGRAM.—The purpose of the pilot program authorized by subsection (a) is to assess the feasibility and advisability of utilizing time-certain development in the acquisition of major weapon systems in order to deliver new capabilities to the warfighter more rapidly through—

''(1) disciplined decision-making;

''(2) emphasis on technological maturity; and

''(3) appropriate trade-offs between—

''(A) cost and system performance; and

''(B) program schedule.

''(c) INCLUSION OF SYSTEMS IN PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense may include a major weapon system in the pilot program only if—

''(A) the major weapon system meets the criteria under paragraph (2) in accordance with that paragraph; and

''(B) the Milestone Decision Authority nominates such program to the Secretary of Defense for inclusion in the program.

''(2) CRITERIA.—For purposes of paragraph (1) a major weapon system meets the criteria under this paragraph only if the Milestone Decision Authority determines, in consultation with the service acquisition executive for the military department carrying out the acquisition program for the system and one or more combatant commanders responsible for fielding the system, that—

''(A) the certification requirements of section 2366b of title 10, United States Code (as amended by section 805 of this Act), have been met, and no waivers have been granted from such requirements;

''(B) a preliminary design has been reviewed using systems engineering, and the system, as so designed, will meet battlefield needs identified by the relevant combatant commanders after appropriate requirements analysis;

''(C) a representative model or prototype of the system, or key subsystems, has been demonstrated in a relevant environment, such as a well-simulated operational environment;

''(D) an independent cost estimate has been conducted and used as the basis for funding requirements for the acquisition program for the system;

''(E) the budget of the military department responsible for carrying out the acquisition program for the system provides the funding necessary to execute the product development and production plan consistent with the requirements identified pursuant to subparagraph (D);

''(F) an appropriately qualified program manager has entered into a performance agreement with the Milestone Decision Authority that establishes expected parameters for the cost, schedule, and performance of the acquisition program for the system, consistent with a business case for such acquisition program;

''(G) the service acquisition executive and the program manager have developed a strategy to ensure stability in program management until, at a minimum, the delivery of the initial operational capability under the acquisition program for the system has occurred;

''(H) the service acquisition executive, the relevant combatant commanders, and the program manager have agreed that no additional requirements that would be inconsistent with the agreed-upon program schedule will be added during the development phase of the acquisition program for the system; and

''(I) a planned initial operational capability will be delivered to the relevant combatant commanders within a defined period of time as prescribed in regulations by the Secretary of Defense.

''(3) TIMING OF DECISION.—The decision whether to include a major weapon system in the pilot program shall be made at the time of milestone approval for the acquisition program for the system.

''(d) LIMITATION ON NUMBER OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The number of major weapon systems included in the pilot program at any time may not exceed six major weapon systems.

''(e) LIMITATION ON COST OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The Secretary of Defense may include a major weapon system in the pilot program only if, at the time a major weapon system is proposed for inclusion, the total cost for system design and development of the weapon system, as set forth in the cost estimate referred to in subsection (c)(2)(D), does not exceed $1,000,000,000 during the period covered by the current future-years defense program.

''(f) SPECIAL FUNDING AUTHORITY.—

''(1) AUTHORITY FOR RESERVE ACCOUNT.—Notwithstanding any other provision of law, the Secretary of Defense may establish a special reserve account utilizing funds made available for the major weapon systems included in the pilot program.

''(2) ELEMENTS.—The special reserve account may include—

''(A) funds made available for any major weapon system included in the pilot program to cover termination liability;

''(B) funds made available for any major weapon system included in the pilot program for award fees that may be earned by contractors; and

''(C) funds appropriated to the special reserve account.

''(3) AVAILABILITY OF FUNDS.—Funds in the special reserve account may be used, in accordance with guidance issued by the Secretary for purposes of this section, for the following purposes:

''(A) To cover termination liability for any major weapon system included in the pilot program.

''(B) To pay award fees that are earned by any contractor for a major weapon system included in the pilot program.

''(C) To address unforeseen contingencies that could prevent a major weapon system included in the pilot program from meeting critical schedule or performance requirements.

''(4) REPORTS ON USE OF FUNDS.—Not later than 30 days after the use of funds in the special reserve account for the purpose specified in paragraph (3)(C), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of funds in the account for such purpose. The report shall set forth the purposes for which the funds were used and the reasons for the use of the funds for such purposes.

''(5) RELATIONSHIP TO APPROPRIATIONS.—Nothing in this subsection may be construed as extending any period of time for which appropriated funds are made available.

''(g) ADMINISTRATION OF PILOT PROGRAM.—The Secretary of Defense shall prescribe policies and procedures on the administration of the pilot program. Such policies and procedures shall—

''(1) provide for the use of program status reports based on earned value data to track progress on a major weapon system under the pilot program against baseline estimates applicable to such system at each systems engineering technical review point; and

''(2) grant authority, to the maximum extent practicable, to the program manager for the acquisition

program for a major weapon system to make key program decisions and trade-offs, subject to management reviews only if cost or schedule deviations exceed the baselines for such acquisition program by 10 percent or more.

''(h) REMOVAL OF WEAPONS SYSTEMS FROM PILOT PROGRAM.—The Secretary of Defense shall remove a major weapon system from the pilot program if—

''(1) the weapon system receives Milestone C approval; or

''(2) the Secretary determines that the weapon system is no longer in substantial compliance with the criteria in subsection (c)(2) or is otherwise no longer appropriate for inclusion in the pilot program.

''(i) EXPIRATION OF AUTHORITY TO INCLUDE ADDITIONAL SYSTEMS IN PILOT PROGRAM.—

''(1) EXPIRATION.—A major weapon system may not be included in the pilot program after September 30, 2012.

''(2) RETENTION OF SYSTEMS.—A major weapon system included in the pilot program before the date specified in paragraph (1) in accordance with the requirements of this section may remain in the pilot program after that date.

''(j) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than one year after including the first major weapon system in the pilot program, and annually thereafter, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program, and the major weapon systems included in the pilot program, during the one-year period ending on the date of such report.

''(2) ELEMENTS.—Each report under this subsection shall include—

''(A) a description of progress under the pilot program, and on each major weapon system included in the pilot program, during the period covered by such report;

''(B) a description of the use of all funds in the special reserve account established under subsection (f); and

''(C) such other matters as the Secretary considers appropriate.

''(k) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term 'major weapon system' means a weapon system that is treatable as a major system under section 2302(5) of title 10, United States Code.''

[Pub. L. 111–84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(5) to section 813(d)(3) of Pub. L. 110–417, set out above, is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.]

LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES

Pub. L. 111–84, div. A, title VIII, §823, Oct. 28, 2009, 123 Stat. 2412, as amended by Pub. L. 111–383, div. A, title VIII, §834(a)–(c), Jan. 7, 2011, 124 Stat. 4278, 4279, provided that:

''(a) AUTHORITY TO REDUCE OR DENY AWARD FEES.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall revise the guidance issued pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 129 [120] Stat. 2321) [set out below] to ensure that all covered contracts using award fees—

''(1) provide for the consideration of any incident described in subsection (b) in evaluations of contractor performance for the relevant award fee period; and

''(2) authorize the Secretary to reduce or deny award fees for the relevant award fee period, or to recover all or part of award fees previously paid for such period, on the basis of the negative impact of such incident on contractor performance.

''(b) COVERED INCIDENTS.—An incident referred to in subsection (a) is any incident in which the contractor—

''(1) has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in subsection (c), in the performance of a covered contract to have caused serious bodily injury or death to any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

''(2) has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in subsection (c), to be liable for actions of a subcontractor of the contractor that caused serious bodily injury or death to any civilian or military personnel of the Government, through gross negligence or with reckless disregard for the safety of such personnel.

''(c) LIST OF DISPOSITIONS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE PROCEEDINGS.—For purposes of subsection (b), the dispositions listed in this subsection are as follows:

''(1) In a criminal proceeding, a conviction.

''(2) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

''(3) In an administrative proceeding, a finding of fault and liability that results in—

''(A) the payment of a monetary fine or penalty of $5,000 or more; or

''(B) the payment of a reimbursement, restitution, or damages in excess of $100,000.

''(4) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the person if the proceeding could have led to any of the outcomes specified in paragraph (1), (2), or (3).

''(5) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to subsection (d).

''(d) DETERMINATIONS OF CONTRACTOR FAULT BY SECRETARY OF DEFENSE.—

''(1) IN GENERAL.—In any case described by paragraph (2), the Secretary of Defense shall—

''(A) provide for an expeditious independent investigation of the causes of the serious bodily injury or death alleged to have been caused by the contractor as described in that paragraph; and

''(B) make a final determination, pursuant to procedures established by the Secretary for purposes of this subsection, whether the contractor, in the performance of a covered contract, caused such serious bodily injury or death through gross negligence or with reckless disregard for the safety of civilian or military personnel of the Government.

''(2) COVERED CASES.—A case described in this paragraph is any case in which the Secretary has reason to believe that—

''(A) a contractor, in the performance of a covered contract, may have caused the serious bodily injury or death of any civilian or military personnel of the Government; and

''(B) such contractor is not subject to the jurisdiction of United States courts.

''(3) CONSTRUCTION OF DETERMINATION.—A final determination under this subsection may be used only for the purpose of evaluating contractor performance, and shall not be determinative of fault for any other purpose.

''(e) DEFINITIONS.—In this section:

''(1) The term 'contractor' means a company awarded a covered contract and a subcontractor at any tier under such contract.

''(2) The term 'covered contract' means a contract awarded by the Department of Defense for the procurement of goods or services.

''(3) The term 'serious bodily injury' means a grievous physical harm that results in a permanent disability.

''(f) EFFECTIVE DATE.—This section shall apply with respect to contracts entered into after the date occur-

ring 180 days after the date of the enactment of this Act [Oct. 28, 2009].''

[Pub. L. 111–383, div. A, title VIII, § 834(e), Jan. 7, 2011, 124 Stat. 4279, provided that: ''The requirements of section 823 of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84, set out above], as amended by subsections (a) through (c), shall apply with respect to the following:

[''(1) Any contract entered into on or after the date of the enactment of this Act [Jan. 7, 2011].

[''(2) Any task order or delivery order issued on or after the date of the enactment of this Act under a contract entered into before, on, or after that date.'']

Pub. L. 110–329, div. C, title VIII, § 8105, Sept. 30, 2008, 122 Stat. 3644, provided that: ''During the current fiscal year and hereafter, none of the funds appropriated or otherwise available to the Department of Defense may be obligated or expended to provide award fees to any defense contractor contrary to the provisions of section 814 of the National Defense Authorization Act, Fiscal Year 2007 (Public Law 109–364) [set out below].''

Pub. L. 109–364, div. A, title VIII, § 814, Oct. 17, 2006, 120 Stat. 2321, provided that:

''(a) GUIDANCE ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall issue guidance, with detailed implementation instructions (including definitions), for the Department of Defense on the appropriate use of award and incentive fees in Department of Defense acquisition programs.

''(b) ELEMENTS.—The guidance under subsection (a) shall—

''(1) ensure that all new contracts using award fees link such fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

''(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

''(3) provide guidance on the circumstances in which contractor performance may be judged to be 'excellent' or 'superior' and the percentage of the available award fee which contractors should be paid for such performance;

''(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be 'acceptable', 'average', 'expected', 'good', or 'satisfactory';

''(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

''(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

''(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the military departments and Defense Agencies;

''(8) ensure that the Department of Defense—

''(A) collects relevant data on award and incentive fees paid to contractors; and

''(B) has mechanisms in place to evaluate such data on a regular basis;

''(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

''(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

''(c) ASSESSMENT OF INDEPENDENT EVALUATION MECHANISMS.—

''(1) IN GENERAL.—The Secretary of Defense shall select a federally funded research and development center to assess various mechanisms that could be used to ensure an independent evaluation of contractor performance for the purpose of making determinations applicable to the judging and payment of award fees.

''(2) CONSIDERATIONS.—The assessment conducted pursuant to paragraph (1) shall include consideration of the advantages and disadvantages of a system in which award fees are—

''(A) held in a separate fund or funds of the Department of Defense; and

''(B) allocated to a specific program only upon a determination by an independent board, charged with comparing contractor performance across programs, that such fees have been earned by the contractor for such program.

''(3) REPORT.—The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the assessment conducted pursuant to paragraph (1) not later than one year after the date of the enactment of this Act [Oct. 17, 2006].''

LIMITATION ON CONTRACTS FOR THE ACQUISITION OF CERTAIN SERVICES

Pub. L. 109–364, div. A, title VIII, § 832, Oct. 17, 2006, 120 Stat. 2331, as amended by Pub. L. 110–181, div. A, title VIII, § 883, Jan. 28, 2008, 122 Stat. 264; Pub. L. 110–417, [div. A], title X, § 1061(b)(5), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 113–291, div. A, title X, § 1071(b)(3)(A), Dec. 19, 2014, 128 Stat. 3506, provided that:

''(a) LIMITATION.—Except as provided in subsection (b), the Secretary of Defense may not enter into a service contract to acquire a military flight simulator.

''(b) WAIVER.—The Secretary of Defense may waive subsection (a) with respect to a contract if the Secretary—

''(1) determines that a waiver is in the national interest; and

''(2) provides to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an economic analysis as described in subsection (c) at least 30 days before the waiver takes effect.

''(c) ECONOMIC ANALYSIS.—The economic analysis provided under subsection (b) shall include, at a minimum, the following:

''(1) A clear explanation of the need for the contract.

''(2) An examination of at least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following with respect to each alternative:

''(A) A rationale for including the alternative.

''(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

''(C) A discussion of the benefits to be realized from the alternative.

''(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

''(d) DEFINITIONS.—In this section:

''(1) The term 'military flight simulator' means any major system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

''(2) The term 'service contract' means any contract entered into by the Department of Defense the principal purpose of which is to furnish services in the United States through the use of service employees.

''(3) The term 'service employees' has the meaning provided in section 6701(3) of title 41, United States Code.

''(e) EFFECT ON EXISTING CONTRACTS.—The limitation in subsection (a) does not apply to any service contract of a military department to acquire a military flight simulator, or to any renewal or extension of, or follow-on contract to, such a contract, if—

''(1) the contract was in effect as of October 17, 2006;

''(2) the number of flight simulators to be acquired under the contract (or renewal, extension, or follow-

on) will not result in the total number of flight simulators acquired by the military department concerned through service contracts to exceed the total number of flight simulators to be acquired under all service contracts of such department for such simulators in effect as of October 17, 2006; and

''(3) in the case of a renewal or extension of, or follow-on contract to, the contract, the Secretary of the military department concerned provides to the congressional defense committees a written notice of the decision to exercise an option to renew or extend the contract, or to issue a solicitation for bids or proposals using competitive procedures for a follow-on contract, and an economic analysis as described in subsection (c) supporting the decision, at least 30 days before carrying out such decision.''

CONGRESSIONAL NOTIFICATION OF CANCELLATION OF MAJOR AUTOMATED INFORMATION SYSTEMS

Pub. L. 109–163, div. A, title VIII, § 806, Jan. 6, 2006, 119 Stat. 3373, provided that:

''(a) REPORT REQUIRED.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not less than 60 days before cancelling a major automated information system program that has been fielded or approved to be fielded, or making a change that will significantly reduce the scope of such a program, of the proposed cancellation or change.

''(b) CONTENT.—Each notification submitted under subsection (a) with respect to a proposed cancellation or change shall include—

''(1) the specific justification for the proposed cancellation or change;

''(2) a description of the impact of the proposed cancellation or change on the ability of the Department to achieve the objectives of the program proposed for cancellation or change;

''(3) a description of the steps that the Department plans to take to achieve those objectives; and

''(4) other information relevant to the change in acquisition strategy.

''(c) DEFINITIONS.—In this section:

''(1) The term 'major automated information system' has the meaning given that term in Department of Defense directive 5000.1.

''(2) The term 'approved to be fielded' means having received Milestone C approval.''

JOINT POLICY ON CONTINGENCY CONTRACTING

Pub. L. 109–163, div. A, title VIII, § 817, Jan. 6, 2006, 119 Stat. 3382, provided that:

''(a) JOINT POLICY.—

''(1) REQUIREMENT.—Not later than one year after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop a joint policy for contingency contracting during combat operations and post-conflict operations.

''(2) MATTERS COVERED.—The joint policy for contingency contracting required by paragraph (1) shall, at a minimum, provide for—

''(A) the designation of a senior commissioned officer in each military department with the responsibility for administering the policy;

''(B) the assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur;

''(C) an organizational approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations and post-conflict operations;

''(D) a requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

''(i) the use of law, regulations, policies, and directives related to contingency contracting operations;

''(ii) the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under section 2304 of title 10, United States Code, sealed bidding, letter contracts, indefinite delivery indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;

''(iii) the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and

''(iv) instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process;

''(E) appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation; and

''(F) such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting.

''(b) REPORTS.—

''(1) INTERIM REPORT.—

''(A) REQUIREMENT.—Not later than 270 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report on contingency contracting.

''(B) MATTERS COVERED.—The report shall include discussions of the following:

''(i) Progress in the development of the joint policy under subsection (a).

''(ii) The ability of the Armed Forces to support contingency contracting.

''(iii) The ability of commanders of combatant commands to request contingency contracting support and the ability of the military departments and the acquisition support agencies to respond to such requests and provide such support, including the availability of rapid acquisition personnel for such support.

''(iv) The ability of the current civilian and military acquisition workforce to deploy to combat theaters of operations and to conduct contracting activities during combat and during post-conflict, reconstruction, or other contingency operations.

''(v) The effect of different periods of deployment on continuity in the acquisition process.

''(2) FINAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the committees listed in paragraph (1)(A) a final report on contingency contracting, containing a discussion of the implementation of the joint policy developed under subsection (a), including updated discussions of the matters covered in the interim report.

''(c) DEFINITIONS.—In this section:

''(1) CONTINGENCY CONTRACTING PERSONNEL.—The term 'contingency contracting personnel' means members of the Armed Forces and civilian employees of the Department of Defense who are members of the defense acquisition workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

''(2) CONTINGENCY CONTRACTING.—The term 'contingency contracting' means all stages of the process of

acquiring property or services by the Department of Defense during a contingency operation.

''(3) CONTINGENCY OPERATION.—The term 'contingency operation' has the meaning provided in section 101(13) of title 10, United States Code.

''(4) ACQUISITION SUPPORT AGENCIES.—The term 'acquisition support agencies' means Defense Agencies and Department of Defense Field Activities that carry out and provide support for acquisition-related activities.''

PROHIBITION ON PROCUREMENTS FROM COMMUNIST CHINESE MILITARY COMPANIES

Pub. L. 109–163, div. A, title XII, §1211, Jan. 6, 2006, 119 Stat. 3461, as amended by Pub. L. 112–81, div. A, title XII, §1243(a), (b), Dec. 31, 2011, 125 Stat. 1645, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not procure goods or services described in subsection (b), through a contract or any subcontract (at any tier) under a contract, from any Communist Chinese military company.

''(b) GOODS AND SERVICES COVERED.—For purposes of subsection (a), the goods and services described in this subsection are goods and services on the munitions list of the International Trafficking in Arms Regulations, other than goods or services procured—

''(1) in connection with a visit by a vessel or an aircraft of the United States Armed Forces to the People's Republic of China;

''(2) for testing purposes; or

''(3) for purposes of gathering intelligence.

''(c) WAIVER AUTHORIZED.—The Secretary of Defense may waive the prohibition in subsection (a) if the Secretary determines that such a waiver is necessary for national security purposes and the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report described in subsection (d) not less than 15 days before issuing the waiver under this subsection.

''(d) REPORT.—The report referred to in subsection (c) is a report that identifies the specific reasons for the waiver issued under subsection (c) and includes recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

''(e) DEFINITIONS.—In this section:

''(1) The term 'Communist Chinese military company' has the meaning provided that term by section 1237(b)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105–261] (50 U.S.C. 1701 note).

''(2) The term 'munitions list of the International Trafficking in Arms Regulations' means the United States Munitions List contained in part 121 of subchapter M of title 22 of the Code of Federal Regulations.''

[Pub. L. 112–81, div. A, title XII, §1243(c), Dec. 31, 2011, 125 Stat. 1646, provided that: ''The amendments made by this section [amending section 1211 of Pub. L. 109–163, set out above] take effect on the date of the enactment of this Act [Dec. 31, 2011] and apply with respect to contracts and subcontracts of the Department of Defense entered into on or after the date of the enactment of this Act.'']

DEVELOPMENT OF DEPLOYABLE SYSTEMS TO INCLUDE CONSIDERATION OF FORCE PROTECTION IN ASYMMETRIC THREAT ENVIRONMENTS

Pub. L. 108–375, div. A, title I, §141, Oct. 28, 2004, 118 Stat. 1829, provided that:

''(a) REQUIREMENT FOR SYSTEMS DEVELOPMENT.—The Secretary of Defense shall require that the Department of Defense regulations, directives, and guidance governing the acquisition of covered systems be revised to require that—

''(1) an assessment of warfighter survivability and of system suitability against asymmetric threats shall be performed as part of the development of system requirements for any such system; and

''(2) requirements for key performance parameters for force protection and survivability shall be included as part of the documentation of system requirements for any such system.

''(b) COVERED SYSTEMS.—In this section, the term 'covered system' means any of the following systems that is expected to be deployed in an asymmetric threat environment:

''(1) Any manned system.

''(2) Any equipment intended to enhance personnel survivability.

''(c) INAPPLICABILITY OF DEVELOPMENT REQUIREMENT TO SYSTEMS ALREADY THROUGH DEVELOPMENT.—The revisions pursuant subsection (a) to Department of Defense regulations, directives, and guidance shall not apply to a system that entered low-rate initial production before the date of the enactment of this Act [Oct. 28, 2004].

''(d) DEADLINE FOR POLICY REVISIONS.—The revisions required by subsection (a) to Department of Defense regulations, directives, and guidance shall be made not later than 120 days after the date of the enactment of this Act [Oct. 28, 2004].''

INTERNAL CONTROLS FOR DEPARTMENT OF DEFENSE PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS

Pub. L. 108–375, div. A, title VIII, §802, Oct. 28, 2004, 118 Stat. 2004, as amended by Pub. L. 109–313, §2(c)(2), Oct. 6, 2006, 120 Stat. 1735, provided that:

''(a) INITIAL INSPECTOR GENERAL REVIEW AND DETERMINATION.—(1) Not later than March 15, 2005, the Inspector General of the Department of Defense and the Inspector General of the General Services Administration shall jointly—

''(A) review—

''(i) the policies, procedures, and internal controls of each GSA Client Support Center; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) for each such Center, determine in writing whether—

''(i) the Center is compliant with defense procurement requirements;

''(ii) the Center is not compliant with defense procurement requirements, but the Center made significant progress during 2004 toward becoming compliant with defense procurement requirements; or

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct.

''(2) If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of such paragraph is correct in the case of a GSA Client Support Center, those Inspectors General shall, not later than March 15, 2006, jointly—

''(A) conduct a second review regarding that GSA Client Support Center as described in paragraph (1)(A); and

''(B) determine in writing whether that GSA Client Support Center is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a GSA Client Support Center is compliant with defense procurement requirements if the GSA Client Support Center's policies, procedures, and internal controls, and the manner in which they are administered, are adequate to ensure compliance of that Center with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) LIMITATIONS ON PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.—(1) After March 15, 2005, and before March 16, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through any GSA Client Support Center for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

''(2) After March 15, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through any GSA Client Support Center that has not been determined under this section as being compliant with defense procurement requirements.

''(d) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—(1) No limitation applies under subsection (c) with respect to the procurement of property and services from a particular GSA Client Support Center during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through that GSA Client Support Center.

''(2) A written determination with respect to a GSA Client Support Center under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary of Defense for Acquisition, Technology, and Logistics shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(e) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (c) shall cease to apply to a GSA Client Support Center on the date on which the Inspector General of the Department of Defense and the Inspector General of the General Services Administration jointly determine that such Center is compliant with defense procurement requirements and notify the Secretary of Defense of that determination.

''(f) GSA CLIENT SUPPORT CENTER DEFINED.—In this section, the term 'GSA Client Support Center' means a Client Support Center of the Federal Acquisition Service of the General Services Administration.''

DATA REVIEW

Pub. L. 108–136, div. A, title VIII, §801(b), Nov. 24, 2003, 117 Stat. 1540, provided that:

''(1) The Secretary of Defense shall revise the data collection systems of the Department of Defense to ensure that such systems are capable of identifying each procurement that involves a consolidation of contract requirements within the department with a total value in excess of $5,000,000.

''(2) The Secretary shall ensure that appropriate officials of the Department of Defense periodically review the information collected pursuant to paragraph (1) in cooperation with the Small Business Administration—

''(A) to determine the extent of the consolidation of contract requirements in the Department of Defense; and

''(B) to assess the impact of the consolidation of contract requirements on the availability of opportunities for small business concerns to participate in Department of Defense procurements, both as prime contractors and as subcontractors.

''(3) In this subsection:

''(A) The term 'consolidation of contract requirements' has the meaning given that term in [former] section 2382(c)(1) of title 10, United States Code, as added by subsection (a).

''(B) The term 'small business concern' means a business concern that is determined by the Administrator of the Small Business Administration to be a small-business concern by application of the standards prescribed under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).''

QUALITY CONTROL IN PROCUREMENT OF AVIATION CRITICAL SAFETY ITEMS AND RELATED SERVICES

Pub. L. 108–136, div. A, title VIII, §802(a)–(c), Nov. 24, 2003, 117 Stat. 1540, provided that:

''(a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the procurement of modifications, repair, and overhaul of such items.

''(b) CONTENT OF REGULATIONS.—The policy set forth in the regulations shall include the following requirements:

''(1) That the head of the design control activity for aviation critical safety items establish processes to identify and manage the procurement, modification, repair, and overhaul of aviation critical safety items.

''(2) That the head of the contracting activity for an aviation critical safety item enter into a contract for the procurement, modification, repair, or overhaul of such item only with a source approved by the design control activity in accordance with section 2319 of title 10, United States Code.

''(3) That the aviation critical safety items delivered, and the services performed with respect to aviation critical safety items, meet all technical and quality requirements specified by the design control activity.

''(c) DEFINITIONS.—In this section, the terms 'aviation critical safety item' and 'design control activity' have the meanings given such terms in section 2319(g) of title 10, United States Code, as amended by subsection (d).''

COMPETITIVE AWARD OF CONTRACTS FOR RECONSTRUCTION ACTIVITIES IN IRAQ

Pub. L. 108–136, div. A, title VIII, §805(a), Nov. 24, 2003, 117 Stat. 1542, provided that: ''The Department of Defense shall fully comply with chapter 137 of title 10, United States Code, and other applicable procurement laws and regulations for any contract awarded for reconstruction activities in Iraq, and shall conduct a full and open competition for performing work needed for the reconstruction of the Iraqi oil industry.''

DEMONSTRATION PROJECT FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES

Pub. L. 108–136, div. A, title VIII, §853, Nov. 24, 2003, 117 Stat. 1557, as amended by Pub. L. 108–199, div. H, §110, Jan. 23, 2004, 118 Stat. 438, provided that:

''(a) AUTHORITY.—The Secretary of Defense may carry out a demonstration project by entering into one or more contracts with an eligible contractor for the purpose of providing defense contracting opportunities for severely disabled individuals.

''(b) EVALUATION FACTOR.—In evaluating an offer for a contract under the demonstration program, the percentage of the total workforce of the offeror consisting of severely disabled individuals employed by the offeror shall be one of the evaluation factors.

''(c) CREDIT TOWARD CERTAIN SMALL BUSINESS CONTRACTING GOALS.—Department of Defense contracts entered into with eligible contractors under the demonstration project under this section, and subcontracts entered into with eligible contractors under such contracts, shall be credited toward the attainment of goals established under section 2323 of title 10, United States Code, and section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) regarding the extent of the participation of disadvantaged small business concerns in contracts of the Department of Defense and subcontracts under such contracts.

''(d) DEFINITIONS.—In this section:

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means a business entity operated on a for-profit or nonprofit basis that—

''(A) employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over a period prescribed by the Secretary;

''(B) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) to the employees who are severely disabled individuals; and

''(C) provides for its employees health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

''(2) SEVERELY DISABLED INDIVIDUAL.—The term 'severely disabled individual' means an individual with

a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) who has a severe physical or mental impairment that seriously limits one or more functional capacities.''

PROCUREMENT OF DEFENSE BIOMEDICAL COUNTERMEASURES

Pub. L. 108–136, div. A, title XVI, § 1602, Nov. 24, 2003, 117 Stat. 1682, as amended by Pub. L. 110–181, div. A, title X, § 1063(g)(3), Jan. 28, 2008, 122 Stat. 324, provided that:

''(a) DETERMINATION OF MATERIAL THREATS.—(1) The Secretary of Defense (in this section referred to as the 'Secretary') shall on an ongoing basis—

''(A) assess current and emerging threats of use of biological, chemical, radiological, and nuclear agents; and

''(B) identify, on the basis of such assessment, those agents that present a material risk of use against the Armed Forces.

''(2) The Secretary shall on an ongoing basis—

''(A) assess the potential consequences to the health of members of the Armed Forces of use against the Armed Forces of the agents identified under paragraph (1)(B); and

''(B) identify, on the basis of such assessment, those agents for which countermeasures are necessary to protect the health of members of the Armed Forces.

''(b) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The Secretary shall on an ongoing basis assess the availability and appropriateness of specific countermeasures to address specific threats identified under subsection (a).

''(c) SECRETARY'S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR PROCUREMENT.—(1) The Secretary, in accordance with paragraph (2), shall on an ongoing basis identify specific countermeasures that the Secretary determines to be appropriate for procurement for the Department of Defense stockpile of biomedical countermeasures.

''(2) The Secretary may not identify a specific countermeasure under paragraph (1) unless the Secretary determines that—

''(A) the countermeasure is a qualified countermeasure; and

''(B) it is reasonable to expect that producing and delivering, within 5 years, the quantity of that countermeasure required to meet the needs of the Department (as determined by the Secretary) is feasible.

''(d) INTERAGENCY COOPERATION.—(1) Activities of the Secretary under this section shall be carried out in regular, structured, and close consultation and coordination with the Secretaries of Homeland Security and Health and Human Services, including the activities described in subsections (a), (b), and (c) and those activities with respect to interagency agreements described in paragraph (2).

''(2) The Secretary may enter into an interagency agreement with the Secretaries of Homeland Security and Health and Human Services to provide for acquisition by the Secretary of Defense for use by the Armed Forces of biomedical countermeasures procured for the Strategic National Stockpile by the Secretary of Health and Human Services. The Secretary may transfer such funds to the Secretary of Health and Human Services as are necessary to carry out such agreements (including administrative costs of the Secretary of Health and Human Services), and the Secretary of Health and Human Services may expend any such transferred funds to procure such countermeasures for use by the Armed Forces, or to replenish the stockpile. The Secretaries are authorized to establish such terms and conditions for such agreements as the Secretaries determine to be in the public interest. The transfer authority provided under this paragraph is in addition to any other transfer authority available to the Secretary.

''(e) DEFINITIONS.—In this section:

''(1) The term 'qualified countermeasure' means a biomedical countermeasure—

''(A) that is approved under section 505(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or that is approved under section 515 or cleared under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e and 360) for use as such a countermeasure to a biological, chemical, radiological, or nuclear agent identified as a material threat under subsection (a); or

''(B) with respect to which the Secretary of Health and Human Services makes a determination that sufficient and satisfactory clinical experience or research data (including data, if available, from preclinical and clinical trials) exists to support a reasonable conclusion that the product will qualify for such approval or licensing for use as such a countermeasure.

''(2) The term 'biomedical countermeasure' means a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))), or biological product (as defined in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i))) that is—

''(A) used to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a military health emergency affecting the Armed Forces; or

''(B) used to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug or biological product that is used as described in subparagraph (A).

''(3) The term 'Strategic National Stockpile' means the stockpile established under section 121(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 300hh–12(a)).

''(f) FUNDING.—Of the amount authorized to be appropriated for the Department of Defense and available within the transfer authority established under section 1001 of this Act [117 Stat. 1582] for fiscal year 2004 and for each fiscal year thereafter, such sums are authorized as may be necessary for the costs incurred by the Secretary in the procurement of countermeasures under this section.''

ENCOURAGEMENT OF SMALL BUSINESSES AND NONTRADITIONAL DEFENSE CONTRACTORS TO SUBMIT PROPOSALS POTENTIALLY BENEFICIAL FOR COMBATING TERRORISM

Pub. L. 107–314, div. A, title II, § 244, Dec. 2, 2002, 116 Stat. 2498, provided that during fiscal years 2003, 2004, and 2005, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, was to carry out a program of outreach to small businesses and nontraditional defense contractors with the purpose of providing a process for reviewing and evaluating research activities of, and new technologies being developed by, small businesses and nontraditional defense contractors that had the potential for meeting a defense requirement or technology development goal of the Department of Defense that related to the mission of the Department of Defense to combat terrorism.

PROCUREMENT OF ENVIRONMENTALLY PREFERABLE PROCUREMENT ITEMS

Pub. L. 107–314, div. A, title III, § 314, Dec. 2, 2002, 116 Stat. 2508, as amended by Pub. L. 109–163, div. A, title X, § 1056(e)(1), Jan. 6, 2006, 119 Stat. 3440, provided that:

''(a) TRACKING SYSTEM.—The Secretary of Defense shall develop and implement an effective and efficient tracking system to identify the extent to which the Defense Logistics Agency procures environmentally preferable procurement items or procurement items made with recovered material. The system shall provide for the separate tracking, to the maximum extent practicable, of the procurement of each category of pro-

curement items that, as of the date of the enactment of this Act [Dec. 2, 2002], has been determined to be environmentally preferable or made with recovered material.

''(b) ASSESSMENT OF TRAINING AND EDUCATION.—The Secretary of Defense shall assess the need to establish a program, or enhance existing programs, for training and educating Department of Defense procurement officials to ensure that they are aware of any Department requirements, preferences, or goals for the procurement of environmentally preferable procurement items or procurement items made with recovered material.

''(c) REPORTING REQUIREMENT.—Not later than March 1, 2004, and each March 1 thereafter through 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report detailing the results obtained from the tracking system developed under subsection (a).

''(d) RELATION TO OTHER LAWS.—Nothing in this section shall be construed to alter the requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(e) DEFINITIONS.—In this section:

''(1) The term 'environmentally preferable', in the case of a procurement item, means that the item has a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. The comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

''(2) The terms 'procurement item' and 'recovered material' have the meanings given such terms in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).''

POLICY REGARDING ACQUISITION OF INFORMATION ASSURANCE AND INFORMATION ASSURANCE-ENABLED INFORMATION TECHNOLOGY PRODUCTS

Pub. L. 107–314, div. A, title III, §352, Dec. 2, 2002, 116 Stat. 2518, provided that:

''(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish a policy to limit the acquisition of information assurance and information assurance-enabled information technology products to those products that have been evaluated and validated in accordance with appropriate criteria, schemes, or programs.

''(b) WAIVER.—As part of the policy, the Secretary of Defense shall authorize specified officials of the Department of Defense to waive the limitations of the policy upon a determination in writing that application of the limitations to the acquisition of a particular information assurance or information assurance-enabled information technology product would not be in the national security interest of the United States.

''(c) IMPLEMENTATION.—The Secretary of Defense shall ensure that the policy is uniformly implemented throughout the Department of Defense.''

LOGISTICS SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS

Pub. L. 107–314, div. A, title III, §365, Dec. 2, 2002, 116 Stat. 2520, as amended by Pub. L. 109–163, div. A, title III, §331, Jan. 6, 2006, 119 Stat. 3195, authorized the Secretary of Defense to make certain logistics support and services available to weapon systems contractors and provided for the expiration of such authority on Sept. 30, 2010.

IMPROVEMENT OF SOFTWARE ACQUISITION PROCESSES

Pub. L. 107–314, div. A, title VIII, §804, Dec. 2, 2002, 116 Stat. 2604, provided that:

''(a) ESTABLISHMENT OF PROGRAMS.—(1) The Secretary of each military department shall establish a program to improve the software acquisition processes of that military department.

''(2) The head of each Defense Agency that manages a major defense acquisition program with a substantial software component shall establish a program to improve the software acquisition processes of that Defense Agency.

''(3) The programs required by this subsection shall be established not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].

''(b) PROGRAM REQUIREMENTS.—A program to improve software acquisition processes under this section shall, at a minimum, include the following:

''(1) A documented process for software acquisition planning, requirements development and management, project management and oversight, and risk management.

''(2) Efforts to develop appropriate metrics for performance measurement and continual process improvement.

''(3) A process to ensure that key program personnel have an appropriate level of experience or training in software acquisition.

''(4) A process to ensure that each military department and Defense Agency implements and adheres to established processes and requirements relating to the acquisition of software.

''(c) DEPARTMENT OF DEFENSE GUIDANCE.—The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

''(1) prescribe uniformly applicable guidance for the administration of all of the programs established under subsection (a) and take such actions as are necessary to ensure that the military departments and Defense Agencies comply with the guidance; and

''(2) assist the Secretaries of the military departments and the heads of the Defense Agencies to carry out such programs effectively by—

''(A) ensuring that the criteria applicable to the selection of sources provides added emphasis on past performance of potential sources, as well as on the maturity of the software products offered by the potential sources; and

''(B) identifying, and serving as a clearinghouse for information regarding, best practices in software development and acquisition in both the public and private sectors.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Defense Agency' has the meaning given the term in section 101(a)(11) of title 10, United States Code.

''(2) The term 'major defense acquisition program' has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.''

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES

Pub. L. 107–314, div. A, title VIII, §806, Dec. 2, 2002, 116 Stat. 2607, as amended by Pub. L. 108–136, div. A, title VIII, §845, Nov. 24, 2003, 117 Stat. 1553; Pub. L. 108–375, div. A, title VIII, §811, Oct. 28, 2004, 118 Stat. 2012; Pub. L. 109–364, div. A, title X, §1071(h), Oct. 17, 2006, 120 Stat. 2403; Pub. L. 111–383, div. A, title VIII, §803, Jan. 7, 2011, 124 Stat. 4255; Pub. L. 112–81, div. A, title VIII, §845(a), (b), Dec. 31, 2011, 125 Stat. 1515; Pub. L. 114–92, div. A, title VIII, §803, Nov. 25, 2015, 129 Stat. 880, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall prescribe procedures for the rapid acquisition and deployment of supplies and associated support services that are—

''(1)(A) currently under development by the Department of Defense or available from the commercial sector; or

''(B) require only minor modifications to supplies described in subparagraph (A);

''(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the

acquisition community, and the research and development community, including—

''(A) a process for the commanders of the combatant commands and the Joint Chiefs of Staff to communicate their needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to propose supplies and associated support services that meet the needs communicated by the combatant commands and the Joint Chiefs of Staff.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying supplies and associated support services proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services;

''(B) a process for developing an acquisition and funding strategy for the deployment of the supplies and associated support services; and

''(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL NEEDS.—

''(1) DETERMINATION OF NEED FOR RAPID ACQUISITION AND DEPLOYMENT.—(A) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

''(B) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that impacts an ongoing or anticipated contingency operation and that, if left unfulfilled, could potentially result in loss of life or critical mission failure, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

''(C)(i) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense without delegation, are urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical mission failure, the loss of life, property destruction, or economic effects, or if left unfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed offensive or defensive cyber capabilities, supplies, and associated support services.

''(ii) In this subparagraph, the term 'cyber attack' means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or programs resident in or transiting these systems or networks.

''(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—(A) Whenever the Secretary makes a determination under subparagraph (A), (B), or (C) of paragraph (1) that certain supplies and associated support services are urgently needed to eliminate a deficiency described in that subparagraph, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed supplies and associated support services are acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the supplies and associated support services within 15 days.

''(B) Upon designation of a senior official under subparagraph (A), the Secretary shall authorize that official to waive any provision of law, policy, directive, or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid acquisition and deployment of the needed supplies and associated support services. In a case in which the needed supplies and associated support services cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

''(3) USE OF FUNDS.—(A) In any fiscal year in which the Secretary makes a determination described in subparagraph (A), (B), or (C) of paragraph (1), the Secretary may use any funds available to the Department of Defense for acquisitions of supplies and associated support services if the determination includes a written finding that the use of such funds is necessary to address the deficiency in a timely manner.

''(B) The authority of this section may only be used to acquire supplies and associated support services—

''(i) in the case of determinations by the Secretary under paragraph (1)(A), in an amount aggregating not more than $200,000,000 during any fiscal year;

''(ii) in the case of determinations by the Secretary under paragraph (1)(B), in an amount aggregating not more than $200,000,000 during any fiscal year; and

''(iii) in the case of determinations by the Secretary under paragraph (1)(C), in an amount aggregating not more than $200,000,000 during any fiscal year.

''(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of a determination by the Secretary under paragraph (1)(A), the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the determination within 15 days after the date of the determination.

''(B) In the case of a determination by the Secretary under paragraph (1)(B) the Secretary shall notify the congressional defense committees of the determination at least 10 days before the date on which the determination is effective.

''(C) A notice under this paragraph shall include the following:

''(i) The supplies and associated support services to be acquired.

''(ii) The amount anticipated to be expended for the acquisition.

''(iii) The source of funds for the acquisition.

''(D) A notice under this paragraph shall be sufficient to fulfill any requirement to provide notification to Congress for a new start program.

''(E) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

''(5) TIME FOR TRANSITIONING TO NORMAL ACQUISITION SYSTEM.—Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to the supplies and associated support services concerned.

''(6) LIMITATION ON OFFICERS WITH AUTHORITY TO MAKE A DETERMINATION.—The authority to make a determination under subparagraph (A), (B), or (C) of paragraph (1) may be exercised only by the Secretary or Deputy Secretary of Defense.

''(d) WAIVER OF CERTAIN STATUTES AND REGULATIONS.—(1) Upon a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation is authorized to waive any provision of law, policy, directive or regulation addressing—

''(A) the establishment of the requirement for the supplies and associated support services;

''(B) the research, development, test, and evaluation of the supplies and associated support services; or

''(C) the solicitation and selection of sources, and the award of the contract, for procurement of the supplies and associated support services.

''(2) Nothing in this subsection authorizes the waiver of—

''(A) the requirements of this section or the regulations implementing this section; or

''(B) any provision of law imposing civil or criminal penalties.

''(e) TESTING REQUIREMENT.—(1) The process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation; and

''(B) a requirement to provide information about any deficiency of the supplies and associated support services in meeting the original requirements for the supplies and associated support services (as stated in a statement of the urgent operational need or similar document) to the deployment decisionmaking authority.

''(2) The process may not include a requirement for any deficiency of supplies and associated support services to be the determining factor in deciding whether to deploy the supplies and associated support services.

''(3) If supplies and associated support services are deployed under the rapid acquisition and deployment procedures prescribed pursuant to this section, or under any other authority, before the completion of operational test and evaluation of the supplies and associated support services, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such supplies and associated support services in accordance with section 139(e)(3) of title 10, United States Code, for the purpose of completing operational test and evaluation of the supplies and associated support services. The access to the operational records and data shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.

''(f) LIMITATION.—In the case of supplies that are part of a major system for which a low-rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code, the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low-rate initial production for such system. Any such supplies shall be included in any relevant calculation of quantities for low-rate initial production for the system concerned.

''(g) ASSOCIATED SUPPORT SERVICES DEFINED.—In this section, the term 'associated support services' means training, operation, maintenance, and support services needed in connection with the deployment of supplies to be acquired pursuant to the authority of this section. The term does not include functions that are inherently governmental or otherwise exempted from private sector performance.''

[Pub. L. 112–81, div. A, title VIII, §845(c), Dec. 31, 2011, 125 Stat. 1515, provided that: ''The authority to acquire associated support services pursuant to section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314, set out above], as amended by this section, shall not take effect until the Secretary of Defense certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the Secretary has developed and implemented an expedited review process in compliance with the requirements of section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4256; 10 U.S.C. 2302 note).'']

PROCUREMENT OF ALTERNATIVE FUELED AND HYBRID LIGHT DUTY TRUCKS

Pub. L. 107–107, div. A, title III, §318, Dec. 28, 2001, 115 Stat. 1055, provided that:

''(a) DEFENSE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF 1992.—(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that only hybrid vehicles are procured by the Administrator for the Department of Defense fleet of light duty trucks that is not in a fleet of vehicles to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.

''(2) The Secretary, in consultation with the Administrator, may waive the policy regarding the procurement of hybrid vehicles in paragraph (1) to the extent that the Secretary determines necessary—

''(A) in the case of trucks that are exempt from the requirements of section 303 of the Energy Policy Act of 1992 for national security reasons under subsection (b)(3)(E) of such section, to meet specific requirements of the Department of Defense for capabilities of light duty trucks;

''(B) to procure vehicles consistent with the standards applicable to the procurement of fleet vehicles for the Federal Government; or

''(C) to adjust to limitations on the commercial availability of light duty trucks that are hybrid vehicles.

''(3) This subsection applies with respect to procurements of light duty trucks in fiscal year 2005 and subsequent fiscal years.

''(b) REQUIREMENT TO EXCEED REQUIREMENT IN ENERGY POLICY ACT OF 1992.—(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that, of the light duty trucks procured in fiscal years after fiscal year 2004 for the fleets of light duty vehicles of the Department of Defense to which section 303 of the Energy Policy Act of 1992 [42 U.S.C. 13212] applies—

''(A) five percent of the total number of such trucks that are procured in each of fiscal years 2005 and 2006 are alternative fueled vehicles or hybrid vehicles; and

''(B) ten percent of the total number of such trucks that are procured in each fiscal year after fiscal year 2006 are alternative fueled vehicles or hybrid vehicles.

''(2) Light duty trucks acquired for the Department of Defense that are counted to comply with section 303 of the Energy Policy Act of 1992 for a fiscal year shall be counted to determine the total number of light duty trucks procured for the Department of Defense for that fiscal year for the purposes of paragraph (1), but shall not be counted to satisfy the requirement in that paragraph.

''(c) REPORT ON PLANS FOR IMPLEMENTATION.—At the same time that the President submits the budget for fiscal year 2003 to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to Congress a report summarizing the plans for carrying out subsections (a) and (b).

''(d) DEFINITIONS.—In this section:

''(1) The term 'hybrid vehicle' means a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

''(A) an internal combustion or heat engine using combustible fuel; and

''(B) a rechargeable energy storage system.

''(2) The term 'alternative fueled vehicle' has the meaning given that term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).''

TEMPORARY EMERGENCY PROCUREMENT AUTHORITY TO FACILITATE THE DEFENSE AGAINST TERRORISM OR BIOLOGICAL OR CHEMICAL ATTACK

Pub. L. 107–107, div. A, title VIII, §836, Dec. 28, 2001, 115 Stat. 1192, provided special authorities relating to increased flexibility for use of streamlined procedures and commercial item treatment for procurements of biotechnology to facilitate the defense against terrorism or biological or chemical attack which would be

applicable to procurements for which funds had been obligated during fiscal years 2002 and 2003, directed the Secretary of Defense to submit to committees of Congress, not later than Mar. 1, 2002, a report containing the Secretary's recommendations for additional emergency procurement authority that the Secretary had determined necessary to support operations carried out to combat terrorism, and provided that no contract could be entered into pursuant to such authority after Sept. 30, 2003.

IMPROVEMENTS IN PROCUREMENTS OF SERVICES

Pub. L. 106–398, §1 [[div. A], title VIII, §821], Oct. 30, 2000, 114 Stat. 1654, 1654A–217, as amended by Pub. L. 108–136, div. A, title XIV, §1431(c), Nov. 24, 2003, 117 Stat. 1672, provided that:

''(a) PREFERENCE FOR PERFORMANCE-BASED SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405 and 421) [see 41 U.S.C. 1121 and 1303] shall be revised to establish a preference for use of contracts and task orders for the purchase of services in the following order of precedence:

''(1) A performance-based contract or performance-based task order that contains firm fixed prices for the specific tasks to be performed.

''(2) Any other performance-based contract or performance-based task order.

''(3) Any contract or task order that is not a performance-based contract or a performance-based task order.

''[(b) Repealed. Pub. L. 108–136, div. A, title XIV, §1431(c), Nov. 24, 2003, 117 Stat. 1672.]

''(c) CENTERS OF EXCELLENCE IN SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Secretary of each military department shall establish at least one center of excellence in contracting for services. Each center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

''(d) ENHANCED TRAINING IN SERVICE CONTRACTING.—(1) The Secretary of Defense shall ensure that classes focusing specifically on contracting for services are offered by the Defense Acquisition University and the Defense Systems Management College and are otherwise available to contracting personnel throughout the Department of Defense.

''(2) The Secretary of each military department and the head of each Defense Agency shall ensure that the personnel of the department or agency, as the case may be, who are responsible for the awarding and management of contracts for services receive appropriate training that is focused specifically on contracting for services.

''(e) DEFINITIONS.—In this section:

''(1) The term 'performance-based', with respect to a contract, a task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

''(2) The term 'commercial item' has the meaning given the term in section 4(12) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403(12)) [see 41 U.S.C. 103].

''(3) The term 'Defense Agency' has the meaning given the term in section 101(a)(11) of title 10, United States Code.''

PROGRAM TO INCREASE BUSINESS INNOVATION IN DEFENSE ACQUISITION PROGRAMS

Pub. L. 106–65, div. A, title VIII, §812(a)–(c), (e), Oct. 5, 1999, 113 Stat. 709, 710, provided that:

''(a) REQUIREMENT TO DEVELOP PLAN.—Not later than March 1, 2000, the Secretary of Defense shall publish in the Federal Register for public comment a plan to provide for increased innovative technology for acquisition programs of the Department of Defense from commercial private sector entities, including small-business concerns.

''(b) IMPLEMENTATION OF PLAN.—Not later than March 1, 2001, the Secretary of Defense shall implement the plan required by subsection (a), subject to any modifications the Secretary may choose to make in response to comments received.

''(c) ELEMENTS OF PLAN.—The plan required by subsection (a) shall include, at a minimum, the following elements:

''(1) Procedures through which commercial private sector entities, including small-business concerns, may submit proposals recommending cost-saving and innovative ideas to acquisition program managers.

''(2) A review process designed to make recommendations on the merit and viability of the proposals submitted under paragraph (1) at appropriate times during the acquisition cycle.

''(3) Measures to limit potential disruptions to existing contracts and programs from proposals accepted and incorporated into acquisition programs of the Department of Defense.

''(4) Measures to ensure that research and development efforts of small-business concerns are considered as early as possible in a program's acquisition planning process to accommodate potential technology insertion without disruption to existing contracts and programs.

''(e) SMALL-BUSINESS CONCERN DEFINED.—In this section, the term 'small-business concern' has the same meaning as the meaning of such term as used in the Small Business Act (15 U.S.C. 631 et seq.).''

YEAR 2000 SOFTWARE CONVERSION

Pub. L. 104–201, div. A, title VIII, §831, Sept. 23, 1996, 110 Stat. 2615, directed the Secretary of Defense to ensure that all information technology acquired by the Department of Defense pursuant to contracts entered into after Sept. 30, 1996, would have the capabilities to process date and date-related data in 2000, and directed the Secretary to assess all information technology within the Department to determine the extent to which such technology would have the capabilities to operate effectively, and to submit to Congress a detailed plan for eliminating any deficiencies not later than Jan. 1, 1997.

DEFENSE FACILITY-WIDE PILOT PROGRAM

Pub. L. 104–106, div. A, title VIII, §822, Feb. 10, 1996, 110 Stat. 396, as amended by Pub. L. 106–65, div. A, title X, §1067(6), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) AUTHORITY TO CONDUCT DEFENSE FACILITY-WIDE PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program, to be known as the 'defense facility-wide pilot program', for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in facilities by using commercial practices on a facility-wide basis.

''(b) DESIGNATION OF PARTICIPATING FACILITIES.—(1) Subject to paragraph (2), the Secretary may designate up to two facilities as participants in the defense facility-wide pilot program.

''(2) The Secretary may designate for participation in the pilot program only those facilities that are authorized to be so designated in a law authorizing appropriations for national defense programs that is enacted after the date of the enactment of this Act [Feb. 10, 1996].

''(c) SCOPE OF PROGRAM.—At a facility designated as a participant in the pilot program, the pilot program shall consist of the following:

''(1) All contracts and subcontracts for defense supplies and services that are performed at the facility.

''(2) All Department of Defense contracts and all subcontracts under Department of Defense contracts performed elsewhere that the Secretary determines

are directly and substantially related to the production of defense supplies and services at the facility and are necessary for the pilot program.

''(d) CRITERIA FOR DESIGNATION OF PARTICIPATING FACILITIES.—The Secretary shall establish criteria for selecting a facility for designation as a participant in the pilot program. In developing such criteria, the Secretary shall consider the following:

''(1) The number of existing and anticipated contracts and subcontracts performed at the facility—

''(A) for which contractors are required to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

''(B) which are administered with the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)].

''(2) The relationship of the facility to other organizations and facilities performing under contracts with the Department of Defense and subcontracts under such contracts.

''(3) The impact that the participation of the facility under the pilot program would have on competing domestic manufacturers.

''(4) Such other factors as the Secretary considers appropriate.

''(e) NOTIFICATION.—(1) The Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each facility proposed to be designated by the Secretary for participation in the pilot program.

''(2) The Secretary shall include in the notification regarding a facility designated for participation in the program a management plan addressing the following:

''(A) The proposed treatment of research and development contracts or subcontracts to be performed at the facility during the pilot program.

''(B) The proposed treatment of the cost impact of the use of commercial practices on the award and administration of contracts and subcontracts performed at the facility.

''(C) The proposed method for reimbursing the contractor for existing and new contracts.

''(D) The proposed method for measuring the performance of the facility for meeting the management goals of the Secretary.

''(E) Estimates of the annual amount and the total amount of the contracts and subcontracts covered under the pilot program.

''(3)(A) The Secretary shall ensure that the management plan for a facility provides for attainment of the following objectives:

''(i) A significant reduction of the cost to the Government for programs carried out at the facility.

''(ii) A reduction of the schedule associated with programs carried out at the facility.

''(iii) An increased use of commercial practices and procedures for programs carried out at the facility.

''(iv) Protection of a domestic manufacturer competing for contracts at such facility from being placed at a significant competitive disadvantage by the participation of the facility in the pilot program.

''(B) The management plan for a facility shall also require that all or substantially all of the contracts to be awarded and performed at the facility after the designation of that facility under subsection (b), and all or substantially all of the subcontracts to be awarded under those contracts and performed at the facility after the designation, be—

''(i) for the production of supplies or services on a firm-fixed price basis;

''(ii) awarded without requiring the contractors or subcontractors to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

''(iii) awarded and administered without the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)].

''(f) EXEMPTION FROM CERTAIN REQUIREMENTS.—In the case of a contract or subcontract that is to be performed at a facility designated for participation in the defense facility-wide pilot program and that is subject to section 2306a of title 10, United States Code, or section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)], the Secretary of Defense may exempt such contract or subcontract from the requirement to obtain certified cost or pricing data under such section 2306a or the requirement to apply mandatory cost accounting standards under such section 26(f) [now 41 U.S.C. 1502(a), (b)] if the Secretary determines that the contract or subcontract—

''(1) is within the scope of the pilot program (as described in subsection (c)); and

''(2) is fairly and reasonably priced based on information other than certified cost and pricing data.

''(g) SPECIAL AUTHORITY.—The authority provided under subsection (a) includes authority for the Secretary of Defense—

''(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot program before the effective date of such amendment or repeal; and

''(2) to apply to a procurement of items other than commercial items under such program—

''(A) the authority provided in section 34 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 430) [now 41 U.S.C. 1906] to waive a provision of law in the case of commercial items, and

''(B) any exception applicable under this Act or the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) [see Tables for classification] (or an amendment made by a provision of either Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

''(h) APPLICABILITY.—(1) Subsections (f) and (g) apply to the following contracts, if such contracts are within the scope of the pilot program at a facility designated for the pilot program under subsection (b):

''(A) A contract that is awarded or modified during the period described in paragraph (2).

''(B) A contract that is awarded before the beginning of such period, that is to be performed (or may be performed), in whole or in part, during such period, and that may be modified as appropriate at no cost to the Government.

''(2) The period referred to in paragraph (1), with respect to a facility designated under subsection (b), is the period that—

''(A) begins 45 days after the date of the enactment of the Act authorizing the designation of that facility in accordance with paragraph (2) of such subsection; and

''(B) ends on September 30, 2000.

''(i) COMMERCIAL PRACTICES ENCOURAGED.—With respect to contracts and subcontracts within the scope of the defense facility-wide pilot program, the Secretary of Defense may, to the extent the Secretary determines appropriate and in accordance with applicable law, adopt commercial practices in the administration of contracts and subcontracts. Such commercial practices may include the following:

''(1) Substitution of commercial oversight and inspection procedures for Government audit and access to records.

''(2) Incorporation of commercial oversight, inspection, and acceptance procedures.

''(3) Use of alternative dispute resolution techniques (including arbitration).

''(4) Elimination of contract provisions authorizing the Government to make unilateral changes to contracts.''

ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS

Pub. L. 102–484, div. A, title III, § 326, Oct. 23, 1992, 106 Stat. 2368, as amended by Pub. L. 104–106, div. A, title XV, §§ 1502(c)(2)(A), 1504(c)(1), Feb. 10, 1996, 110 Stat. 506, 514; Pub. L. 106–65, div. A, title X, § 1067(8), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113–291, div. A, title X, § 1071(b)(14), Dec. 19, 2014, 128 Stat. 3508, provided that:

''(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.—(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

''(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine—

''(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

''(II) in the event of a determination that the contract includes such a specification or standard, whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

''(ii) A contract referred to in clause (i) is any contract in an amount in excess of $10,000,000 that—

''(I) was awarded before June 1, 1993; and

''(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

''(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

''(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

''(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

''(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

''(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

''(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

''(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

''(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

''(5) The Secretary shall promptly transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each report submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

''(b) COST RECOVERY.—In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

''(c) DEFINITIONS.—In this section:

''(1) The term 'class I ozone-depleting substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

''(2) The term 'Federal Acquisition Regulation' means the single Government-wide procurement regulation issued under section 1303(a) of title 41, United States Code.''

PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND SUPPLIERS

Pub. L. 102–190, div. A, title VIII, § 806, Dec. 5, 1991, 105 Stat. 1417, as amended by Pub. L. 102–484, div. A, title X, § 1053(5), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 103–355, title II, § 2091, title VIII, § 8105(k), Oct. 13, 1994, 108 Stat. 3306, 3393; Pub. L. 113–291, div. A, title X, § 1071(b)(15), Dec. 19, 2014, 128 Stat. 3508, provided that:

''(a) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the following requirements:

''(1) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT.—(A) Subject to section 552(b)(1) of title 5, United States Code, upon the request of a subcontractor or supplier of a contractor performing a Department of Defense contract, the Department of Defense shall promptly make available to such subcontractor or supplier the following information:

''(i) Whether requests for progress payments or other payments have been submitted by the contractor to the Department of Defense in connection with that contract.

''(ii) Whether final payment to the contractor has been made by the Department of Defense in connection with that contract.

''(B) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(2) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT BONDS.—(A) Upon the request of a subcontractor or supplier described in subparagraph (B), the Department of Defense shall promptly make available to such subcontractor or supplier any of the following:

''(i) The name and address of the surety or sureties on the payment bond.

''(ii) The penal amount of the payment bond.

''(iii) A copy of the payment bond.

''(B) Subparagraph (A) applies to—

''(i) a subcontractor or supplier having a subcontract, purchase order, or other agreement to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act; and

''(ii) a prospective subcontractor or supplier offering to furnish labor or material for the performance of such a Department of Defense contract.

''(C) With respect to the information referred to in subparagraphs (A)(i) and (A)(ii), the regulations shall include authority for such information to be provided verbally to the subcontractor or supplier.

''(D) With respect to the information referred to in subparagraph (A)(iii), the regulations may impose reasonable fees to cover the cost of copying and providing requested bonds.

''(E) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(3) INFORMATION PROVIDED BY CONTRACTORS RELATING TO PAYMENT BONDS.—(A) Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly make available to such prospective subcontractor or supplier a copy of the payment bond.

''(B) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act for which a solicitation is issued after the expiration of the 60-day period beginning on the effective date of the regulations promulgated under this subsection.

''(4) PROCEDURES RELATING TO COMPLIANCE WITH PAYMENT TERMS.—(A) Under procedures established in the regulations, upon the assertion by a subcontractor or supplier of a contractor performing a Department of Defense contract that the subcontractor or supplier has not been paid by the prime contractor in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine the following:

''(i) With respect to a construction contract, whether the contractor has made progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code.

''(ii) With respect to a contract other than a construction contract, whether the contractor has made progress or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iii) With respect to either a construction contract or a contract other than a construction contract, whether the contractor has made final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iv) With respect to either a construction contract or a contract other than a construction contract, whether any certification of payment of the subcontractor or supplier accompanying the contractor's payment request to the Government is accurate.

''(B) If the contracting officer determines that the prime contractor is not in compliance with any matter referred to in clause (i), (ii), or (iii) of subparagraph (A), the contracting officer may, under procedures established in the regulations—

''(i) encourage the prime contractor to make timely payment to the subcontractor or supplier; or

''(ii) reduce or suspend progress payments with respect to amounts due to the prime contractor.

''(C) If the contracting officer determines that a certification referred to in clause (iv) of subparagraph (A) is inaccurate in any material respect, the contracting officer shall, under procedures established in the regulations, initiate appropriate administrative or other remedial action.

''(D) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date of promulgation of the regulations under this subsection or that is awarded after such date.

''(b) INAPPLICABILITY TO CERTAIN CONTRACTS.—Regulations prescribed under this section shall not apply to a contract for the acquisition of commercial items (as defined in section 103 of title 41, United States Code).

''(c) GOVERNMENT-WIDE APPLICABILITY.—The Federal Acquisition Regulatory Council (established by section 1302(a) of title 41, United States Code) shall modify the Federal Acquisition Regulation (issued pursuant to section 1303(a)(1) of such title 41[)] to apply Government-wide the requirements that the Secretary is required under subsection (a) to prescribe in regulations applicable with respect to the Department of Defense contracts.

''(d) ASSISTANCE TO SMALL BUSINESS CONCERNS.—[Amended section 15(k)(5) of the Small Business Act (15 U.S.C. 644(k)(5)).]

''(e) GAO REPORT.—(1) The Comptroller General of the United States shall conduct an assessment of the matters described in paragraph (2) and submit a report pursuant to paragraph (3).

''(2) In addition to such other related matters as the Comptroller General considers appropriate, the matters to be assessed pursuant to paragraph (1) are the following:

''(A) Timely payment of progress or other periodic payments to subcontractors and suppliers by prime contractors on Federal contracts by—

''(i) identifying all existing statutory and regulatory provisions, categorized by types of contracts covered by such provisions;

''(ii) evaluating the feasibility and desirability of requiring that a prime contractor (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) be required to—

''(I) include in its subcontracts a payment term requiring payment within 7 days (or some other fixed term) after receiving payment from the Government; and

''(II) submit with its payment request to the Government a certification that it has timely paid its subcontractors in accordance with their subcontracts from funds previously received as progress payments and will timely make required payments to such subcontractors from the proceeds of the progress payment covered by the certification;

''(iii) evaluating the feasibility and desirability of requiring that all prime contractors (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) furnish with its payment request to the Government proof of payment of the amounts included in such payment request for payments made to subcontractors and suppliers;

''(iv) evaluating the feasibility and desirability of requiring a prime contractor to establish an escrow account at a federally insured financial institution and requiring direct disbursements to subcontractors and suppliers of amounts certified by the prime contractor in its payment request to the Government as being payable to such subcontractors and suppliers in accordance with their subcontracts; and

''(v) evaluating the feasibility and desirability of requiring direct disbursement of amounts certified by a prime contractor as being payable to its subcontractors and suppliers in accordance with their

subcontracts (using techniques such as joint payee checks, escrow accounts, or direct payment by the Government), if the contracting officer has determined that the prime contractor is failing to make timely payments to its subcontractors and suppliers.

''(B) Payment protection of subcontractors and suppliers through the use of payment bonds or alternatives methods by—

''(i) evaluating the effectiveness of the modifications to part 28.2 of the Federal Acquisition Regulation Part 28.2 (48 C.F.R. 28.200) relating to the use of individual sureties, which became effective February 26, 1990;

''(ii) evaluating the effectiveness of requiring payment bonds pursuant to the Miller Act as a means of affording protection to construction subcontractors and suppliers relating to receiving—

''(I) timely payment of progress payments due in accordance with their subcontracts; and

''(II) ultimate payment of such amounts due;

''(iii) evaluating the feasibility and desirability of increasing the payment bond amounts required under the Miller Act from the current maximum amounts to an amount equal to 100 percent of the amount of the contract;

''(iv) evaluating the feasibility and desirability of requiring payment bonds for supply and services contracts (other than construction), and, if feasible and desirable, the amounts of such bonds; and

''(v) evaluating the feasibility and desirability of using letters of credit issued by federally insured financial institutions (or other alternatives) as substitutes for payment bonds in providing payment protection to subcontractors and suppliers on construction contracts (and other contracts).

''(C) Any evaluation of feasibility and desirability carried out pursuant to subparagraph (A) or (B) shall include the appropriateness of—

''(i) any differential treatment of, or impact on, small business concerns as opposed to concerns other than small business concerns;

''(ii) any differential treatment of subcontracts relating to commercial products entered into by the contractor in furtherance of its non-Government business, especially those subcontracts entered into prior to the award of a contract by the Government; and

''(iii) extending the protections regarding payment to all tiers of subcontractors or restricting them to first-tier subcontractors and direct suppliers.

''(3) The report required by paragraph (1) shall include a description of the results of the assessment carried out pursuant to paragraph (2) and may include recommendations pertaining to any of the following:

''(A) Statutory and regulatory changes providing payment protections for subcontractors and suppliers (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) that the Comptroller General believes to be desirable and feasible.

''(B) Proposals to assess the desirability and utility of a specific payment protection on a test basis.

''(C) Such other recommendations as the Comptroller General considers appropriate in light of the matters assessed pursuant to paragraph (2).

''(4) The report required by paragraph (1) shall be submitted not later than by February 1, 1993, to the Committees on Armed Services and on Small Business [now the Committee on Small Business and Entrepreneurship of the Senate] of the Senate and House of Representatives.

''(f) INSPECTOR GENERAL REPORT.—(1) The Inspector General of the Department of Defense shall submit to the Secretary of Defense a report on payment protections for subcontractors and suppliers under contracts entered into with the Department of Defense. The report shall include an assessment of the extent to which available judicial and administrative remedies, as well as suspension and debarment procedures, have been used (or recommended for use) by officials of the Department to deter false statements relating to (A) payment bonds provided by individuals pursuant to the Miller Act, and (B) certifications pertaining to payment requests by construction contractors pursuant to section 3903(b) of title 31, United States Code. The assessment shall cover actions taken during the period beginning on October 1, 1989, and ending on September 30, 1992.

''(2) The report required by paragraph (1) shall be submitted to the Secretary of Defense not later than March 1, 1993. The report may include recommendations by the Inspector General on ways to improve the effectiveness of existing methods of preventing false statements.

''(g) MILLER ACT DEFINED.—For purposes of this section, the term 'Miller Act' means the Act of August 24, 1935 (40 U.S.C. 270a–270d) [now 40 U.S.C. 3131, 3133].''

ADVISORY PANEL ON STREAMLINING AND CODIFYING ACQUISITION LAWS

Pub. L. 101–510, div. A, title VIII, § 800, Nov. 5, 1990, 104 Stat. 1587, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, directed Under Secretary of Defense for Acquisition and Technology, not later than Jan. 15, 1991, to establish under sponsorship of Defense Systems Management College an advisory panel on streamlining and codifying acquisition laws, to review the acquisition laws applicable to Department of Defense with a view toward streamlining the defense acquisition process, to make any recommendations for repeal or amendment of such laws that the panel considers necessary, as a result of such review, and to prepare a proposed code of relevant acquisition laws, directed the advisory panel, not later than Dec. 15, 1992, to transmit a final report on the actions of the panel to the Under Secretary of Defense for Acquisition and Technology, and directed the Secretary of Defense, not later than Jan. 15, 1993, to transmit the final report, together with such comments as he deems appropriate, to Congress.

MENTOR-PROTEGE PILOT PROGRAM

Pub. L. 114–92, div. A, title VIII, § 861(b), Nov. 25, 2015, 129 Stat. 925, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending section 831 of Pub. L. 101–510, set out below] shall apply to a mentor-protege agreement made pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1607; 10 U.S.C. 2302 note) entered into after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 [Nov. 25, 2015].

''(2) RETROACTIVITY OF REPORT AND REVIEW REQUIREMENTS.—The amendments made by subsection (a)(10) [amending section 831 of Pub. L. 101–510, set out below, by adding subsecs. (*l*) and (m)] shall apply to a mentor-protege agreement made pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1607; 10 U.S.C. 2302 note) entered into before, on, or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 [Nov. 25, 2015].''

Pub. L. 106–65, div. A, title VIII, § 811(d)(2), (3), Oct. 5, 1999, 113 Stat. 708, 709, as amended by Pub. L. 107–107, div. A, title X, § 1048(g)(5), Dec. 28, 2001, 115 Stat. 1228, directed the Secretary of Defense to conduct a review of the Mentor-Protege Program established in Pub. L. 101–510, § 831, set out below, to assess the feasibility of transitioning such program to operation without a specific appropriation or authority to provide reimbursement to a mentor firm and to assess additional incentives that could be extended to mentor firms to ensure adequate support and participation in the Program, directed the Secretary to submit to committees of Congress a report on the results of the review and recommendations not later than Sept. 30, 2000, and directed the Comptroller General to conduct a study on the im-

plementation of the Program and the extent to which the Program was achieving its purposes in a cost-effective manner and to submit to committees of Congress a report on the results of the study not later than Jan. 1, 2002.

Pub. L. 102–484, div. A, title VIII, §807(a), Oct. 23, 1992, 106 Stat. 2448, directed the Secretary of Defense, within 15 days after Oct. 23, 1992, to publish in the Department of Defense Supplement to the Federal Acquisition Regulation the Department of Defense policy for the pilot Mentor-Protege Program and the regulations, directives, and administrative guidance pertaining to such program as such policy, regulations, directives, and administrative guidance had existed on Dec. 6, 1991, and directed that proposed modifications to that policy and any amendments proposed in order to implement any of the amendments made by this section, amending Pub. L. 101–510, §831, set out below, were to be published in final form within 120 days after Oct. 23, 1992.

Pub. L. 101–510, div. A, title VIII, §831, Nov. 5, 1990, 104 Stat. 1607, as amended by Pub. L. 102–25, title VII, §704(c), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–172, title VIII, §8064A, Nov. 26, 1991, 105 Stat. 1186; Pub. L. 102–190, div. A, title VIII, §814(b), Dec. 5, 1991, 105 Stat. 1425; Pub. L. 102–484, div. A, title VIII, §§801(h)(4), 807(b)(1), title X, §1054(d), Oct. 23, 1992, 106 Stat. 2445, 2448, 2503; Pub. L. 103–160, div. A, title VIII, §813(b)(1), (c), Nov. 30, 1993, 107 Stat. 1703; Pub. L. 104–106, div. A, title VIII, §824, Feb. 10, 1996, 110 Stat. 399; Pub. L. 104–201, div. A, title VIII, §802, Sept. 23, 1996, 110 Stat. 2604; Pub. L. 105–85, div. A, title VIII, §821(a), title X, §1073(c)(6), Nov. 18, 1997, 111 Stat. 1840, 1904; Pub. L. 106–65, div. A, title VIII, §811(a)–(d)(1), (e), Oct. 5, 1999, 113 Stat. 706, 707, 709; Pub. L. 106–398, §1 [[div. A], title VIII, §807], Oct. 30, 2000, 114 Stat. 1654, 1654A–208; Pub. L. 107–107, div. A, title VIII, §812, Dec. 28, 2001, 115 Stat. 1181; Pub. L. 108–375, div. A, title VIII, §§841(a), (b), 842, Oct. 28, 2004, 118 Stat. 2018, 2019; Pub. L. 112–10, div. A, title VIII, §8016, Apr. 15, 2011, 125 Stat. 60; Pub. L. 112–81, div. A, title VIII, §867, title X, §1062(n), Dec. 31, 2011, 125 Stat. 1526, 1586; Pub. L. 112–239, div. A, title X, §1076(a)(17), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113–291, div. A, title X, §1071(b)(16), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–92, div. A, title VIII, §861(a), Nov. 25, 2015, 129 Stat. 921, provided that:

''(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary of Defense shall establish a pilot program to be known as the 'Mentor-Protege Program'.

''(b) PURPOSE.—The purpose of the program is to provide incentives for major Department of Defense contractors to furnish disadvantaged small business concerns with assistance designed to—

''(1) enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts; and

''(2) increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.

''(c) PROGRAM PARTICIPANTS.—(1) A business concern meeting the eligibility requirements set out in subsection (d) may enter into agreements under subsection (e) and furnish assistance to disadvantaged small business concerns upon making application to the Secretary of Defense and being approved for participation in the pilot program by the Secretary. A business concern participating in the pilot program pursuant to such an approval shall be known, for the purposes of the program, as a 'mentor firm'.

''(2) A disadvantaged small business concern eligible for the award of Federal contracts may obtain assistance from a mentor firm upon entering into an agreement with the mentor firm as provided in subsection (e). A disadvantaged small business concern may not be a party to more than one agreement concurrently, and the authority to enter into agreements under subsection (e) shall only be available to such concern during the 5-year period beginning on the date such concern enters into the first such agreement. A disadvantaged small business concern receiving such assistance shall be known, for the purposes of the program, as a 'protege firm'.

''(3) In entering into an agreement pursuant to subsection (e), a mentor firm may rely in good faith on a written representation of a business concern that such business concern is a disadvantaged small business concern. The Small Business Administration shall determine the status of such business concern as a disadvantaged small business concern in the event of a protest regarding the status of such business concern. If at any time the business concern is determined by the Small Business Administration not to be a disadvantaged small business concern, assistance furnished such business concern by the mentor firm after the date of the determination may not be considered assistance furnished under the program.

''(d) MENTOR FIRM ELIGIBILITY.—Subject to subsection (c)(1), a mentor firm eligible for award of Federal contracts may enter into an agreement with one or more protege firms under subsection (e) and provide assistance under the program pursuant to that agreement if—

''(1) the mentor firm is not affiliated with the protege firm prior to the approval of that agreement; and

''(2) the mentor firm demonstrates that it—

''(A) is qualified to provide assistance that will contribute to the purpose of the program;

''(B) is of good financial health and character and does not appear on a Federal list of debarred or suspended contractors; and

''(C) can impart value to a protege firm because of experience gained as a Department of Defense contractor or through knowledge of general business operations and government contracting, as demonstrated by evidence that—

''(i) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than $100,000,000; or

''(ii) the mentor firm demonstrates the capability to assist in the development of protege firms, and is approved by the Secretary of Defense pursuant to criteria specified in the regulations prescribed pursuant to subsection (k).

''(e) MENTOR-PROTEGE AGREEMENT.—Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

''(1) A developmental program for the protege firm, in such detail as may be reasonable, including—

''(A) factors to assess the protege firm's developmental progress under the program;

''(B) a description of the quantitative and qualitative benefits to the Department of Defense from the agreement, if applicable; and

''(C) goals for additional awards that [the] protege firm can compete for outside the Mentor-Protege Program.

''(2) A program participation term for any period of not more than three years, except that the term may be a period of up to five years if the Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of three years.

''(3) Procedures for the protege firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.

''(f) FORMS OF ASSISTANCE.—A mentor firm may provide a protege firm the following:

''(1) Assistance, by using mentor firm personnel, in—

''(A) general business management, including organizational management, financial management,

and personnel management, marketing, and overall business planning;

''(B) engineering and technical matters such as production, inventory control, and quality assurance; and

''(C) any other assistance designed to develop the capabilities of the protege firm under the developmental program referred to in subsection (e).

''(2) Award of subcontracts on a noncompetitive basis to the protege firm under the Department of Defense or other contracts.

''(3) Payment of progress payments for performance of the protege firm under such a subcontract in amounts as provided for in the subcontract, but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance.

''(4) Advance payments under such subcontracts.

''(5) Loans.

''(6) Assistance obtained by the mentor firm for the protege firm from one or more of the following—

''(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

''(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code; or

''(C) a historically Black college or university or a minority institution of higher education.

''(g) INCENTIVES FOR MENTOR FIRMS.—(1) The Secretary of Defense may provide to a mentor firm reimbursement for the total amount of any progress payment or advance payment made under the program by the mentor firm to a protege firm in connection with a Department of Defense contract awarded the mentor firm.

''(2)(A) The Secretary of Defense may provide to a mentor firm reimbursement for the costs of the assistance furnished to a protege firm pursuant to paragraphs (1) and (6) of subsection (f) (except as provided in subparagraph (D)) as provided for in a line item in a Department of Defense contract under which the mentor firm is furnishing products or services to the Department, subject to a maximum amount of reimbursement specified in such contract, except that this sentence does not apply in a case in which the Secretary of Defense determines in writing that unusual circumstances justify reimbursement using a separate contract.

''(B) The determinations made in annual performance reviews of a mentor firm's mentor-protege agreement shall be a major factor in the determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.

''(C) The total amount reimbursed under this paragraph to a mentor firm for costs of assistance furnished in a fiscal year to a protege firm may not exceed $1,000,000, except in a case in which the Secretary of Defense determines in writing that unusual circumstances justify a reimbursement of a higher amount.

''(D) The Secretary may not reimburse any fee assessed by the mentor firm for services provided to the protege firm pursuant to subsection (f)(6) or for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protege firm.

''(3)(A) Costs incurred by a mentor firm in providing assistance to a protege firm that are not reimbursed pursuant to paragraph (2) shall be recognized as credit in lieu of subcontract awards for purposes of determining whether the mentor firm attains a subcontracting participation goal applicable to such mentor firm under a Department of Defense contract, under a contract with another executive agency, or under a divisional or company-wide subcontracting plan negotiated with the Department of Defense or another executive agency.

''(B) The amount of the credit given a mentor firm for any such unreimbursed costs shall be equal to—

''(i) four times the total amount of such costs attributable to assistance provided by entities described in subsection (f)(6);

''(ii) three times the total amount of such costs attributable to assistance furnished by the mentor firm's employees; and

''(iii) two times the total amount of any other such costs.

''(C) Under regulations prescribed pursuant to subsection (k), the Secretary of Defense shall adjust the amount of credit given a mentor firm pursuant to subparagraphs (A) and (B) if the Secretary determines that the firm's performance regarding the award of subcontracts to disadvantaged small business concerns has declined without justifiable cause.

''(4) A mentor firm shall receive credit toward the attainment of a subcontracting participation goal applicable to such mentor firm for each subcontract for a product or service awarded under such contract by a mentor firm to a business concern that, except for its size, would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

''(A) the size of such business concern is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing such product or service is a small business concern; and

''(B) the business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

''(h) RELATIONSHIP TO SMALL BUSINESS ACT.—(1) For purposes of the Small Business Act (15 U.S.C. 631 et seq.), no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f).

''(2) Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637), the Small Business Administration may not determine a disadvantaged small business concern to be ineligible to receive any assistance authorized under the Small Business Act on the basis that such business concern has participated in the Mentor-Protege Program or has received assistance pursuant to any developmental assistance agreement authorized under such program.

''(3) The Small Business Administration may not require a firm that is entering into, or has entered into, an agreement under subsection (e) as a protege firm to submit the agreement, or any other document required by the Secretary of Defense in the administration of the Mentor-Protege Program, to the Small Business Administration for review, approval, or any other purpose.

''(i) PARTICIPATION IN MENTOR-PROTEGE PROGRAM NOT TO BE A CONDITION FOR AWARD OF A CONTRACT OR SUBCONTRACT.—A mentor firm may not require a business concern to enter into an agreement with the mentor firm pursuant to subsection (e) as a condition for being awarded a contract by the mentor firm, including a subcontract under a contract awarded to the mentor firm.

''(j) EXPIRATION OF AUTHORITY.—(1) No mentor-protege agreement may be entered into under subsection (e) after September 30, 2018.

''(2) No reimbursement may be paid, and no credit toward the attainment of a subcontracting goal may be granted, under subsection (g) for any cost incurred after September 30, 2021.

''(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the pilot Mentor-Protege Program. Such regulations shall include the requirements set forth in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and shall prescribe procedures by which mentor firms may terminate participation in the program. The Secretary shall publish the proposed regulations not later than the date 180 days

after the date of the enactment of this Act [Nov. 5, 1990]. The Secretary shall promulgate the final regulations not later than the date 270 days after the date of the enactment of this Act. The Department of Defense policy regarding the pilot Mentor-Protege Program shall be published and maintained as an appendix to the Department of Defense Supplement to the Federal Acquisition Regulation.

''(*l*) REPORT BY MENTOR FIRMS.—To comply with section 8(d)(7) of the Small Business Act (15 U.S.C. 637(d)(7)), each mentor firm shall submit a report to the Secretary not less than once each fiscal year that includes, for the preceding fiscal year—

''(1) all technical or management assistance provided by mentor firm personnel for the purposes described in subsection (f)(1);

''(2) any new awards of subcontracts on a competitive or noncompetitive basis to the protege firm under Department of Defense contracts or other contracts, including the value of such subcontracts;

''(3) any extensions, increases in the scope of work, or additional payments not previously reported for prior awards of subcontracts on a competitive or noncompetitive basis to the protege firm under Department of Defense contracts or other contracts, including the value of such subcontracts;

''(4) the amount of any payment of progress payments or advance payments made to the protege firm for performance under any subcontract made under the Mentor-Protege Program;

''(5) any loans made by [the] mentor firm to the protege firm;

''(6) all Federal contracts awarded to the mentor firm and the protege firm as a joint venture, designating whether the award was a restricted competition or a full and open competition;

''(7) any assistance obtained by the mentor firm for the protege firm from one or more—

''(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

''(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code; or

''(C) historically Black colleges or universities or minority institutions of higher education;

''(8) whether there have been any changes to the terms of the mentor-protege agreement; and

''(9) a narrative describing the success assistance provided under subsection (f) has had in addressing the developmental needs of the protege firm, the impact on Department of Defense contracts, and addressing any problems encountered.

''(m) REVIEW OF REPORT BY THE OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of Defense shall review the report required by subsection (*l*) and, if the Office finds that the mentor-protege agreement is not furthering the purpose of the Mentor-Protege Program, decide not to approve any continuation of the agreement.

''(n) DEFINITIONS.—In this section:

''(1) The term 'small business concern' has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'disadvantaged small business concern' means a firm that has less than half the size standard corresponding to its primary North American Industry Classification System code, is not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm, and is—

''(A) a small business concern owned and controlled by socially and economically disadvantaged individuals;

''(B) a business entity owned and controlled by an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

''(C) a business entity owned and controlled by a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));

''(D) a qualified organization employing severely disabled individuals;

''(E) a small business concern owned and controlled by women, as defined in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D));

''(F) a small business concern owned and controlled by service–disabled veterans (as defined in section 8(d)(3) of the Small Business Act [15 U.S.C. 637(d)(3)]); and [sic]

''(G) a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p)); or

''(H) a small business concern that—

''(i) is a nontraditional defense contractor, as such term is defined in section 2302 of title 10, United States Code; or

''(ii) currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key Department of Defense needs.

''(3) The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

''(4) The term 'historically Black college and university' means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code.

''(5) The term 'minority institution of higher education' means an institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).

''(6) The term 'subcontracting participation goal', with respect to a Department of Defense contract, means a goal for the extent of the participation by disadvantaged small business concerns in the subcontracts awarded under such contract, as established pursuant to section 2323 of title 10, United States Code, and section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

''(7) The term 'qualified organization employing the severely disabled' means a business entity operated on a for-profit or nonprofit basis that—

''(A) uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

''(B) employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

''(C) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

''(D) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

''(8) The term 'severely disabled individual' means an individual who is blind (as defined in section 8501 of title 41, United States Code) or a severely disabled individual (as defined in such section).

''(9) The term 'affiliated', with respect to the relationship between a mentor firm and a protege firm, means—

''(A) the mentor firm shares, directly or indirectly, with the protege firm ownership or management of the protege firm;

''(B) the mentor firm has an agreement, at the time the mentor firm enters into a mentor-protege agreement under subsection (e), to merge with the protege firm;

''(C) the owners and managers of the mentor firm are the parent, child, spouse, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, or first cousin of an owner or manager of the protege firm;

''(D) the mentor firm has, during the 2-year period before entering into a mentor-protege agreement, employed any officer, director, principal

stock holder, managing member, or key employee of the protege firm;

''(E) the mentor firm has engaged in a joint venture with the protege firm during the 2-year period before entering into a mentor-protege agreement, unless such joint venture was approved by the Small Business Administration prior to making any offer on a contract;

''(F) the mentor firm is, directly or indirectly, the primary party providing contracts to the protege firm, as measured by the dollar value of the contracts; and

''(G) the Small Business Administration has made a determination of affiliation or control under subsection (h).''

[Pub. L. 114–92, § 861(a)(11)(B)(iii), which directed amendment of section 831(n)(2)(G) of Pub. L. 101–510, set out above, by substituting ''Small Business Act (15 U.S.C. 632(p)); or'' for ''Small Business Act.'', was executed by making the substitution for ''Small Business Act).'' to reflect the probable intent of Congress.]

[Pub. L. 106–65, div. A, title VIII, § 811(f), Oct. 5, 1999, 113 Stat. 709, provided that:

[''(1) The amendments made by this section [amending section 831 of Pub. L. 101–510, set out above] shall take effect on October 1, 1999, and shall apply with respect to mentor-protege agreements that are entered into under section 831(e) of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510, set out above] on or after that date.

[''(2) Section 831 of the National Defense Authorization Act for Fiscal Year 1991, as in effect on September 30, 1999, shall continue to apply with respect to mentor-protege agreements entered into before October 1, 1999.'']

[Section 807(b)(2) of Pub. L. 102–484 provided that: ''The amendment made by this subsection [amending section 831 of Pub. L. 101–510, set out above] shall take effect as of November 5, 1990.'']

CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS

Pub. L. 101–189, div. A, title VIII, § 832, Nov. 29, 1989, 103 Stat. 1508, which provided credit for Indian contracting in meeting certain minority contracting goals, was repealed and restated in section 2323a of this title by Pub. L. 102–484, § 801(g)(1)(B), (h)(5).

EQUITABLE PARTICIPATION OF AMERICAN SMALL AND MINORITY-OWNED BUSINESS IN FURNISHING OF COMMODITIES AND SERVICES

Pub. L. 101–165, title IX, § 9004, Nov. 21, 1989, 103 Stat. 1129, provided that: ''During the current fiscal year and hereafter, the Secretary of Defense and each purchasing and contracting agency of the Department of Defense shall assist American small and minority-owned business to participate equitably in the furnishing of commodities and services financed with funds appropriated under this Act [see Tables for classification] by increasing, to an optimum level, the resources and number of personnel jointly assigned to promoting both small and minority business involvement in purchases financed with funds appropriated herein, and by making available or causing to be made available to such businesses, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this Act, and by assisting small and minority business concerns to participate equitably as subcontractors on contracts financed with funds appropriated herein, and by otherwise advocating and providing small and minority business opportunities to participate in the furnishing of commodities and services financed with funds appropriated by this Act.''

REQUIREMENT FOR SUBSTANTIAL PROGRESS ON MINORITY AND SMALL BUSINESS CONTRACT AWARDS

Pub. L. 100–180, div. A, title VIII, § 806(a)–(c), Dec. 4, 1987, 101 Stat. 1126, 1127, directed Secretary of Defense to issue regulations to ensure that substantial progress was made in increasing awards of Department of Defense contracts to small business concerns, historically Black colleges and universities, and minority institutions described in section 1207(a) of Pub. L. 99–661 [formerly set out below], prior to repeal by Pub. L. 102–484, div. A, title VIII, § 801(h)(7), Oct. 23, 1992, 106 Stat. 2446.

DEFINITIONS; RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99–500, 99–591, AND 99–661

Pub. L. 100–26, §§ 2, 6, Apr. 21, 1987, 101 Stat. 273, 274, provided that:

''SEC. 2. REFERENCES TO 99TH CONGRESS LAWS

''For purposes of this Act [Pub. L. 100–26, see Short Title of 1987 Amendment note set out under section 101 of this title]:

''(1) The term 'Defense Authorization Act' means the Department of Defense Authorization Act, 1987 (division A of Public Law 99–661; 100 Stat. 3816 et seq.).

''(2) The term 'Defense Appropriations Act' means the Department of Defense Appropriations Act, 1987 (as contained in identical form in section 101(c) of Public Law 99–500 (100 Stat. 1783–82 et seq.) and section 101(c) of Public Law 99–591 (100 Stat. 3341–82 et seq.)).

''(3) The term 'Defense Acquisition Improvement Act' means title X of the Defense Appropriations Act [100 Stat. 1783–130, 3341–130] and title IX of the Defense Authorization Act [100 Stat. 3910] (as designated by the amendment made by section 3(5) [section 3(5) of Pub. L. 100–26]). Any reference in this Act to the Defense Acquisition Improvement Act shall be considered to be a reference to each such title.''

''SEC. 6. CONSTRUCTION OF DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS

''(a) RULE FOR CONSTRUCTION OF DUPLICATE PROVISIONS.—(1) In applying the provisions of Public Laws 99–500, 99–591, and 99–661 described in paragraph (2)—

''(A) the identical provisions of those public laws referred to in such paragraph shall be treated as having been enacted only once, and

''(B) in executing to the United States Code and other statutes of the United States the amendments made by such identical provisions, such amendments shall be executed so as to appear only once in the law as amended.

''(2) Paragraph (1) applies with respect to the provisions of the Defense Appropriations Act and the Defense Authorization Act (as amended by sections 3, 4, 5, and 10(a)) referred to across from each other in the following table:

''Section 101(c) of Public Law 99–500	Section 101(c) of Public Law 99–591	Division A of Public Law 99–661
''Title X	Title X	Title IX
''Sec. 9122	Sec. 9122	Sec. 522
''Sec. 9036(b)	Sec. 9036(b)	Sec. 1203
''Sec. 9115	Sec. 9115	Sec. 1311

''(b) RULE FOR DATE OF ENACTMENT.—(1) The date of the enactment of the provisions of law listed in the middle column, and in the right-hand column, of the table in subsection (a)(2) shall be deemed to be October 18, 1986 (the date of the enactment of Public Law 99–500).

''(2) Any reference in a provision of law referred to in paragraph (1) to 'the date of the enactment of this Act' shall be treated as a reference to October 18, 1986.''

[For classification of provisions listed in the table, see Tables.]

CONTRACT GOAL FOR MINORITIES

Pub. L. 99–661, div. A, title XII, § 1207, Nov. 14, 1986, 100 Stat. 3973, as amended by Pub. L. 100–180, div. A, title VIII, § 806(d), 101 Stat. 1127; Pub. L. 100–456, div. A, title VIII, § 844, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 101–189, div. A, title VIII, § 831, Nov. 29, 1989, 103 Stat. 1507; Pub.

L. 101–510, div. A, title VIII, §§811, 832, title XIII, §§1302(d), 1312(b), Nov. 5, 1990, 104 Stat. 1596, 1612, 1669, 1670; Pub. L. 102–25, title VII, §§704(a)(6), 705(e), Apr. 6, 1991, 105 Stat. 118, 120, which set contract goals for small disadvantaged businesses and certain institutions of higher education, was repealed and restated in section 2323 of this title by Pub. L. 102–484, §801(a)(1)(B), (h)(1).

MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS

Pub. L. 99–145, title IX, §913, Nov. 8, 1985, 99 Stat. 687, as amended by Pub. L. 101–510, div. A, title XIII, §1322(d)(1), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

''(b) DEFINITION.—For the purposes of this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in section 2304 of title 10, United States Code.''

DEFENSE PROCUREMENT REFORM: CONGRESSIONAL FINDINGS AND POLICY

Pub. L. 98–525, title XII, §1202, Oct. 19, 1984, 98 Stat. 2588, as amended by Pub. L. 99–500, §101(c) [title X, §953(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, §101(c) [title X, §953(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, §953(c), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to the elimination of excessive pricing of replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

''(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

''(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

''(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

''(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective; and

''(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts.''

MODIFICATION OF REGULATIONS AND DIRECTIVES TO ACCOMMODATE A POLICY OF MULTIYEAR PROCUREMENT

Pub. L. 97–86, title IX, §909(d), Dec. 1, 1981, 95 Stat. 1120, directed Secretary of Defense, not later than the end of the 90-day period beginning Dec. 1, 1981, to issue such modifications to existing regulations governing defense acquisitions as might be necessary to implement the amendments made by subsections (a), (b), and (c) [amending sections 139, 2301, and 2306 of this title] and directed Director of the Office of Management and Budget to issue such modifications to existing Office of Management and Budget directives as might be necessary to take into account the amendments made by subsections (a) and (b) [amending sections 2301 and 2306 of this title].

PROCUREMENT REQUIREMENTS FOR GOODS WHICH ARE NOT AMERICAN GOODS

Pub. L. 93–365, title VII, §707, Aug. 5, 1974, 88 Stat. 406, which prohibited contracts by the Department of Defense for other than American goods after Aug. 5, 1974, unless adequate consideration was first given to bids of firms in labor surplus areas of the United States, of small business firms, and of all other United States firms which had offered to furnish American goods, balance of payments, cost of shipping other than American goods, and any duty, tariff, or surcharge on such goods, was repealed and restated in section 2501 of this title by Pub. L. 100–370, §3(a), (c). Section 2501 of this title was renumbered section 2506 by Pub. L. 100–456, §821(b)(1)(A). Section 2506 of this title was renumbered section 2533 by Pub. L. 102–484, §4202(a).

§ 2302a. Simplified acquisition threshold

(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by agencies named in section 2303 of this title, the simplified acquisition threshold is as specified in section 134 of title 41.

(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of title 41 shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(Added and amended Pub. L. 103–355, title IV, §§4002(a), 4102(a), Oct. 13, 1994, 108 Stat. 3338, 3340; Pub. L. 111–350, §5(b)(9), Jan. 4, 2011, 124 Stat. 3843.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–350, §5(b)(9)(A), substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act''.

Subsec. (b). Pub. L. 111–350, §5(b)(9)(B), substituted ''section 1905 of title 41'' for ''section 33 of the Office of Federal Procurement Policy Act''.

1994—Subsec. (b). Pub. L. 103–355, §4102(a), added subsec. (b).

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2302b. Implementation of simplified acquisition procedures

The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 1901 of title 41 shall apply as provided in such section to the agencies named in section 2303(a) of this title.

(Added Pub. L. 103–355, title IV, §4203(a)(1), Oct. 13, 1994, 108 Stat. 3345; amended Pub. L. 111–350, §5(b)(10), Jan. 4, 2011, 124 Stat. 3843.)

AMENDMENTS

2011—Pub. L. 111–350 substituted ''section 1901 of title 41'' for ''section 31 of the Office of Federal Procurement Policy Act''.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2302c. Implementation of electronic commerce capability

(a) IMPLEMENTATION OF ELECTRONIC COMMERCE CAPABILITY.—(1) The head of each agency named in paragraphs (1), (5), and (6) of section 2303(a) of this title shall implement the electronic commerce capability required by section 2301 of title 41.

(2) The Secretary of Defense shall act through the Under Secretary of Defense for Acquisition, Technology, and Logistics to implement the capability within the Department of Defense.

(3) In implementing the electronic commerce capability pursuant to paragraph (1), the head of an agency referred to in paragraph (1) shall consult with the Administrator for Federal Procurement Policy.

(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303(a) of this title shall designate a program manager to implement the electronic commerce capability for that agency. The program manager shall report directly to an official at a level not lower than the senior procurement executive designated for the agency under section 1702(c) of title 41.

(Added Pub. L. 103–355, title IX, § 9002(a), Oct. 13, 1994, 108 Stat. 3402; amended Pub. L. 105–85, div. A, title VIII, § 850(f)(3)(A), Nov. 18, 1997, 111 Stat. 1850; Pub. L. 105–129, § 1(a)(1), Dec. 1, 1997, 111 Stat. 2551; Pub. L. 106–65, div. A, title X, § 1066(a)(18), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111–350, § 5(b)(11), Jan. 4, 2011, 124 Stat. 3843.)

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–350, § 5(b)(11)(A), substituted ''section 2301 of title 41'' for ''section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426)''.

Subsec. (b). Pub. L. 111–350, § 5(b)(11)(B), substituted ''section 1702(c) of title 41'' for ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))''.

2006—Subsec. (b). Pub. L. 109–364 substituted ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))'' for ''section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))''.

2001—Subsec. (a)(2). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1999—Subsec. (b). Pub. L. 106–65 substituted ''section 2303(a)'' for ''section 2303''.

1997—Pub. L. 105–85 substituted ''electronic commerce'' for ''FACNET'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1) The head of each agency named in section 2303 of this title shall implement the Federal acquisition computer network ('FACNET') capability required by section 30 of the Office of Federal Procurement Policy Act. In the case of the Department of Defense, the implementation shall be by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, for the Department of Defense as a whole. For purposes of this section, the term 'head of an agency' does not include the Secretaries of the military departments.

''(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an agency shall consult with the Administrator for Federal Procurement Policy.

''(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303 of this title shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).''

Subsec. (a)(1). Pub. L. 105–129 inserted ''of section 2303(a) of this title'' after ''paragraphs (1), (5), and (6)''.

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–129, § 1(a)(2), Dec. 1, 1997, 111 Stat. 2551, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment to section 2302c of title 10, United States Code, made by section 850(f)(3)(A) of the National Defense Authorization Act for Fiscal Year 1998 [Pub. L. 105–85] to which the amendment made by paragraph (1) relates.''

Pub. L. 105–85, div. A, title VIII, § 850(g), Nov. 18, 1997, 111 Stat. 1850, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, section 2304 of this title, section 637 of Title 15, Commerce and Trade, section 1501 of former Title 40, Public Buildings, Property, and Works, and sections 252c, 253, 416, 426, and 427 of Title 41, Public Contracts, repealing section 426a of Title 41, amending provisions set out as a note under section 413 of Title 41, and repealing provisions set out as a note under section 426a of Title 41] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

''(2) The repeal made by subsection (c) of this section [repealing provisions set out as a note under section 426a of Title 41] shall take effect on the date of the enactment of this Act.''

EFFECTIVE DATE

Pub. L. 103–355, title IX, § 9002(c), Oct. 13, 1994, 108 Stat. 3402, provided that: ''A FACNET capability may be implemented and used in an agency before the promulgation of regulations implementing this section (as provided in section 10002) [108 Stat. 3404, formerly set out as a Regulations note under section 251 of former Title 41, Public Contracts]. If such implementation and use occurs, the period for submission of bids or proposals under section 18(a)(3)(B) of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1708(e)(1)(B)], in the case of a solicitation through FACNET, may be less than the period otherwise applicable under that section, but shall be at least 10 days. The preceding sentence shall not be in effect after September 30, 1995.''

§ 2302d. Major system: definitional threshold amounts

(a) DEPARTMENT OF DEFENSE SYSTEMS.—For purposes of section 2302(5) of this title, a system for which the Department of Defense is responsible shall be considered a major system if—

(1) the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $115,000,000 (based on fiscal year 1990 constant dollars); or

(2) the eventual total expenditure for procurement for the system is estimated to be more than $540,000,000 (based on fiscal year 1990 constant dollars).

(b) CIVILIAN AGENCY SYSTEMS.—For purposes of section 2302(5) of this title, a system for which a civilian agency is responsible shall be considered a major system if total expenditures for the system are estimated to exceed the greater of—

(1) $750,000 (based on fiscal year 1980 constant dollars); or

(2) the dollar threshold for a ''major system'' established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled ''Major Systems Acquisitions''.

(c) ADJUSTMENT AUTHORITY.—(1) The Secretary of Defense may adjust the amounts and the base fiscal year provided in subsection (a) on the basis of Department of Defense escalation rates.

(2) An amount, as adjusted under paragraph (1), that is not evenly divisible by $5,000,000 shall be rounded to the nearest multiple of $5,000,000. In the case of an amount that is evenly divisible by $2,500,000 but not evenly divisible by $5,000,000, the amount shall be rounded to the next higher multiple of $5,000,000.

(3) An adjustment under this subsection shall be effective after the Secretary transmits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the adjustment.

(Added Pub. L. 104–201, div. A, title VIII, §805(a)(2), Sept. 23, 1996, 110 Stat. 2605; amended Pub. L. 105–85, div. A, title X, §1073(a)(41), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (c)(3). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''procurement for the system is estimated to be'' for ''procurement of''.

§ 2303. Applicability of chapter

(a) This chapter applies to the procurement by any of the following agencies, for its use or otherwise, of all property (other than land) and all services for which payment is to be made from appropriated funds:

(1) The Department of Defense.

(2) The Department of the Army.

(3) The Department of the Navy.

(4) The Department of the Air Force.

(5) The Coast Guard.

(6) The National Aeronautics and Space Administration.

(b) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85–568, title III, §301(b), July 29, 1958, 72 Stat. 432; Pub. L. 98–369, div. B, title VII, §2722(b), July 18, 1984, 98 Stat. 1187.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2303(a)	41:151(a).	Feb. 19, 1948, ch. 65, §§2(a), 9 (clause (b)), 62 Stat. 21, 24.
2303(b)	41:158 (clause (b), less last 5 words).	
2303(c)	41:158 (last 5 words of clause (b)).	

In subsection (a), the words ''all property named in subsection (b), and all services'' are substituted for the words ''for supplies or services''. The words ''(each being hereinafter called the agency)'', are omitted, since the revised sections of this chapter make specific reference to the agencies named in this revised section. The words ''United States'' before the words ''Coast Guard'' are omitted, since they are not a part of the official name of the Coast Guard under section 1 of title 14.

In subsection (b), the introductory clause is substituted for the word ''supplies''. Throughout the revised chapter reference is made to ''property or services covered by this chapter'', instead of ''supplies'', since the word ''supplies'' is defined in section 101(26) of this title in its usual and narrower sense, rather than the sense of the source statute for this revised chapter. It is desirable to avoid a usage which conflicts with the definition in section 101(26) of this title. The word ''ships'' and the words ''of every character, type, and description'', after the word ''vessels'', are omitted as covered by the definition of ''vessel'' in section 1 of title 1.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, §2722(b)(1)(A), (B), substituted in provisions preceding cl. (1) ''procurement'' for ''purchase, and contract to purchase,'' and ''(other than land) and all services'' for ''named in subsection (b), and all services,''.

Subsec. (a)(1) to (6). Pub. L. 98–369, §2722(b)(1)(C), (D), added cl. (1) and redesignated existing cls. (1) to (5) as (2) to (6), respectively.

Subsecs. (b), (c). Pub. L. 98–369, §2722(b)(2), (3), redesignated subsec. (c) as (b). Former subsec. (b), which had provided that this chapter did not cover land but did cover public works, buildings, facilities, vessels, floating equipment, aircraft, parts, accessories, equipment, and machine tools, was struck out.

1958—Subsec. (a)(5). Pub. L. 85–568 substituted ''The National Aeronautics and Space Administration'' for ''The National Advisory Committee for Aeronautics''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see note set out under section 2302 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.

ACQUISITION, LEASE, OR RENTAL FOR USE BY THE ARMED FORCES OF MOTOR BUSES MANUFACTURED OUTSIDE THE UNITED STATES

Pub. L. 90–500, title IV, §404, Sept. 20, 1968, 82 Stat. 851, which provided that no funds for the armed forces were to be used to buy or lease buses other than those manufactured in the United States, except as regulation from the Secretary of Defense might authorize solely to avoid uneconomical procurement or one contrary to the national interest, was repealed and restated as section 2400 of this title by Pub. L. 97–295, §§1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

[§ 2303a. Repealed. Pub. L. 98–577, title III, § 302(c)(1), Oct. 30, 1984, 98 Stat. 3077]

Section, Pub. L. 98–525, title XII, § 1212(a), Oct. 19, 1984, 98 Stat. 2590, related to publication of proposed regulations.

Section, pursuant to section 1212(b) of Pub. L. 98–525, was to have taken effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which was 30 days after the date of enactment of Pub. L. 98–525. Pub. L. 98–525 was approved Oct. 19, 1984. However, before that effective date, the section was repealed by Pub. L. 98–577.

§ 2304. Contracts: competition requirements

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 2323 of this title.

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).

(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.

(c) The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency;

(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to subsection (k), a statute expressly authorizes or requires that the procurement be made through another agency or

from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(d)(1) For the purposes of applying subsection (c)(1)—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a concept—

(i) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability of the source to provide the service; and

(ii) the substance of which is not otherwise available to the United States, and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(i) substantial duplication of cost to the United States which is not expected to be recovered through competition; or

(ii) unacceptable delays in fulfilling the agency's needs.

(2) The authority of the head of an agency under subsection (c)(7) may not be delegated.

(3)(A) The contract period of a contract described in subparagraph (B) that is entered into by an agency pursuant to the authority provided under subsection (c)(2)—

(i) may not exceed the time necessary—

(I) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(II) for the agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(ii) may not exceed one year unless the head of the agency entering into such contract determines that exceptional circumstances apply.

(B) This paragraph applies to any contract in an amount greater than the simplified acquisition threshold.

(e) The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding $500,000 (but equal to or less than $10,000,000), by the competition advocate for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii);

(ii) in the case of a contract for an amount exceeding $10,000,000 (but equal to or less than $75,000,000), by the head of the procuring activity (or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A)); or

(iii) in the case of a contract for an amount exceeding $75,000,000, by the senior procurement executive of the agency designated pursuant to section 1702(c) of title 41 (without further delegation) or in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B); and

(C) any required notice has been published with respect to such contract pursuant to section 1708 of title 41 and all bids or proposals received in response to that notice have been considered by the head of the agency.

(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial item for authorized resale;

(C) in the case of a procurement permitted by subsection (c)(7);

(D) in the case of a procurement conducted under (i) chapter 85 of title 41, or (ii) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(E) in the case of a procurement permitted by subsection (c)(4), but only if the head of the contracting activity prepares a document in connection with such procurement that describes the terms of an agreement or treaty, or the written directions, referred to in that subsection that have the effect of requiring the use of procedures other than competitive procedures.

(3) The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

(4) In no case may the head of an agency—

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(B) procure property or services from another agency unless such other agency complies fully with the requirements of this chapter in its procurement of such property or services.

The restriction contained in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

(5)(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

(i) if a member of the armed forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of brigadier general or rear admiral (lower half).

(B) The authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (1)(B)(iii) may be delegated only to—

(i) an Assistant Secretary of Defense; or

(ii) with respect to the element of the Department of Defense (as specified in section 111(b) of this title), other than a military department, carrying out the procurement action concerned, an officer or employee serving in or assigned or detailed to that element who—

(I) if a member of the armed forces, is serving in a grade above brigadier general or rear admiral (lower half); or

(II) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than $5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(2) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

(3) In using simplified procedures, the head of an agency shall promote competition to the maximum extent practicable.

(4) The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of title 41.

(h) For the purposes of the following, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) Chapter 65 of title 41.

(2) Sections 3141–3144, 3146, and 3147 of title 40.

(i)(1) The Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures, as defined in section 2302(2) of this title.

(2) The regulations required by paragraph (1) shall—

(A) specify the incurred overhead a contractor may appropriately allocate to supplies referred to in that paragraph; and

(B) require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value.

(3) Such regulations shall not apply to an item of supply included in a contract or subcontract for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

(j) The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements.

(k)(1) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(3) For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(4) This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(*l*)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting ''30 days'' for ''14 days''.

(2) The documents shall be made available on the website of the agency and through a government-wide website selected by the Administrator for Federal Procurement Policy.

(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85–800, §8, Aug. 28, 1958, 72 Stat. 967; Pub. L. 85–861, §33(a)(12), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87–653, §1(a)–(c), Sept. 10, 1962, 76 Stat. 528; Pub. L. 90–268, §5, Mar. 16, 1968, 82 Stat. 50; Pub. L. 90–500, title IV, §405, Sept. 20, 1968, 82 Stat. 851; Pub. L. 93–356, §4, July 25, 1974, 88 Stat. 390; Pub. L. 96–513, title V, §511(76), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–86, title IX, §907(a), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 97–295, §1(24), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 97–375, title I, §114, Dec. 21, 1982, 96 Stat. 1821; Pub. L. 98–369, div. B, title VII, §§2723(a), 2727(b), July 18, 1984, 98 Stat. 1187, 1194; Pub. L. 98–577, title V, §504(b)(1), (2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99–145, title IX, §961(a)(1), title XIII, §1303(a)(13), Nov. 8, 1985, 99 Stat. 703, 739; Pub. L. 99–500, §101(c) [title X, §§923(a)–(c), 927(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–152, 1783–155, and Pub. L. 99–591, §101(c) [title X, §§923(a)–(c), 927(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–152, 3341–155; Pub. L. 99–661, div. A, title IX, formerly title IV, §§923(a)–(c), 927(a), title XIII, §1343(a)(14), Nov. 14, 1986, 100 Stat. 3932, 3935, 3993, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §7(d)(3), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–456, div. A, title VIII, §803, Sept. 29, 1988, 102 Stat. 2008; Pub. L. 101–189, div. A, title VIII, §§812, 817, 818, 853(d), Nov. 29, 1989, 103 Stat. 1493, 1501, 1502, 1519; Pub. L. 101–510, div. A, title VIII, §806(b), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102–25, title VII, §701(d)(2), Apr. 6, 1991, 105 Stat. 114; Pub. L. 102–484, div. A, title VIII, §§801(h)(2), 816, title X, §1052(23), Oct. 23, 1992, 106 Stat. 2445, 2454, 2500; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title I, §§1001–1003, 1004(b), 1005, title IV, §4401(a), title VII, §7203(a)(1), Oct. 13, 1994, 108 Stat. 3249, 3253, 3254, 3347, 3379; Pub. L. 104–106, div. D, title XLI, §§4101(a), 4102(a), title XLII, §4202(a)(1), title XLIII, §4321(b)(4), (5), Feb. 10, 1996, 110 Stat. 642, 643, 652, 672; Pub. L. 104–320, §§7(a)(1), 11(c)(1), Oct. 19, 1996, 110 Stat. 3871, 3873; Pub. L. 105–85, div. A, title VIII, §§841(b), 850(f)(3)(B), title X, §1073(a)(42), (43), Nov. 18, 1997, 111 Stat. 1843, 1850, 1902; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–217, §3(b)(3), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–375, div. A, title VIII, §815, Oct. 28, 2004, 118 Stat. 2015; Pub. L. 109–364, div. A, title X, §1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title VIII, §844(b), Jan. 28, 2008, 122 Stat. 239; Pub. L. 110–417, [div. A], title VIII, §862(b), Oct. 14, 2008, 122 Stat. 4546; Pub. L. 111–350, §5(b)(12), Jan. 4, 2011, 124 Stat. 3843.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2304(a)	41:151(c) (less proviso of clause (11) and proviso of clause (16)).	Feb. 19, 1948, ch. 65, §§2(b) (less 1st sentence), (c), (e), 7(d), 8, 62 Stat. 21, 22, 24.
2304(b)	41:156(d).	
2304(c)	41:151(e).	
2304(d)	41:151(b) (less 1st sentence).	
2304(e)	41:151(c) (proviso of clause (11) and proviso of clause (16)).	
2304(f)	41:157.	

In subsection (a)(1), the words ''the period of'' are omitted as surplusage.

In subsections (a)(4)–(10), and (12)–(15), the words ''the purchase or contract is'' are inserted for clarity.

In subsection (a)(5), the words ''to be rendered'' are omitted as surplusage.

In subsection (a)(6), the words ''its Territories'' are inserted for clarity. The words ''the limits of'' are omitted as surplusage.

In subsection (a)(14), the words ''and for which'' are substituted for the word ''when''.

In subsection (a)(15), the words ''and for which'' are substituted for 41:151(c)(15) (1st 22 words of proviso).

In subsection (a)(16), the words ''to have'' are substituted for the words ''be made or kept''.

In subsection (a)(17), the first 7 words are inserted for clarity.

In subsection (b), the words ''shall be kept'' are substituted for the words ''shall be preserved in the files''. The words ''six years after the date'' are substituted for the words ''a period of six years following''.

In subsection (c), the words ''but such authorization shall be required in the same manner as heretofore'' and ''continental'', in 41:151(e), are omitted as surplusage.

In subsection (d), the words ''before making'' are substituted for the words ''Whenever it is proposed to make''.

In subsection (e), the words ''beginning six months after the effective date of this chapter'' are omitted as executed. The words ''on May 19 and November 19 of each year'' are substituted for the words ''and at the end of each six-month period thereafter'', since the effective date of the source statute was May 19, 1948, and the first report was made on November 19, 1948. The words ''property and services covered by each contract'' are substituted for the words ''work required to be performed thereunder''.

1958 ACT

The change is necessary to reflect the present Commonwealth status of Puerto Rico.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2304(a) (1st sentence).	10:2304 (note).	Mar. 16, 1967, Pub. L. 90–5, § 304, 81 Stat. 6.
2304(f)(1)	10:2304(f)(1).	
2304(i)	10:2304 (note).	Sept. 21, 1977, Pub. L. 95–111, § 836, 91 Stat. 906.

In subsection (a), the words ''The Secretary of Defense is hereby directed that insofar as practicable all contracts shall be formally advertised'' are omitted as unnecessary because of 10:2304(a) (1st sentence).

Subsection (f)(1) is amended to correct a mistake in spelling.

In subsection (i)(1)(B), the words ''or States'' are omitted because of 1:1.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2011—Subsec. (f)(1)(B)(iii). Pub. L. 111–350, § 5(b)(12)(A), substituted ''section 1702(c) of title 41'' for ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))''.

Subsec. (f)(1)(C). Pub. L. 111–350, § 5(b)(12)(B), substituted ''section 1708 of title 41'' for ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)''.

Subsec. (f)(2)(D)(i). Pub. L. 111–350, § 5(b)(12)(C), substituted ''chapter 85 of title 41'' for ''the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)''.

Subsec. (g)(4). Pub. L. 111–350, § 5(b)(12)(D), substituted ''section 1901(e) of title 41'' for ''section 31(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 427)''.

Subsec. (h)(1). Pub. L. 111–350, § 5(b)(12)(E), substituted ''Chapter 65 of title 41'' for ''The Walsh-Healey Act (41 U.S.C. 35 et seq.)''.

2008—Subsec. (d)(3). Pub. L. 110–417 added par. (3).

Subsec. (f)(4) to (6). Pub. L. 110–181, § 844(b)(2), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: ''The justification required by paragraph (1)(A) and any related information, and any document prepared pursuant to paragraph (2)(E), shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.''

Subsec. (*l*). Pub. L. 110–181, § 844(b)(1), added subsec. (*l*).

2006—Subsec. (f)(1)(B)(iii). Pub. L. 109–364 substituted ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))'' for ''section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))''.

2004—Subsec. (f)(1)(B)(ii), (iii). Pub. L. 108–375 substituted ''$75,000,000'' for ''$50,000,000''.

2002—Subsec. (h). Pub. L. 107–217, § 3(b)(3)(A), struck out ''laws'' after ''following'' in introductory provisions.

Subsec. (h)(2). Pub. L. 107–217, § 3(b)(3)(B), substituted ''Sections 3141–3144, 3146, and 3147 of title 40'' for ''The Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a—276a–5)''.

2001—Subsec. (f)(1)(B)(iii), (6)(B). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1997—Subsec. (c)(5). Pub. L. 105–85, § 1073(a)(42), substituted ''subsection (k)'' for ''subsection (j)''.

Subsec. (f)(1)(B)(iii). Pub. L. 105–85, § 1073(a)(43)(A), substituted ''(6)(B)'' for ''(6)(C)''.

Subsec. (f)(2)(E). Pub. L. 105–85, § 841(b), struck out ''and such document is approved by the competition advocate for the procuring activity'' after ''requiring the use of procedures other than competitive procedures''.

Subsec. (f)(6)(B), (C). Pub. L. 105–85, § 1073(a)(43)(B), redesignated subpar. (C) as (B), substituted ''paragraph (1)(B)(iii)'' for ''paragraph (1)(B)(iv)'' in introductory provisions, and struck out former subpar. (B), which read as follows: ''The authority of the senior procurement executive under paragraph (1)(B)(iii) may be delegated only to an officer or employee within the senior procurement executive's organization who—

''(i) if a member of the armed forces, is a general or flag officer; or

''(ii) if a civilian, is serving in a position in grade GS–16 or above (or in a comparable or higher position under any other schedule for civilian officers or employees).''

Subsec. (g)(4). Pub. L. 105–85, § 850(f)(3)(B), substituted ''31(f)'' for ''31(g)''.

1996—Subsec. (c)(3)(C). Pub. L. 104–320 substituted ''agency, or to procure the services of an expert or neutral for use'' for ''agency, or'' and inserted ''or negotiated rulemaking'' after ''alternative dispute resolution''.

Subsec. (f)(1)(B)(i). Pub. L. 104–106, § 4102(a)(1), substituted ''$500,000 (but equal to or less than $10,000,000)'' for ''$100,000 (but equal to or less than $1,000,000)'' and ''(ii) or (iii)'' for ''(ii), (iii), or (iv)''.

Subsec. (f)(1)(B)(ii). Pub. L. 104–106, § 4102(a)(2), substituted ''$10,000,000 (but equal to or less than $50,000,000)'' for ''$1,000,000 (but equal to or less than $10,000,000)'' and inserted ''or'' at end.

Subsec. (f)(1)(B)(iii), (iv). Pub. L. 104–106, § 4102(a)(3), (4), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''in the case of a contract for an amount exceeding $10,000,000 (but equal to or less than $50,000,000), by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) or the senior procurement executive's delegate designated pursuant to paragraph (6)(B), or in the case of the Under Secretary of Defense for Acquisition and Technology, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(C); or''.

Subsec. (f)(2)(D). Pub. L. 104–106, § 4321(b)(4), substituted ''the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.),'' for ''the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act,''.

Subsec. (g)(1). Pub. L. 104–106, § 4202(a)(1)(A), substituted ''shall provide for—'' and subpars. (A) and (B) for ''shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.''

Subsec. (g)(4). Pub. L. 104–106, § 4202(a)(1)(B), added par. (4).

Subsec. (h)(1). Pub. L. 104–106, § 4321(b)(5), added par. (1) and struck out former par. (1) which read as follows: ''The Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (commonly referred to as the 'Walsh-Healey Act') (41 U.S.C. 35–45).''

Subsecs. (j), (k). Pub. L. 104–106, § 4101(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1994—Subsec. (a)(1)(A). Pub. L. 103–355, § 1001(1), substituted ''Federal Acquisition Regulation'' for ''modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)''.

Subsec. (b)(1)(D) to (F). Pub. L. 103–355, § 1002(a), added subpars. (D) to (F).

Subsec. (b)(4). Pub. L. 103–355, § 1002(b), added par. (4).

Subsec. (c)(3)(C). Pub. L. 103–355, § 1005, added subpar. (C).

Subsec. (c)(5). Pub. L. 103–355, § 7203(a)(1)(A), inserted ''subject to subsection (j),'' after ''(5)''.

Subsec. (f)(1)(B)(i). Pub. L. 103–355, § 1003, inserted before semicolon at end ''or by an official referred to in clause (ii), (iii), or (iv)''.

Subsec. (g)(1). Pub. L. 103–355, §§1001(2), 4401(a)(1), substituted ''Federal Acquisition Regulation'' for ''regulations modified in accordance with section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)'' and ''purchases of property and services for amounts not greater than the simplified acquisition threshold'' for ''small purchases of property and services''.

Subsec. (g)(2). Pub. L. 103–355, §4401(a)(4), substituted ''simplified acquisition threshold'' for ''small purchase threshold'' and ''simplified procedures'' for ''small purchase procedures''.

Pub. L. 103–355, §4401(a)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''For the purposes of this subsection, a small purchase is a purchase or contract for an amount which does not exceed the small purchase threshold.''

Subsec. (g)(3). Pub. L. 103–355, §4401(a)(5), substituted ''simplified procedures'' for ''small purchase procedures''.

Pub. L. 103–355, §4401(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (g)(4). Pub. L. 103–355, §4401(a)(3), redesignated par. (4) as (3).

Subsec. (j). Pub. L. 103–355, §7203(a)(1)(B), added subsec. (j).

Pub. L. 103–355, §1004(b), struck out subsec. (j) which related to authority of Secretary of Defense to enter into master agreements for advisory and assistance services.

1993—Subsec. (f)(1)(B)(iii), (iv), (6)(C). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (b)(2). Pub. L. 102–484, §801(h)(2), substituted ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (j)(3)(A). Pub. L. 102–484, §1052(23), substituted ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' for ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))''.

Subsec. (j)(5). Pub. L. 102–484, §816, substituted ''on September 30, 1994.'' for ''at the end of the three-year period beginning on the date on which final regulations prescribed to carry out this subsection take effect.''

1991—Subsec. (g)(2). Pub. L. 102–25, §701(d)(2)(A)(i), substituted ''subsection'' for ''chapter''.

Subsec. (g)(5). Pub. L. 102–25, §701(d)(2)(A)(ii), struck out par. (5) which provided that in this subsection, the term ''small purchase threshold'' has the meaning given such term in section 403(11) of title 41. See section 2302(7) of this title.

Subsec. (j)(3)(A). Pub. L. 102–25, §701(d)(2)(B), substituted ''the small purchase threshold'' for ''$25,000''.

1990—Subsec. (g). Pub. L. 101–510 substituted ''the small purchase threshold'' for ''$25,000'' in pars. (2) and (3) and added par. (5).

1989—Subsec. (b)(2). Pub. L. 101–189, §853(d), substituted ''The head of an agency'' for ''An executive agency'' and ''concerns other than'' for ''other than'' and inserted before period at end ''and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (f)(1)(B)(iii). Pub. L. 101–189, §818(a)(1), (3), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (f)(1)(B)(iv). Pub. L. 101–189, §818(a)(2), (c)(1), redesignated cl. (iii) as (iv) and substituted ''$50,000,000'' for ''$10,000,000'' and ''paragraph (6)(C)'' for ''paragraph (6)(B)''.

Subsec. (f)(2)(E). Pub. L. 101–189, §817(a), added subpar. (E).

Subsec. (f)(4). Pub. L. 101–189, §817(b), inserted '', and any document prepared pursuant to paragraph (2)(E),'' after ''any related information''.

Subsec. (f)(6)(B). Pub. L. 101–189, §818(b)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (f)(6)(C). Pub. L. 101–189, §818(b)(1), (c)(2), redesignated subpar. (B) as (C) and substituted ''paragraph (1)(B)(iv)'' for ''paragraph (1)(B)(iii)''.

Subsec. (j). Pub. L. 101–189, §812, added subsec. (j).

1988—Subsec. (f)(1)(B)(ii). Pub. L. 100–456, §803(1), substituted ''(or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A));'' for ''or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule);''.

Subsec. (f)(1)(B)(iii). Pub. L. 100–456, §803(2), inserted ''or in the case of the Under Secretary of Defense for Acquisition, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B)'' before semicolon at end.

Subsec. (f)(6). Pub. L. 100–456, §803(3), added par. (6).

1987—Subsec. (a)(1)(A). Pub. L. 100–26, §7(d)(3)(A), inserted ''(41 U.S.C. 403 note)'' after ''Competition in Contracting Act of 1984''.

Subsec. (f)(1)(C). Pub. L. 100–26, §7(d)(3)(B), inserted ''(41 U.S.C. 416)'' after ''Policy Act''.

Subsec. (g)(1). Pub. L. 100–26, §7(d)(3)(A), inserted ''(41 U.S.C. 403 note)'' after ''Act of 1984''.

1986—Subsec. (b)(2). Pub. L. 99–661, §1343(a)(14), substituted ''15 U.S.C. 638,'' for ''15 U.S.C. 639;''.

Subsec. (c)(1). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(a)], Pub. L. 99–661, §923(a), amended par. (1) identically, inserting ''or only from a limited number of responsible sources''.

Subsec. (d)(1)(A). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(b)], Pub. L. 99–661, §923(b), amended subpar. (A) identically, substituting ''a concept—'' for ''a unique and innovative concept'', adding cl. (i), and designating provision relating to nonavailability to the United States and nonresemblance to a pending competitive procurement as cl. (ii).

Subsec. (d)(1)(B). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(c)], Pub. L. 99–661, §923(c), amended subpar. (B) identically, inserting '', or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures'' after ''highly specialized equipment'', inserted a one-em dash after ''would result in'', paragraphed cls. (i) and (ii), in cl. (i) substituted ''competition;'' for ''competition,'', and in cl. (ii) struck out '', such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures'' after ''agency's needs''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§927(a)], Pub. L. 99–661, §927(a), amended section identically, adding subsec. (i).

1985—Subsec. (a)(1)(B). Pub. L. 99–145, §1303(a)(13), substituted ''procedures'' for ''krocedures''.

Subsec. (f)(2). Pub. L. 99–145, §961(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under—

''(A) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act; or

''(B) the authority of section 8(a) of the Small Business Act (15 U.S.C. 637).''

1984—Pub. L. 98–369, §2723(a), substituted ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in section catchline and struck out subsecs. (a) to (e) and (g) to (i), redesignated subsec. (f) as (h), and added new subsecs. (a) through (g), thereby removing the prior statutory preference for formal advertising and installing instead more competitive procurement procedures, including dual sourcing, but with provision for the use of other than competitive procedures in specified situations.

Subsec. (b)(2). Pub. L. 98–577, §504(b)(1), substituted provisions to the effect that executive agencies may

provide for procurement of property or services covered by this section using competitive procedures but excluding other than small business concerns for provisions which provided that executive agencies shall use competitive procedures but may restrict a solicitation to allow only small business concerns to compete.

Subsec. (b)(3). Pub. L. 98–577, § 504(b)(1), added par. (3).

Subsec. (f)(2). Pub. L. 98–577, § 504(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 98–369, § 2727(b), substituted ''contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed bid procedures'' for ''contracts negotiated under this section shall be treated as if they were made with formal advertising''.

Pub. L. 98–369, § 2723(a)(1)(B), redesignated subsec. (f) as (h).

1982—Subsec. (a). Pub. L. 97–295, § 1(24)(A), inserted '', and shall be awarded on a competitive bid basis to the lowest responsible bidder,'' after ''formal advertising''.

Subsec. (e). Pub. L. 97–375 repealed subsec. (e) which directed that a report be made on May and November 19 of each year of purchases and contracts under cls. (11) and (16) of subsec. (a) since the last report, and that the report name each contractor, state the amount of each contract, and describe, with consideration of the national security, the property and services covered by each contract.

Subsec. (f)(1). Pub. L. 97–295, § 1(24)(B), substituted ''Healey'' for ''Healy'' after ''Walsh–''.

Subsec. (i). Pub. L. 97–295, § 1(24)(C), added subsec. (i).

1981—Subsecs. (a)(3), (g). Pub. L. 97–86 substituted ''$25,000'' for ''$10,000''.

1980—Subsec. (f). Pub. L. 96–513 substituted ''(1) The Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (commonly referred to as the 'Walsh-Healy Act') (41 U.S.C. 35–45).'', for ''(1) Sections 35–45 of title 41.'', and ''(2) The Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a—276a–5).'' for ''(2) Sections 276a—276a–5 of title 40.'', and struck out ''(3) Sections 324 and 325a of title 40''.

1974—Subsec. (a)(3). Pub. L. 93–356, § 4(a), substituted ''$10,000'' for ''$2,500''.

Subsec. (g). Pub. L. 93–356, § 4(b), substituted ''$10,000'' for ''$2,500''.

1968—Subsec. (g). Pub. L. 90–500 required that the proposals solicited from the maximum number of qualified sources, consistent with the nature and requirements of the supplies or services to be procured, include price.

Subsec. (h). Pub. L. 90–268 added subsec. (h).

1962—Subsec. (a). Pub. L. 87–653, § 1(a), (b), provided that formal advertising be used where feasible and practicable under existing conditions and circumstances, subjected the agency head to the requirements of section 2310 of this title before negotiating a contract where formal advertising is not feasible and practicable and, in par. (14), substituted ''would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;'' for ''and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or''.

Subsec. (g). Pub. L. 87–653, § 1(c), added subsec. (g).

1958—Subsec. (a). Pub. L. 85–861 included Commonwealths in cl. (6).

Pub. L. 85–800 substituted ''$2,500'' for ''$1,000'' in cl. (3) and inserted ''or nonperishable'' in cl. (9).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 850(f)(3)(B) of Pub. L. 105–85 effective 180 days after Nov. 18, 1997, see section 850(g) of Pub. L. 105–85, set out as a note under section 2302c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendments by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 923(d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, Pub. L. 99–591, § 101(c) [title X, § 923(d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 923(d), Nov. 14, 1986, 100 Stat. 3932, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to contracts for which solicitations are issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].

''(2) The amendment made by subsection (b) [amending this section] shall apply with respect to contracts awarded on the basis of unsolicited research proposals after the end of the 180-day period beginning on the date of the enactment of this Act.

''(3) The amendments made by subsection (c) [amending this section] shall apply with respect to follow-on contracts awarded after the end of the 180-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, § 961(e), Nov. 8, 1985, 99 Stat. 704, provided that: ''The amendments made by subsections (a) [amending this section and section 253 of Title 41, Public Contracts], (b) [amending section 2323 (now section 2343) of this title], and (c) [amending section 759 of former Title 40, Public Buildings, Property, and Works] shall take effect as if included in the enactment of the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369) [see Effective Date of 1984 Amendment note set out under section 2302 of this title].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

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.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–653, § 1(h), Sept. 10, 1962, 76 Stat. 529, provided that: ''The amendments made by this Act [amending this section and sections 2306, 2310, and 2311 of this title] shall take effect on the first day of the third calendar month which begins after the date of enactment of this Act [Sept. 10, 1962].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CONSTRUCTION OF 1994 AMENDMENT

Repeal of prior subsec. (j) of this section by section 1004(b) of Pub. L. 103–355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former section 759

or former subchapter VI (§ 541 et seq.) of chapter 10 of Title 40 [now chapter 11 of Title 40, Public Buildings, Property, and Works], see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

CONSTRUCTION OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title VII, § 2723(c), July 18, 1984, 98 Stat. 1192, provided that: ''The amendments made by this section [amending this section and section 2305 of this title] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).''

CONTRACTS FOR STUDIES, ANALYSIS, OR CONSULTING SERVICES ENTERED INTO WITHOUT COMPETITION ON THE BASIS OF AN UNSOLICITED PROPOSAL

Pub. L. 114–113, div. C, title VIII, § 8039, Dec. 18, 2015, 129 Stat. 2359, provided that:

''None of the funds appropriated by this Act [div. C of Pub. L. 114–113, see Tables for classification] and hereafter shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

''(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;

''(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

''(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support: *Provided*, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.''

MITIGATING POTENTIAL UNFAIR COMPETITIVE ADVANTAGE OF TECHNICAL ADVISORS TO ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title VIII, § 895, Nov. 25, 2015, 129 Stat. 954, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall review, and as necessary revise or issue, policy guidance pertaining to the identification, mitigation, and prevention of potential unfair competitive advantage conferred to technical advisors to acquisition programs.''

COMPETITION FOR RELIGIOUS SERVICES CONTRACTS

Pub. L. 114–92, div. A, title VIII, § 898, Nov. 25, 2015, 129 Stat. 955, provided that: ''The Department of Defense may not preclude a non-profit organization from competing for a contract for religious related services on a United States military installation.''

MATTERS RELATING TO REVERSE AUCTIONS

Pub. L. 113–291, div. A, title VIII, § 824, Dec. 19, 2014, 128 Stat. 3436, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall clarify regulations on reverse auctions, as necessary, to ensure that—

''(1) single bid contracts may not be entered into resulting from reverse auctions unless compliant with existing Federal regulations and Department of Defense memoranda providing guidance on single bid offers;

''(2) all reverse auctions provide offerors with the ability to submit revised bids throughout the course of the auction;

''(3) if a reverse auction is conducted by a third party—

''(A) inherently governmental functions are not performed by private contractors, including by the third party; and

''(B) past performance or financial responsibility information created by the third party is made available to offerors; and

''(4) reverse auctions resulting in design-build military construction contracts specifically authorized in law are prohibited.

''(b) TRAINING.—Not later than 180 days after the date of the enactment of this Act, the President of the Defense Acquisition University shall establish comprehensive training available for contract specialists in the Department of Defense on the use of reverse auctions.

''(c) DESIGN-BUILD DEFINED.—In this section, the term 'design-build' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary of Defense.''

REVIEW AND JUSTIFICATION OF PASS-THROUGH CONTRACTS

Pub. L. 112–239, div. A, title VIII, § 802, Jan. 2, 2013, 126 Stat. 1824, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such guidance and regulations as may be necessary to ensure that in any case in which an offeror for a contract or a task or delivery order informs the agency pursuant to section 52.215-22 of the Federal Acquisition Regulation that the offeror intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the contracting officer for the contract is required to—

''(1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work;

''(2) make a written determination that the contracting approach selected is in the best interest of the Government; and

''(3) document the basis for such determination.''

REQUIREMENTS FOR INFORMATION RELATING TO SUPPLY CHAIN RISK

Pub. L. 111–383, div. A, title VIII, § 806, Jan. 7, 2011, 124 Stat. 4260, as amended by Pub. L. 112–239, div. A, title VIII, § 806, Jan. 2, 2013, 126 Stat. 1827, provided that:

''(a) AUTHORITY.—Subject to subsection (b), the head of a covered agency may—

''(1) carry out a covered procurement action; and

''(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

''(b) DETERMINATION AND NOTIFICATION.—The head of a covered agency may exercise the authority provided in subsection (a) only after—

''(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence, that there is a significant supply chain risk to a covered system;

''(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition, Technology, and Logistics, that—

''(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

''(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

''(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

''(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

''(A) the information required by section 2304(f)(3) of title 10, United States Code;

''(B) the joint recommendation by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

''(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence that serves as the basis for the joint recommendation specified in paragraph (1); and

''(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

''(c) DELEGATION.—The head of a covered agency may not delegate the authority provided in subsection (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.

''(d) LIMITATION ON DISCLOSURE.—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

''(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

''(2) the agency head shall—

''(A) notify appropriate parties of a covered procurement action and the basis for such action only to the extent necessary to effectuate the covered procurement action;

''(B) notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

''(C) ensure the confidentiality of any such notifications.

''(e) DEFINITIONS.—In this section:

''(1) HEAD OF A COVERED AGENCY.—The term 'head of a covered agency' means each of the following:

''(A) The Secretary of Defense.

''(B) The Secretary of the Army.

''(C) The Secretary of the Navy.

''(D) The Secretary of the Air Force.

''(2) COVERED PROCUREMENT ACTION.—The term 'covered procurement action' means any of the following actions, if the action takes place in the course of conducting a covered procurement:

''(A) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of section 2319 of title 10, United States Code, for the purpose of reducing supply chain risk in the acquisition of covered systems.

''(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

''(C) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

''(3) COVERED PROCUREMENT.—The term 'covered procurement' means—

''(A) a source selection for a covered system or a covered item of supply involving either a performance specification, as provided in section 2305(a)(1)(C)(ii) of title 10, United States Code, or an evaluation factor, as provided in section 2305(a)(2)(A) of such title, relating to supply chain risk;

''(B) the consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply, as provided in section 2304c(d)(3) of title 10, United States Code, where the task or delivery order contract concerned includes a contract clause establishing a requirement relating to supply chain risk; or

''(C) any contract action involving a contract for a covered system or a covered item of supply where such contract includes a clause establishing requirements relating to supply chain risk.

''(4) SUPPLY CHAIN RISK.—The term 'supply chain risk' means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

''(5) COVERED SYSTEM.—The term 'covered system' means a national security system, as that term is defined in [former] section 3542(b) of title 44, United States Code [see now 44 U.S.C. 3552(b)].

''(6) COVERED ITEM OF SUPPLY.—The term 'covered item of supply' means an item of information technology (as that term is defined in section 11101 of title 40, United States Code) that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system.

''(7) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

''(A) in the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) in the case of a covered system not otherwise included in subparagraph (A), the congressional defense committees.

''(f) EFFECTIVE DATE.—The requirements of this section shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 7, 2011] and shall apply to—

''(1) contracts that are awarded on or after such date; and

''(2) task and delivery orders that are issued on or after such date pursuant to contracts that are awarded before, on, or after such date.

''(g) SUNSET.—The authority provided in this section shall expire on September 30, 2018.

''(h) VERIFICATION OF EFFECTIVE IMPLEMENTATION.—

''(1) CRITERIA AND DATA COLLECTION TO MEASURE EFFECTIVENESS.—The Secretary of Defense shall—

''(A) establish criteria for measuring the effectiveness of the authority provided by this section; and

''(B) collect data to evaluate the implementation of this section using such criteria.

''(2) REPORTS.—The Secretary shall submit to the appropriate congressional committees—

''(A) not later than March 1, 2013, a report on the criteria established under paragraph (1)(A); and

''(B) not later than January 1, 2017, a report on the effectiveness of the implementation of this section, based on data collected under paragraph (1)(B).''

PUBLICATION OF NOTIFICATION OF BUNDLING OF CONTRACTS OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title VIII, § 820, Oct. 28, 2009, 123 Stat. 2410, provided that:

''(a) REQUIREMENT TO PUBLISH NOTIFICATION FOR BUNDLING.—A contracting officer of the Department of Defense carrying out a covered acquisition shall publish a notification consistent with the requirements of paragraph (c)(2) of subpart 10.001 of the Federal Acquisition Regulation on the website known as FedBizOpps.gov (or any successor site) at least 30 days prior to the release of a solicitation for such acquisition and, if the agency has determined that measurably substantial benefits are expected to be derived as a result of bundling such acquisition, shall include in the notification a brief description of the benefits.

''(b) COVERED ACQUISITION DEFINED.—In this section, the term 'covered acquisition' means an acquisition that is—

''(1) funded entirely using funds of the Department of Defense; and

''(2) covered by subpart 7.107 of the Federal Acquisition Regulation (relating to acquisitions involving bundling).

''(c) CONSTRUCTION.—

''(1) NOTIFICATION.—Nothing in this section shall be construed to alter the responsibility of a contracting officer to provide the notification referred to in subsection (a) with respect to a covered acquisition, or otherwise provide notification, to any party concerning such acquisition under any other requirement of law or regulation.

''(2) DISCLOSURE.—Nothing in this section shall be construed to require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code, or is otherwise restricted from public disclosure by law or Executive order.

''(3) ISSUANCE OF SOLICITATION.—Nothing in this section shall be construed to require a contracting officer to delay the issuance of a solicitation in order to meet the requirements of subsection (a) if the expedited issuance of such solicitation is otherwise authorized under any other requirement of law or regulation.''

SMALL ARMS ACQUISITION STRATEGY AND REQUIREMENTS REVIEW

Pub. L. 110–417, [div. A], title I, § 143, Oct. 14, 2008, 122 Stat. 4381, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(1), Jan. 7, 2011, 124 Stat. 4374, provided that:

''(a) SECRETARY OF DEFENSE REPORT.—Not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008], 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 the small arms requirements of the Armed Forces and the industrial base of the United States. The report shall include the following:

''(1) An assessment of Department of Defense-wide small arms requirements in terms of capabilities and quantities, based on an analysis of the small arms capability assessments of each military department.

''(2) An assessment of plans for small arms research, development, and acquisition programs to meet the requirements identified under paragraph (1).

''(3) An assessment of capabilities, capacities, and risks in the small arms industrial base of the United States to meet the requirements of the Department of Defense for pistols, carbines, rifles, and light, medium, and heavy machine guns during the 20 years following the date of the report.

''(4) An assessment of the costs, benefits, and risks of full and open competition for the procurement of non-developmental pistols and carbines that are not technically compatible with the M9 pistol or M4 carbine to meet the requirements identified under paragraph (1).

''(b) COMPETITION FOR A NEW INDIVIDUAL WEAPON.—

''(1) COMPETITION REQUIRED.—If the small arms capabilities based assessments by the Army identify gaps in small arms capabilities and the Secretary of the Army determines that a new individual weapon is required to address such gaps, the Secretary shall procure the new individual weapon using full and open competition as described in paragraph (2).

''(2) FULL AND OPEN COMPETITION.—The full and open competition described in this paragraph is competition among all responsible manufacturers that—

''(A) is open to all developmental item solutions and non-developmental item solutions; and

''(B) provides for the award of a contract based on selection criteria that reflect the key performance parameters and attributes identified in a service requirements document approved by the Army.

''(c) SMALL ARMS DEFINED.—In this section, the term 'small arms'—

''(1) means man-portable or vehicle-mounted light weapons, designed primarily for use by individual military personnel for anti-personnel use; and

''(2) includes pistols, carbines, rifles, and light, medium, and heavy machine guns.''

IMPLEMENTATION OF STATUTORY REQUIREMENTS REGARDING THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Pub. L. 110–417, [div. A], title VIII, § 802, Oct. 14, 2008, 122 Stat. 4518, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall issue guidance regarding—

''(1) the appropriate application of the authority in sections 2304(b) and 2304(c)(3)(A) of title 10, United States Code, in connection with major defense acquisition programs; and

''(2) the appropriate timing and performance of the requirement in section 2440 of title 10, United States Code, to consider the national technology and industrial base in the development and implementation of acquisition plans for each major defense acquisition program.

''(b) DEFINITIONS.—In this section;[:]

''(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' has the meaning provided in section 2430 of title 10, United States Code.

''(2) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—The term 'national technology and industrial base' has the meaning provided in section 2500(1) of title 10, United States Code.''

PLAN FOR RESTRICTING GOVERNMENT-UNIQUE CONTRACT CLAUSES ON COMMERCIAL CONTRACTS

Pub. L. 110–181, div. A, title VIII, § 821, Jan. 28, 2008, 122 Stat. 226, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(2)(B), Dec. 19, 2014, 128 Stat. 3506, provided that:

''(a) PLAN.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall develop and implement a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to the following:

''(1) Government-unique clauses authorized by law or regulation.

''(2) Any additional clauses that are relevant and necessary to a specific contract.

''(b) COMMERCIAL CONTRACT.—In this section:

''(1) The term 'commercial contract' means a contract awarded by the Federal Government for the procurement of a commercial item.

''(2) The term 'commercial item' has the meaning provided by section 103 of title 41, United States Code.''

TELEPHONE SERVICES FOR MILITARY PERSONNEL SERVING IN COMBAT ZONES

Pub. L. 110–181, div. A, title VIII, § 885, Jan. 28, 2008, 122 Stat. 265, as amended by Pub. L. 111–383, div. A, title

VI, § 641, Jan. 7, 2011, 124 Stat. 4241; Pub. L. 112–81, div. A, title X, § 1062(c), Dec. 31, 2011, 125 Stat. 1585, provided that:

''(a) COMPETITIVE PROCEDURES REQUIRED.—

''(1) REQUIREMENT.—When the Secretary of Defense considers it necessary to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones, the Secretary shall use competitive procedures when entering into a contract to provide those services.

''(2) REVIEW AND DETERMINATION.—Before soliciting bids or proposals for new contracts, or considering extensions to existing contracts, to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones, the Secretary shall review and determine whether it is in the best interest of the Department to require bids or proposals, or adjustments for the purpose of extending a contract, to include options that minimize the cost of the telephone services to individual users while providing individual users the flexibility of using phone cards from other than the prospective contractor.

''(b) EFFECTIVE DATE.—

''(1) REQUIREMENT.—Subsection (a)(1) shall apply to any new contract to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones that is entered into after the date of the enactment of this Act [Jan. 28, 2008].

''(2) REVIEW AND DETERMINATION.—Subsection (a)(2) shall apply to any new contract or extension to an existing contract to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones that is entered into or agreed upon after the date of the enactment of this Act.

''(c) MORALE, WELFARE, AND RECREATION TELEPHONE SERVICES DEFINED.—In this section, the term 'morale, welfare, and recreation telephone services' means unofficial telephone calling center services supporting calling centers provided by the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other nonappropriated fund instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.''

COMPETITION FOR PROCUREMENT OF SMALL ARMS SUPPLIED TO IRAQ AND AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, § 892, Jan. 28, 2008, 122 Stat. 270, provided that:

''(a) COMPETITION REQUIREMENT.—For the procurement of pistols and other weapons described in subsection (b), the Secretary of Defense shall ensure, consistent with the provisions of section 2304 of title 10, United States Code, that—

''(1) full and open competition is obtained to the maximum extent practicable;

''(2) no responsible United States manufacturer is excluded from competing for such procurements; and

''(3) products manufactured in the United States are not excluded from the competition.

''(b) PROCUREMENTS COVERED.—This section applies to the procurement of the following:

''(1) Pistols and other weapons less than 0.50 caliber for assistance to the Army of Iraq, the Iraqi Police Forces, and other Iraqi security organizations.

''(2) Pistols and other weapons less than 0.50 caliber for assistance to the Army of Afghanistan, the Afghani Police Forces, and other Afghani security organizations.''

INTERNAL CONTROLS FOR PROCUREMENTS ON BEHALF OF THE DEPARTMENT OF DEFENSE

Pub. L. 110–417, [div. A], title VIII, § 804(a)–(c), Oct. 14, 2008, 122 Stat. 4519, provided that:

''(a) INCLUSION OF ADDITIONAL NON-DEFENSE AGENCIES IN REVIEW.—The covered non-defense agencies specified in subsection (c) of this section shall be considered covered non-defense agencies as defined in subsection (i) of section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2326) [set out below] for purposes of such section.

''(b) DEADLINES AND APPLICABILITY FOR ADDITIONAL NON-DEFENSE AGENCIES.—For each covered non-defense agency specified in subsection (c) of this section, section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2326) shall apply to such agency as follows:

''(1) The review and determination required by subsection (a)(1) of such section shall be completed by not later than March 15, 2009.

''(2) The review and determination required by subsection (a)(2) of such section, if necessary, shall be completed by not later than June 15, 2010, and such review and determination shall be a review and determination of such agency's procurement of property and services on behalf of the Department of Defense in fiscal year 2009.

''(3) The memorandum of understanding required by subsection (c)(1) of such section shall be entered into by not later than 60 days after the date of the enactment of this Act [Oct. 14, 2008].

''(4) The limitation specified in subsection (d)(1) of such section shall apply after March 15, 2009, and before June 16, 2010.

''(5) The limitation specified in subsection (d)(2) of such section shall apply after June 15, 2010.

''(6) The limitation required by subsection (d)(3) of such section shall commence, if necessary, on the date that is 60 days after the date of the enactment of this Act.

''(c) DEFINITION OF COVERED NON-DEFENSE AGENCY.—In this section, the term 'covered non-defense agency' means each of the following:

''(1) The Department of Commerce.

''(2) The Department of Energy.''

Pub. L. 110–181, div. A, title VIII, § 801, Jan. 28, 2008, 122 Stat. 202, as amended by Pub. L. 110–417, [div. A], title VIII, § 804(d), Oct. 14, 2008, 122 Stat. 4519; Pub. L. 111–84, div. A, title VIII, § 806, Oct. 28, 2009, 123 Stat. 2404; Pub. L. 112–81, div. A, title VIII, § 817, Dec. 31, 2011, 125 Stat. 1493; Pub. L. 112–239, div. A, title VIII, §§ 801, 805, Jan. 2, 2013, 126 Stat. 1824, 1826; Pub. L. 113–291, div. A, title X, § 1071(d)(1)(B), Dec. 19, 2014, 128 Stat. 3509, provided that:

''(a) INSPECTORS GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such covered non-defense agency may jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such covered non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such covered non-defense agency; and

''(ii) the administration of such policies, procedures, and internal controls; and

''(B) determine in writing whether such covered non-defense agency is or is not compliant with applicable procurement requirements.

''(2) SEPARATE REVIEWS AND DETERMINATIONS.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by joint agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate government-wide acquisition contracts, of the covered non-defense agency. If such separate reviews are conducted, the Inspectors General shall make a separate determination under paragraph (1)(B) with respect to each such separate review.

''(3) MEMORANDA OF UNDERSTANDING FOR REVIEWS AND DETERMINATIONS.—Not later than one year before

a review and determination is to be performed under this subsection with respect to a covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency may enter into a memorandum of understanding with each other to carry out such review and determination.

''(4) TERMINATION OF NON-COMPLIANCE DETERMINATION.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency determine, pursuant to paragraph (1)(B), that a covered non-defense agency is not compliant with applicable procurement requirements, the Inspectors General may terminate such a determination effective on the date on which the Inspectors General jointly—

''(A) determine that the non-defense agency is compliant with applicable procurement requirements; and

''(B) notify the Secretary of Defense of that determination.

''(5) RESOLUTION OF DISAGREEMENTS.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency are unable to agree on a joint determination under this subsection, a determination by the Inspector General of the Department of Defense under this subsection shall be conclusive for the purposes of this section.

''(b) LIMITATION ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) Except as provided in paragraph (2), an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if—

''(A) in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the non-defense agency will comply with applicable procurement requirements for the fiscal year;

''(B) in the case of—

''(i) a procurement by a covered non-defense agency in a fiscal year for which a memorandum of understanding is to be entered into under subsection (a)(3), the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency have entered into such a memorandum of understanding; or

''(ii) a procurement by a covered non-defense agency in a fiscal year following the Inspectors General review and determination provided for under subsection (a), the Inspectors General have determined that a covered non-defense agency is compliant with applicable procurement requirements or have terminated a prior determination of non-compliance in accordance with subsection (a)(4); and

''(C) the procurement is not otherwise prohibited by section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) or section 811 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) [see notes below].

''(2) EXCEPTION FOR PROCUREMENTS OF NECESSARY PROPERTY AND SERVICES.—

''(A) IN GENERAL.—The limitation in paragraph (1) shall not apply to the procurement of property and services on behalf of the Department of Defense by a non-defense agency during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics that it is necessary in the interest of the Department of Defense to procure property and services through the non-defense agency during such fiscal year.

''(B) SCOPE OF PARTICULAR EXCEPTION.—A written determination with respect to a non-defense agency under subparagraph (A) shall apply to any category of procurements through the non-defense agency that is specified in the determination.

''(3) TREATMENT OF PROCUREMENTS UNDER JOINT PROGRAMS WITH INTELLIGENCE COMMUNITY.—For purposes of this subsection, a contract entered into by a non-defense agency that is an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) for the performance of a joint program conducted to meet the needs of the Department of Defense and the non-defense agency shall not be considered a procurement of property or services for the Department of Defense through a non-defense agency.

''(c) GUIDANCE ON INTERAGENCY CONTRACTING.—

''(1) REQUIREMENT.—Not later than 180 days after the date of enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance on the use of interagency contracting by the Department of Defense.

''(2) MATTERS COVERED.—The guidance required by paragraph (1) shall address the circumstances in which it is appropriate for Department of Defense acquisition officials to procure goods or services through a contract entered into by an agency outside the Department of Defense. At a minimum, the guidance shall address—

''(A) the circumstances in which it is appropriate for such acquisition officials to use direct acquisitions;

''(B) the circumstances in which it is appropriate for such acquisition officials to use assisted acquisitions;

''(C) the circumstances in which it is appropriate for such acquisition officials to use interagency contracting to acquire items unique to the Department of Defense and the procedures for approving such interagency contracting;

''(D) the circumstances in which it is appropriate for such acquisition officials to use interagency contracting to acquire items that are already being provided under a contract awarded by the Department of Defense;

''(E) tools that should be used by such acquisition officials to determine whether items are already being provided under a contract awarded by the Department of Defense; and

''(F) procedures for ensuring that applicable procurement requirements are identified and communicated to outside agencies involved in interagency contracting.

''(d) COMPLIANCE WITH APPLICABLE PROCUREMENT REQUIREMENTS.—

''(1) Except as provided in paragraph (2), for the purposes of this section, a non-defense agency is compliant with applicable procurement requirements if the procurement policies, procedures, and internal controls of the non-defense agency applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure the compliance of the non-defense agency with the following:

''(A) The Federal Acquisition Regulation and other laws and regulations that apply to procurements of property and services by Federal agencies.

''(B) Laws and regulations (including applicable Department of Defense financial management regulations) that apply to procurements of property and services made by the Department of Defense through other Federal agencies.

''(2) In the case of the procurement of property or services on behalf of the Department of Defense through the Work for Others program of the Department of Energy, the laws and regulations applicable under paragraph (1)(B) are the Department of Energy Acquisition Regulations, pertinent interagency agreements, and Department of Defense and Department of Energy policies related to the Work for Others program.

''(e) TREATMENT OF PROCUREMENTS FOR FISCAL YEAR PURPOSES.—For the purposes of this section, a procurement shall be treated as being made during a particular

fiscal year to the extent that funds are obligated by the Department of Defense for the procurement in that fiscal year.

''(f) DEFINITIONS.—In this section:

''(1) NON-DEFENSE AGENCY.—The term 'non-defense agency' means any department or agency of the Federal Government other than the Department of Defense. Such term includes a covered non-defense agency.

''(2) COVERED NON-DEFENSE AGENCY.—The term 'covered non-defense agency' means each of the following:

''(A) The General Services Administration.

''(B) The Department of the Interior.

''(C) The Department of Veterans Affairs.

''(D) The National Institutes of Health.

''(E) The Department of Commerce.

''(F) The Department of Energy.

''(3) GOVERNMENT-WIDE ACQUISITION CONTRACT.—The term 'government-wide acquisition contract' means a task or delivery order contract that—

''(A) is entered into by a non-defense agency; and

''(B) may be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

''(4) SIMPLIFIED ACQUISITION THRESHOLD.—The term 'simplified acquisition threshold' has the meaning provided by section 2302(7) of title 10, United States Code.

''(5) INTERAGENCY CONTRACTING.—The term 'interagency contracting' means the exercise of the authority under section 1535 of title 31, United States Code, or other statutory authority, for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

''(6) ACQUISITION OFFICIAL.—The term 'acquisition official', with respect to the Department of Defense, means—

''(A) a contracting officer of the Department of Defense; or

''(B) any other Department of Defense official authorized to approve a direct acquisition or an assisted acquisition on behalf of the Department of Defense.

''(7) DIRECT ACQUISITION.—The term 'direct acquisition', with respect to the Department of Defense, means the type of interagency contracting through which the Department of Defense orders an item or service from a government-wide acquisition contract maintained by a non-defense agency.

''(8) ASSISTED ACQUISITION.—The term 'assisted acquisition', with respect to the Department of Defense, means the type of interagency contracting through which acquisition officials of a non-defense agency award a contract or task or delivery order for the procurement of goods or services on behalf of the Department of Defense.''

Pub. L. 109–364, div. A, title VIII, § 817, Oct. 17, 2006, 120 Stat. 2326, provided that:

''(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2007, jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such non-defense agency; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) determine in writing whether—

''(i) such non-defense agency is compliant with defense procurement requirements;

''(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements;

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency; or

''(iv) such non-defense agency is not compliant with defense procurement requirements to such an extent that the interests of the Department of Defense are at risk in procurements conducted by such non-defense agency.

''(2) ACTIONS FOLLOWING CERTAIN DETERMINATIONS.—If the Inspectors General determine under paragraph (1) that a conclusion stated in clause (ii), (iii), or (iv) of subparagraph (B) of that paragraph is correct in the case of a covered non-defense agency, such Inspectors General shall, not later than June 15, 2008, jointly—

''(A) conduct a second review, as described in subparagraph (A) of that paragraph, regarding such non-defense agency's procurement of property or services on behalf of the Department of Defense in fiscal year 2007; and

''(B) determine in writing whether such non-defense agency is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a covered non-defense agency is compliant with defense procurement requirements if such non-defense agency's procurement policies, procedures, and internal controls applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure such non-defense agency's compliance with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) MEMORANDA OF UNDERSTANDING BETWEEN INSPECTORS GENERAL.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Oct. 17, 2006], the Inspector General of the Department of Defense and the Inspector General of each covered non-defense agency shall enter into a memorandum of understanding with each other to carry out the reviews and make the determinations required by this section.

''(2) SCOPE OF MEMORANDA.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by mutual agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate governmentwide acquisition contracts, of such non-defense agency. In any case where such separate reviews are conducted, the Inspectors General shall make separate determinations under paragraph (1) or (2) of subsection (a), as applicable, with respect to each such separate review.

''(d) LIMITATIONS ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) LIMITATION DURING REVIEW PERIOD.—After March 15, 2007, and before June 16, 2008, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency for which a determination described in clause (iii) or (iv) of paragraph (1)(B) of subsection (a) has been made under subsection (a).

''(2) LIMITATION AFTER REVIEW PERIOD.—After June 15, 2008, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency that, having been subject to review under this section, has not been determined under this section as being compliant with defense procurement requirements.

''(3) LIMITATION FOLLOWING FAILURE TO REACH MOU.—Commencing on the date that is 60 days after the

date of the enactment of this Act [Oct. 17, 2006], if a memorandum of understanding between the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency cannot be attained causing the review required by this section to not be performed, no official of the Department of Defense, except as provided in subsection (e) or (f), may order, purchase or otherwise procure property or services in an amount in excess of $100,000 through such non-defense agency.

''(e) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—

''(1) EXCEPTION.—No limitation applies under subsection (d) with respect to the procurement of property and services on behalf of the Department of Defense by a covered non-defense agency during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through such non-defense agency.

''(2) APPLICABILITY OF DETERMINATION.—A written determination with respect to a covered non-defense agency under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(f) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (d) shall cease to apply to a covered non-defense agency on the date on which the Inspector General of the Department of Defense and the Inspector General of such non-defense agency jointly—

''(1) determine that such non-defense agency is compliant with defense procurement requirements; and

''(2) notify the Secretary of Defense of that determination.

''(g) IDENTIFICATION OF PROCUREMENTS MADE DURING A PARTICULAR FISCAL YEAR.—For the purposes of subsection (a), a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for that procurement in that fiscal year.

''(h) RESOLUTION OF DISAGREEMENTS.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency are unable to agree on a joint determination under subsection (a) or (f), a determination by the Inspector General of the Department of Defense under such subsection shall be conclusive for the purposes of this section.

''(i) DEFINITIONS.—In this section:

''(1) The term 'covered non-defense agency' means each of the following:

''(A) The Department of Veterans Affairs.

''(B) The National Institutes of Health.

''(2) The term 'governmentwide acquisition contract', with respect to a covered non-defense agency, means a task or delivery order contract that—

''(A) is entered into by the non-defense agency; and

''(B) may be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.''

Pub. L. 109–163, div. A, title VIII, § 811, Jan. 6, 2006, 119 Stat. 3374, provided that:

''(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2006, jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such non-defense agency; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) determine in writing whether—

''(i) such non-defense agency is compliant with defense procurement requirements;

''(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements; or

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency.

''(2) ACTIONS FOLLOWING CERTAIN DETERMINATIONS.—If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of that paragraph is correct in the case of a covered non-defense agency, such Inspectors General shall, not later than June 15, 2007, jointly—

''(A) conduct a second review, as described in subparagraph (A) of that paragraph, regarding such non-defense agency's procurement of property or services on behalf of the Department of Defense in fiscal year 2006; and

''(B) determine in writing whether such non-defense agency is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a covered non-defense agency is compliant with defense procurement requirements if such non-defense agency's procurement policies, procedures, and internal controls applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure such non-defense agency's compliance with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) MEMORANDA OF UNDERSTANDING BETWEEN INSPECTORS GENERAL.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Jan. 6, 2006], the Inspector General of the Department of Defense and the Inspector General of each covered non-defense agency shall enter into a memorandum of understanding with each other to carry out the reviews and make the determinations required by this section.

''(2) SCOPE OF MEMORANDA.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by mutual agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate governmentwide acquisition contracts, of such non-defense agency. In any case where such separate reviews are conducted, the Inspectors General shall make separate determinations under paragraph (1) or (2) of subsection (a), as applicable, with respect to each such separate review.

''(d) LIMITATIONS ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) LIMITATION DURING REVIEW PERIOD.—After March 15, 2006, and before June 16, 2007, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

''(2) LIMITATION AFTER REVIEW PERIOD.—After June 15, 2007, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency that, having been subject to review

under this section, has not been determined under this section as being compliant with defense procurement requirements.

''(3) LIMITATION FOLLOWING FAILURE TO REACH MOU.—Commencing on the date that is 60 days after the date of the enactment of this Act [Jan. 6, 2006], if a memorandum of understanding between the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency cannot be attained causing the review required by this section to not be performed, no official of the Department of Defense, except as provided in subsection (e) or (f), may order, purchase or otherwise procure property or services in an amount in excess of $100,000 through such non-defense agency.

''(e) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—

''(1) EXCEPTION.—No limitation applies under subsection (d) with respect to the procurement of property and services on behalf of the Department of Defense by a covered non-defense agency during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through such non-defense agency.

''(2) APPLICABILITY OF DETERMINATION.—A written determination with respect to a covered non-defense agency under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(f) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (d) shall cease to apply to a covered non-defense agency on the date on which the Inspector General of the Department of Defense and the Inspector General of such non-defense agency jointly—

''(1) determine that such non-defense agency is compliant with defense procurement requirements; and

''(2) notify the Secretary of Defense of that determination.

''(g) IDENTIFICATION OF PROCUREMENTS MADE DURING A PARTICULAR FISCAL YEAR.—For the purposes of subsection (a), a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for that procurement in that fiscal year.

''(h) DEFINITIONS.—In this section:

''(1) The term 'covered non-defense agency' means each of the following:

''(A) The Department of the Treasury.

''(B) The Department of the Interior.

''(C) The National Aeronautics and Space Administration.

''(2) The term 'governmentwide acquisition contract', with respect to a covered non-defense agency, means a task or delivery order contract that—

''(A) is entered into by the non-defense agency; and

''(B) may be used as the contract under which property or services are procured for 1 or more other departments or agencies of the Federal Government.''

PANEL ON CONTRACTING INTEGRITY

Pub. L. 109–364, div. A, title VIII, § 813, Oct. 17, 2006, 120 Stat. 2320, as amended by Pub. L. 111–23, title II, § 207(d), May 22, 2009, 123 Stat. 1730, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a panel to be known as the 'Panel on Contracting Integrity'.

''(2) COMPOSITION.—The panel shall be composed of the following:

''(A) A representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall be the chairman of the panel.

''(B) A representative of the service acquisition executive of each military department.

''(C) A representative of the Inspector General of the Department of Defense.

''(D) A representative of the Inspector General of each military department.

''(E) A representative of each Defense Agency involved with contracting, as determined appropriate by the Secretary of Defense.

''(F) Such other representatives as may be determined appropriate by the Secretary of Defense.

''(b) DUTIES.—In addition to other matters assigned to it by the Secretary of Defense, the panel shall—

''(1) conduct reviews of progress made by the Department of Defense to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur;

''(2) review the report by the Comptroller General required by section 841 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3389), relating to areas of vulnerability of Department of Defense contracts to fraud, waste, and abuse; and

''(3) recommend changes in law, regulations, and policy that it determines necessary to eliminate such areas of vulnerability.

''(c) MEETINGS.—The panel shall meet as determined necessary by the Secretary of Defense but not less often than once every six months.

''(d) REPORT.—

''(1) REQUIREMENT.—The panel shall prepare and submit to the Secretary of Defense and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an annual report on its activities. The report shall be submitted not later than December 31 of each year and contain a summary of the panel's findings and recommendations for the year covered by the report.

''(2) FIRST REPORT.—The first report under this subsection shall be submitted not later than December 31, 2007, and shall contain an examination of the current structure in the Department of Defense for contracting integrity and recommendations for any changes needed to the system of administrative safeguards and disciplinary actions to ensure accountability at the appropriate level for any violations of appropriate standards of behavior in contracting.

''(3) INTERIM REPORTS.—The panel may submit such interim reports to the congressional defense committees as the Secretary of Defense considers appropriate.

''(e) TERMINATION.—

''(1) IN GENERAL.—Subject to paragraph (2), the panel shall continue to serve until the date that is 18 months after the date on which the Secretary of Defense notifies the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of an intention to terminate the panel based on a determination that the activities of the panel no longer justify its continuation and that concerns about contracting integrity have been mitigated.

''(2) MINIMUM CONTINUING SERVICE.—The panel shall continue to serve at least until December 31, 2011.''

EMPLOYMENT OF STATE RESIDENTS IN STATES HAVING UNEMPLOYMENT RATE IN EXCESS OF NATIONAL AVERAGE

Pub. L. 109–289, div. A, title VIII, § 8048, Sept. 29, 2006, 120 Stat. 1284, provided that: ''Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year and hereafter for construction or service performed in whole or in part in a State (as defined in section 381(d) of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the

purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: *Provided*, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.''

REVIEW AND DEMONSTRATION PROJECT RELATING TO CONTRACTOR EMPLOYEES

Pub. L. 108–375, div. A, title VIII, §851, Oct. 28, 2004, 118 Stat. 2019, provided that:

''(a) GENERAL REVIEW.—(1) The Secretary of Defense shall conduct a review of policies, procedures, practices, and penalties of the Department of Defense relating to employees of defense contractors for purposes of ensuring that the Department of Defense is in compliance with Executive Order No. 12989 [8 U.S.C. 1324a note] (relating to a prohibition on entering into contracts with contractors that are not in compliance with the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]).

''(2) In conducting the review, the Secretary shall—

''(A) identify potential weaknesses and areas for improvement in existing policies, procedures, practices, and penalties;

''(B) develop and implement reforms to strengthen, upgrade, and improve policies, procedures, practices, and penalties of the Department of Defense and its contractors; and

''(C) review and analyze reforms developed pursuant to this paragraph to identify for purposes of national implementation those which are most efficient and effective.

''(3) The review under this subsection shall be completed not later than 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(b) DEMONSTRATION PROJECT.—The Secretary of Defense shall conduct a demonstration project in accordance with this section, in one or more regions selected by the Secretary, for purposes of promoting greater contracting opportunities for contractors offering effective, reliable staffing plans to perform defense contracts that ensure all contract personnel employed for such projects, including management employees, professional employees, craft labor personnel, and administrative personnel, are lawful residents or persons properly authorized to be employed in the United States and properly qualified to perform services required under the contract. The demonstration project shall focus on contracts for construction, renovation, maintenance, and repair services for military installations.

''(c) DEMONSTRATION PROJECT PROCUREMENT PROCEDURES.—As part of the demonstration project under subsection (b), the Secretary of Defense may conduct a competition in which there is a provision in contract solicitations and request for proposal documents to require significant weight or credit be allocated to—

''(1) reliable, effective workforce programs offered by prospective contractors that provide background checks and other measures to ensure the contractor is in compliance with the Immigration and Nationality Act; and

''(2) reliable, effective project staffing plans offered by prospective contractors that specify for all contract employees (including management employees, professionals, and craft labor personnel) the skills, training, and qualifications of such persons and the labor supply sources and hiring plans or procedures used for employing such persons.

''(d) IMPLEMENTATION OF DEMONSTRATION PROJECT.—The Secretary of Defense shall begin operation of the demonstration project required under this section after completion of the review under subsection (a), but in no event later than 270 days after the date of the enactment of this Act.

''(e) REPORT ON DEMONSTRATION PROJECT.—Not later than six months after award of a contract under the demonstration project, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report setting forth a review of the demonstration project and recommendations on the actions, if any, that can be implemented to ensure compliance by the Department of Defense with Executive Order No. 12989.

''(f) DEFINITION.—In this section, the term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.''

DEFENSE PROCUREMENTS MADE THROUGH CONTRACTS OF OTHER AGENCIES

Pub. L. 108–375, div. A, title VIII, §854, Oct. 28, 2004, 118 Stat. 2022, provided that:

''(a) LIMITATION.—The head of an agency may not procure goods or services (under section 1535 of title 31, United States Code, pursuant to a designation under section 11302(e) of title 40, United States Code, or otherwise) through a contract entered into by an agency outside the Department of Defense for an amount greater than the simplified acquisition threshold referred to in section 2304(g) of title 10, United States Code, unless the procurement is done in accordance with procedures prescribed by that head of an agency for reviewing and approving the use of such contracts.

''(b) EFFECTIVE DATE.—The limitation in subsection (a) shall apply only with respect to orders for goods or services that are issued by the head of an agency to an agency outside the Department of Defense on or after the date that is 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(c) INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.—This section does not apply to procurements of the following services:

''(1) Printing, binding, or blank-book work to which section 502 of title 44, United States Code, applies.

''(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 114 Stat. 2187; 2 U.S.C. 182c).

''(d) ANNUAL REPORT.—(1) For each of fiscal years 2005 and 2006, each head of an agency shall submit to the Secretary of Defense a report on the service charges imposed on purchases made for an amount greater than the simplified acquisition threshold during such fiscal year through a contract entered into by an agency outside the Department of Defense.

''(2) In the case of procurements made on orders issued by the head of a Defense Agency, Department of Defense Field Activity, or any other organization within the Department of Defense (other than a military department) under the authority of the Secretary of Defense as the head of an agency, the report under paragraph (1) shall be submitted by the head of that Defense Agency, Department of Defense Field Activity, or other organization, respectively.

''(3) The report for a fiscal year under this subsection shall be submitted not later than December 31 of the calendar year in which such fiscal year ends.

''(e) DEFINITIONS.—In this section:

''(1) The term 'head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force.

''(2) The term 'Defense Agency' has the meaning given such term in section 101(a)(11) of title 10, United States Code.

''(3) The term 'Department of Defense Field Activity' has the meaning given such term in section 101(a)(12) of such title.''

RESOURCES-BASED SCHEDULES FOR COMPLETION OF PUBLIC-PRIVATE COMPETITIONS FOR PERFORMANCE OF DEPARTMENT OF DEFENSE FUNCTIONS

Pub. L. 108–136, div. A, title III, § 334, Nov. 24, 2003, 117 Stat. 1443, provided that:

''(a) APPLICATION OF TIMEFRAMES.—Any interim or final deadline or other schedule-related milestone for the completion of a Department of Defense public-private competition shall be established solely on the basis of considered research and sound analysis regarding the availability of sufficient personnel, training, and technical resources to the Department of Defense to carry out such competition in a timely manner.

''(b) EXTENSION OF TIMEFRAMES.—(1) The Department of Defense official responsible for managing a Department of Defense public-private competition shall extend any interim or final deadline or other schedule-related milestone established (consistent with subsection (a)) for the completion of the competition if the official determines that the personnel, training, or technical resources available to the Department of Defense to carry out the competition in a timely manner are insufficient.

''(2) A determination under this subsection shall be made pursuant to procedures prescribed by the Secretary of Defense.''

COMPETITION REQUIREMENT FOR PURCHASE OF SERVICES PURSUANT TO MULTIPLE AWARD CONTRACTS

Pub. L. 107–107, div. A, title VIII, § 803, Dec. 28, 2001, 115 Stat. 1178, which required the Secretary of Defense to promulgate in the Department of Defense Supplement to the Federal Acquisition Regulation, not later than 180 days after Dec. 28, 2001, regulations requiring competition in the purchase of services by the Department of Defense pursuant to multiple award contracts, was repealed by Pub. L. 110–417, [div. A], title VIII, § 863(f), Oct. 14, 2008, 122 Stat. 4548.

REQUIREMENT TO DISREGARD CERTAIN AGREEMENTS IN AWARDING CONTRACTS FOR PURCHASE OF FIREARMS OR AMMUNITION

Pub. L. 106–398, § 1 [[div. A], title VIII, § 826], Oct. 30, 2000, 114 Stat. 1654, 1654A–220, provided that: ''In accordance with the requirements contained in the amendments enacted in the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369; 98 Stat. 1175) [see Tables for classification], the Secretary of Defense may not, in awarding a contract for the purchase of firearms or ammunition, take into account whether a manufacturer or vendor of firearms or ammunition is a party to an agreement under which the manufacturer or vendor agrees to adopt limitations with respect to importing, manufacturing, or dealing in firearms or ammunition in the commercial market.''

GAO REPORT

Pub. L. 106–65, div. A, title VIII, § 806(b), Oct. 5, 1999, 113 Stat. 705, directed the Comptroller General, not later than Mar. 1, 2001, to submit to Congress an evaluation of the test program authorized by the provisions in Pub. L. 104–106, § 4202 (amending this section and section 2305 of this title and sections 253, 253a, 416, and 427 of Title 41, Public Contracts, and enacting provisions set out as a note below), together with any recommendations that the Comptroller General considered appropriate regarding the test program or the use of special simplified procedures for purchases of commercial items in excess of the simplified acquisition threshold.

PROCUREMENT OF CONVENTIONAL AMMUNITION

Pub. L. 105–261, div. A, title VIII, § 806, Oct. 17, 1998, 112 Stat. 2084, provided that:

''(a) AUTHORITY.—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department shall have the authority to restrict the procurement of conventional ammunition to sources within the national technology and industrial base in accordance with the authority in section 2304(c) of title 10, United States Code.

''(b) REQUIREMENT.—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department of Defense shall limit a specific procurement of ammunition to sources within the national technology and industrial base in accordance with section 2304(c)(3) of title 10, United States Code, in any case in which that manager determines that such limitation is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization.

''(c) CONVENTIONAL AMMUNITION DEFINED.—For purposes of this section, the term 'conventional ammunition' has the meaning given that term in Department of Defense Directive 5160.65, dated March 8, 1995.''

WARRANTY CLAIMS RECOVERY PILOT PROGRAM

Pub. L. 105–85, div. A, title III, § 391, Nov. 18, 1997, 111 Stat. 1716, as amended by Pub. L. 106–65, div. A, title III, § 382, Oct. 5, 1999, 113 Stat. 583; Pub. L. 107–107, div. A, title III, § 364, Dec. 28, 2001, 115 Stat. 1068; Pub. L. 107–314, div. A, title III, § 368, Dec. 2, 2002, 116 Stat. 2524; Pub. L. 108–375, div. A, title III, § 343, Oct. 28, 2004, 118 Stat. 1857, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense may carry out a pilot program to use commercial sources of services to improve the collection of Department of Defense claims under aircraft engine warranties.

''(b) CONTRACTS.—Exercising the authority provided in section 3718 of title 31, United States Code, the Secretary of Defense may enter into contracts under the pilot program to provide for the following services:

''(1) Collection services.

''(2) Determination of amounts owed the Department of Defense for repair of aircraft engines for conditions covered by warranties.

''(3) Identification and location of the sources of information that are relevant to collection of Department of Defense claims under aircraft engine warranties, including electronic data bases and document filing systems maintained by the Department of Defense or by the manufacturers and suppliers of the aircraft engines.

''(4) Services to define the elements necessary for an effective training program to enhance and improve the performance of Department of Defense personnel in collecting and organizing documents and other information that are necessary for efficient filing, processing, and collection of Department of Defense claims under aircraft engine warranties.

''(c) CONTRACTOR FEE.—Under the authority provided in section 3718(d) of title 31, United States Code, a contract entered into under the pilot program shall provide for the contractor to be paid, out of the amount recovered by the contractor under the program, such percentages of the amount recovered as the Secretary of Defense determines appropriate.

''(d) RETENTION OF RECOVERED FUNDS.—Subject to any obligation to pay a fee under subsection (c), any amount collected for the Department of Defense under the pilot program for a repair of an aircraft engine for a condition covered by a warranty shall be credited to an appropriation available for repair of aircraft engines for the fiscal year in which collected and shall be available for the same purposes and same period as the appropriation to which credited.

''(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

''(f) TERMINATION OF AUTHORITY.—The pilot program shall terminate on September 30, 2006, and contracts entered into under this section shall terminate not later than that date.

''(g) REPORTING REQUIREMENT.—Not later than February 1, 2006, the Secretary of Defense shall submit to Congress a report on the pilot program, including—

''(1) a description of the extent to which commercial firms have been used to provide the services specified in subsection (b) and the type of services procured;

''(2) a description of any problems that have limited the ability of the Secretary to utilize the pilot program to procure such services; and

''(3) the recommendation of the Secretary regarding whether the pilot program should be made permanent or extended beyond September 30, 2006.''

REQUIREMENTS RELATING TO MICRO-PURCHASES

Pub. L. 105–85, div. A, title VIII, §848, Nov. 18, 1997, 111 Stat. 1846, as amended by Pub. L. 113–291, div. A, title X, §1071(b)(10), Dec. 19, 2014, 128 Stat. 3507, provided that:

''(a) REQUIREMENT.—(1) Not later than October 1, 1998, at least 60 percent of all eligible purchases made by the Department of Defense for an amount less than the micro-purchase threshold shall be made through streamlined micro-purchase procedures.

''(2) Not later than October 1, 2000, at least 90 percent of all eligible purchases made by the Department of Defense for an amount less than the micro-purchase threshold shall be made through streamlined micro-purchase procedures.

''(b) ELIGIBLE PURCHASES.—The Secretary of Defense shall establish which purchases are eligible for purposes of subsection (a). In establishing which purchases are eligible, the Secretary may exclude those categories of purchases determined not to be appropriate or practicable for streamlined micro-purchase procedures.

''(c) PLAN.—Not later than March 1, 1998, the Secretary of Defense shall provide to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a plan to implement this section.

''(d) REPORT.—Not later than March 1 in each of the years 1999, 2000, and 2001, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the implementation of this section. Each report shall include—

''(A) the total dollar amount of all Department of Defense purchases for an amount less than the micro-purchase threshold in the fiscal year preceding the year in which the report is submitted;

''(B) the total dollar amount of such purchases that were considered to be eligible purchases;

''(C) the total amount of such eligible purchases that were made through a streamlined micro-purchase method; and

''(D) a description of the categories of purchases excluded from the definition of eligible purchases established under subsection (b).

''(e) DEFINITIONS.—In this section:

''(1) The term 'micro-purchase threshold' has the meaning provided in section 1902 of title 41, United States Code.

''(2) The term 'streamlined micro-purchase procedures' means procedures providing for the use of the Government-wide commercial purchase card or any other method for carrying out micro-purchases that the Secretary of Defense prescribes in the regulations implementing this subsection.''

TERMINATION OF AUTHORITY TO ISSUE SOLICITATIONS FOR PURCHASES OF COMMERCIAL ITEMS IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

Pub. L. 104–106, div. D, title XLII, §4202(e), Feb. 10, 1996, 110 Stat. 654, as amended by Pub. L. 106–65, div. A, title VIII, §806(a), Oct. 5, 1999, 113 Stat. 705; Pub. L. 107–107, div. A, title VIII, §823, Dec. 28, 2001, 115 Stat. 1183; Pub. L. 107–314, div. A, title VIII, §812(a), Dec. 2, 2002, 116 Stat. 2609; Pub. L. 108–136, div. A, title XIV, §1443(b), Nov. 24, 2003, 117 Stat. 1676; Pub. L. 108–375, div. A, title VIII, §817, Oct. 28, 2004, 118 Stat. 2015; Pub. L. 110–181, div. A, title VIII, §822(a), Jan. 28, 2008, 122 Stat. 226; Pub. L. 111–84, div. A, title VIII, §816, Oct. 28, 2009, 123 Stat. 2408; Pub. L. 112–239, div. A, title VIII, §822, Jan. 2, 2013, 126 Stat. 1830; Pub. L. 113–66, div. A, title X, §1091(b)(4), Dec. 26, 2013, 127 Stat. 876, which related to termination of authority to issue solicitations for purchases of commercial items in excess of simplified acquisition threshold, was repealed by Pub. L. 113–291, div. A, title VIII, §815, Dec. 19, 2014, 128 Stat. 3430.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

AUTHORITY OF BASE COMMANDERS OVER CONTRACTING FOR COMMERCIAL ACTIVITIES

Pub. L. 100–180, div. A, title XI, §1111, Dec. 4, 1987, 101 Stat. 1146, directed the Secretary of Defense to authorize the commander of each military installation to (1) prepare an inventory each fiscal year of commercial activities carried out by Government personnel on the military installation, (2) decide which commercial activities were to be reviewed pursuant to Office of Management and Budget Circular A–76 or any successor administrative regulation or policy, (3) conduct a solicitation for contracts for those commercial activities selected for conversion to contractor performance under the Circular A–76 process, and (4) assist in finding suitable employment for any employee of the Department of Defense who had been displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation; directed the Secretary to prescribe regulations required by the preceding authority no later than 60 days after Dec. 4, 1987; and provided for termination of the authority on Oct. 1, 1989.

EVALUATION OF CONTRACTS FOR PROFESSIONAL AND TECHNICAL SERVICES

Pub. L. 100–456, div. A, title VIII, §804, Sept. 29, 1988, 102 Stat. 2009, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, directed Secretary of Defense, within 120 days after Sept. 29, 1988, to establish criteria to ensure that proposals for contracts for professional and technical services be evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees and, within 30 days after Sept. 29, 1988, to establish an advisory committee to make recommendations on the criteria.

REGULATIONS ON USE OF FIXED-PRICE DEVELOPMENT CONTRACTS

Pub. L. 100–456, div. A, title VIII, §807, Sept. 29, 1988, 102 Stat. 2011, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, which provided that not later than 120 days after Sept. 29, 1988, the Secretary of Defense was to make certain revisions to Department of Defense regulations that provide for the use of fixed-price type contracts in a development program, was repealed by Pub. L. 109–364, div. A, title VIII, §818(a), Oct. 17, 2006, 120 Stat. 2329.

PROHIBITION OF PURCHASE OF ANGOLAN PETROLEUM PRODUCTS FROM COMPANIES PRODUCING OIL IN ANGOLA

Pub. L. 102–484, div. A, title VIII, §842, Oct. 23, 1992, 106 Stat. 2468, provided that: ''The prohibition in section 316 of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (100 Stat. 3855; 10 U.S.C. 2304 note) shall cease to be effective on the date on which the President certifies to Congress that free, fair, and democratic elections have taken place in Angola.''

Determination of President of the United States, No. 93–32, July 19, 1993, 58 F.R. 40309, provided:

Pursuant to the authority vested in me by Public Law 102–484, section 842 [set out as a note above], I hereby certify that free, fair, and democratic elections have taken place in Angola.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.

WILLIAM J. CLINTON.

Pub. L. 99–661, div. A, title III, §316, Nov. 14, 1986, 100 Stat. 3855, provided that:

''(a) GENERAL RULE.—The Secretary of Defense may not enter into a contract with a company for the purchase of petroleum products which originated in Angola if the company (or a subsidiary or partnership of the company) is engaged in the production of petroleum products in Angola.

''(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) if the Secretary determines that such action is in the best interest of the United States.

''(c) PETROLEUM PRODUCT DEFINED.—For purposes of this section, the term 'petroleum product' means—

''(1) natural or synthetic crude;

''(2) blends of natural or synthetic crude; and

''(3) products refined or derived from natural or synthetic crude or from such blends.

''(d) EFFECTIVE DATE.—This section shall take effect six months after the date of the enactment of this Act [Nov. 14, 1986].''

DEADLINE FOR PRESCRIBING REGULATIONS

Pub. L. 99–500, §101(c) [title X, §927(b)], Oct. 18, 1986, 100 Stat. 1783–82, 100 Stat. 1783–156, Pub. L. 99–591, §101(c) [title X, §927(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156, and Pub. L. 99–661, div. A, title IX, formerly title IV, §927(b), Nov. 14, 1986, 100 Stat. 3935, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The Secretary of Defense shall prescribe the regulations required by section 2304(i) of such title (as added by subsection (a)) not later than 180 days after the date of the enactment of this Act [Oct. 18, 1986].''

ONE-YEAR SECURITY-GUARD PROHIBITION

Pub. L. 99–661, div. A, title XII, §1222(b), Nov. 14, 1986, 100 Stat. 3976, provided that:

''(1) Except as provided in paragraph (2), funds appropriated to the Department of Defense may not be obligated or expended before October 1, 1987, for the purpose of entering into a contract for the performance of security-guard functions at any military installation or facility.

''(2) The prohibition in paragraph (1) does not apply—

''(A) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which military personnel would have to be used for the performance of the function described in paragraph (1) at the expense of unit readiness;

''(B) to a contract to be carried out on a Government-owned but privately operated installation;

''(C) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983; or

''(D) to a contract for the performance of security-guard functions if (i) the requirement for the functions arises after the date of the enactment of this Act [Nov. 14, 1986], and (ii) the Secretary of Defense determines the functions can be performed by contractor personnel without adversely affecting installation security, safety, or readiness.''

CONTRACTING OUT PERFORMANCE OF DEPARTMENT OF DEFENSE SUPPLY AND SERVICE FUNCTIONS

Pub. L. 99–661, div. A, title XII, §1223, Nov. 14, 1986, 100 Stat. 3977, which required Secretary to contract for Department of Defense supplies and services from private sector after a cost comparison demonstrates lower cost than Department of Defense can provide, and to ensure that overhead costs considered are realistic and fair, was repealed and restated in former section 2462 of this title by Pub. L. 100–370, §2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

REPORTS ON SAVINGS OR COSTS FROM INCREASED USE OF CIVILIAN PERSONNEL

Pub. L. 99–661, div. A, title XII, §1224, Nov. 14, 1986, 100 Stat. 3977, which required Secretary to maintain cost comparison data on performance of a commercial or industrial type activity taken over by Department of Defense comparing performance by employees of private contractor to that of civilian employees of Department of Defense, and to submit semi-annual report on savings or loss to United States, was repealed and restated in section 2463 of this title by Pub. L. 100–370, §2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

LIMITATIONS ON CONTRACTING PERFORMED BY COAST GUARD

Pub. L. 101–225, title II, §205, Dec. 12, 1989, 103 Stat. 1912, provided that: ''Notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before—

''(1) a study has been performed by the Secretary of Transportation under the Office of Management and Budget Circular A–76 with respect to that procurement;

''(2) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (1) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and

''(3) copies of the studies required by paragraphs (1) and (2) of this subsection are submitted to the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.''

Pub. L. 100–448, §5, Sept. 28, 1988, 102 Stat. 1837, as amended by Pub. L. 104–66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724, provided that:

''(a) MAINTENANCE OF LOGISTICS CAPABILITY.—

''(1) STATEMENT OF NATIONAL INTEREST.—It is in the national interest for the Coast Guard to maintain a logistics capability (including personnel, equipment, and facilities) to provide a ready and controlled source of technical competence and resources necessary to ensure the effective and timely performance of Coast Guard missions in behalf of the security, safety, and economic and environmental well-being of the United States.

''[(2) Repealed. Pub. L. 104–66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724.]

''[(b) Repealed. Pub. L. 104–66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724.]

''(c) SUBMISISON [sic] OF LIST OF ACTIVITIES CONTRACTED FOR PERFORMANCE.—At least 30 days before the beginning of each fiscal year, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives a list of activities that will be contracted for performance by non-Government personnel under the procedures of Office of Management and Budget Circular A–76 during that fiscal year.

''(d) EMPLOYMENT OF LOCAL RESIDENTS TO PERFORM CONTRACTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, each contract awarded by the Coast Guard in fiscal years 1988 and 1989 for construction or services to be performed in whole or in part in a State which has an unemployment rate in excess of the national average rate of unemployment (as deter-

mined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary of the department in which the Coast Guard is operating may waive this subsection in the interest of national security or economic efficiency.

''(2) LOCAL RESIDENT DEFINED.—As used in this subsection, the term 'local resident' means a resident of a State described in paragraph (1), and any individual who commutes daily to a State described in paragraph (1).''

[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.]

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–640, §5, Nov. 10, 1986, 100 Stat. 3546.

CONTRACTED ADVISORY AND ASSISTANCE SERVICES

Pub. L. 99–145, title IX, §918, Nov. 8, 1985, 99 Stat. 690, which provided that Secretary of Defense require each military department to establish accounting procedure to aid in control of expenditures for contracted advisory and assistance services, prescribe regulations to identify such services and which services are in direct support of a weapons system, consider specific list of factors in prescribing regulations, and identify total amount requested and separate category amount requested in budget documents for Department of Defense presented to Congress, was repealed and restated in section 2212 of this title by Pub. L. 100–370, §1(d)(2), July 19, 1988, 102 Stat. 842.

ASSIGNMENT OF PRINCIPAL CONTRACTING OFFICERS

Pub. L. 99–145, title IX, §925, Nov. 8, 1985, 99 Stat. 699, required Secretary of Defense to develop a policy regarding mobility and regular rotation of principal administrative and corporate administrative contracting officers in Department of Defense and to report to Committees on Armed Services of Senate and House of Representatives not later than January 1, 1986, on such policy, prior to repeal by Pub. L. 101–510, div. A, title XII, §1207(a), Nov. 5, 1990, 104 Stat. 1665.

PROHIBITION ON FELONS CONVICTED OF DEFENSE-CONTRACT-RELATED FELONIES AND PENALTY ON EMPLOYMENT OF SUCH PERSONS BY DEFENSE CONTRACTORS

Pub. L. 99–145, title IX, §932, Nov. 8, 1985, 99 Stat. 699, prohibited certain felons from working on defense contracts and penalized employment of such persons by defense contractors, prior to repeal by Pub. L. 99–500, §101(c) [title X, §941(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, §101(c) [title X, §941(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, §941(b), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273.

REIMBURSEMENT, INTEREST CHARGES, AND PENALTIES FOR OVERPAYMENTS DUE TO COST AND PRICING DATA

Pub. L. 99–145, title IX, §934(a), Nov. 8, 1985, 99 Stat. 700, which provided for interest payments and penalties for overpayments due to faulty cost and pricing data, was repealed by Pub. L. 99–500, §101(c) [title X, §952(b)(2), (d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, §101(c) [title X, §952(b)(2), (d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, §952(b)(2), (d), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, effective with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on Oct. 18, 1986.

PERSONNEL FOR PERFORMANCE OF SERVICES AND ACTIVITIES

Pub. L. 99–145, title XII, §1233, Nov. 8, 1985, 99 Stat. 734, related to services and activities to be performed by non-Government personnel, prior to repeal by Pub. L. 99–661, div. A, title XII, §1222(c), Nov. 14, 1986, 100 Stat. 3977.

LIMITATION ON CONTRACTING-OUT CORE LOGISTICS FUNCTIONS

Pub. L. 99–145, title XII, §1231(a)–(e), Nov. 8, 1985, 99 Stat. 731–733, declared that certain specifically described functions of the Department of Defense shall be deemed logistics activities necessary to maintain the logistics capability described in section 307(a)(1) of Pub. L. 98–525, formerly set out below; contained a description of the functions, i.e., depot-level maintenance of mission-essential materiel at specifically located activities of the Army, the Navy, the Marine Corps, the Air Force, the Defense Logistics Agency, and the Defense Mapping Agency; included certain matters within the specified functions and excluded certain functions; and defined ''mission-essential materiel'' as related to such functions.

Pub. L. 98–525, title III, §307, Oct. 19, 1984, 98 Stat. 2514, as amended by Pub. L. 99–145, title XII, §1231(f), Nov. 8, 1985, 99 Stat. 733, which prohibited contracting to non-Government personnel of logistics activities necessary for effective response to national emergencies unless Secretary waives such prohibition after a determination that Government performance of such activity is no longer required for national defense reasons, and reports to Congress on waiver, was repealed and restated in former section 2464 of this title by Pub. L. 100–370, §2(a)(1), (c)(2), July 19, 1988, 102 Stat. 853, 854.

SHIPBUILDING CLAIMS FOR CONTRACT PRICE ADJUSTMENTS

Pub. L. 98–473, title I, §101(h) [title VIII, §8078], Oct. 12, 1984, 98 Stat. 1904, 1938, prohibited expenditure of funds to adjust any contract price in any shipbuilding claim, request for equitable adjustment, or demand for payment incurred due to the preparation, submission, or adjudication of any such shipbuilding claim, request, or demand under a contract entered into after Oct. 12, 1984, arising out of events occurring more than eighteen months prior to the submission of such shipbuilding claim, request, or demand, prior to repeal by Pub. L. 100–370, §1(p)(2), July 19, 1988, 102 Stat. 851.

Pub. L. 98–212, title VII, §787, Dec. 8, 1983, 97 Stat. 1453, which contained similar provisions relating to shipbuilding claims for contract price adjustments, was repealed and restated in section 2405 of this title by Pub. L. 98–525, title XII, §1234(a), (b)(2), Oct. 19, 1984, 98 Stat. 2604, effective Oct. 19, 1984.

WEAPON SYSTEM GUARANTEES; GOVERNMENT-AS-SOURCE EXCEPTION; WAIVER

Pub. L. 98–212, title VII, §794, Dec. 8, 1983, 97 Stat. 1454, provided for weapon system guarantees, Government-as-Source exception, and waiver, prior to repeal by Pub. L. 98–525, title XII, §1234(b)(1), Oct. 19, 1984, 98 Stat. 2604, effective Jan. 1, 1985.

FIGHTER AIRCRAFT ENGINE WARRANTY

Pub. L. 97–377, title I, §101(c) [title VII, §797], Dec. 21, 1982, 96 Stat. 1865, provided that: ''None of the funds made available in the Act or any subsequent Act shall be available for the purchase of the alternate or new model fighter aircraft engine that does not have a written warranty or guarantee attesting that it will perform not less than 3,000 tactical cycles. The warranty will provide that the manufacturer must perform the necessary improvements or replace any parts to

achieve the required performance at no cost to the Government.''

INSURANCE TO PROTECT GOVERNMENT CONTRACTORS AGAINST COST OF CORRECTING CONTRACTOR'S OWN DEFECTS; REIMBURSEMENT PROHIBITED

Pub. L. 97–12, title I, § 100, June 5, 1981, 95 Stat. 29, and Pub. L. 97–114, title VII, § 770, Dec. 29, 1981, 95 Stat. 1590, which provided that no funds authorized for the Department of Defense in fiscal year 1981 and thereafter would be available to reimburse a contractor for the cost of commercial insurance, except for that normally maintained in the conduct of his business, that would protect against the cost for correction for the contractor's own defects in materials or workmanship such as were not a fortuitous casualty or loss, were repealed and restated in section 2399 of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

RESTRICTIONS ON CONVERSION OF PERFORMANCE OF COMMERCIAL AND INDUSTRIAL TYPE FUNCTIONS FROM DEPARTMENT OF DEFENSE PERSONNEL TO PRIVATE CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 96–342, title V, § 502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97–252, title XI, § 1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99–145, title XII, § 1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99–661, div. A, title XII, § 1221, Nov. 14, 1986, 100 Stat. 3976, which provided that no commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees could be converted to performance by a private contractor to circumvent any civilian personnel ceiling unless Secretary of Defense submitted favorable cost comparisons and certifications, and reported annually to Congress with regard to such conversions, was repealed and restated in section 2461 of this title by Pub. L. 100–370, § 2(a)(1), (c)(1), July 19, 1988, 102 Stat. 851, 854.

Similar provisions for fiscal year 1980 were contained in Pub. L. 96–107, title VIII, § 806, Nov. 9, 1979, 93 Stat. 813.

CONTRACT CLAIMS; REQUEST FOR EQUITABLE ADJUSTMENT; REQUEST FOR RELIEF; CERTIFICATION

Pub. L. 95–485, title VIII, § 813, Oct. 20, 1978, 92 Stat. 1624, which prohibited payment of a contract claim, request for equitable adjustment, or request for relief which exceeded $100,000 unless a senior company official certified that request was made in good faith and that supporting data was accurate and complete, was repealed and restated in section 2410 of this title by Pub. L. 100–370, § 1(h)(2), (p)(4), July 19, 1988, 102 Stat. 847, 851.

REPORT TO CONGRESS BY SECRETARY OF DEFENSE; CHANGES IN POLICY OR REGULATIONS CONCERNING USE OF PRIVATE CONTRACTORS FOR COMMERCIAL OR INDUSTRIAL TYPE FUNCTION AT DEPARTMENT OF DEFENSE INSTALLATIONS; RESTRICTIONS

Pub. L. 95–485, title VIII, § 814, Oct. 20, 1978, 92 Stat. 1625, directed the Secretary of Defense to report to the House and Senate Committees on Armed Services any proposed change in policy or regulations from those in effect before June 30, 1976, as to whether commercial or industrial functions at Defense Department installations in the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors during the period Oct. 1, 1978 to Sept. 30, 1979; prohibited such functions to be performed privately unless such contractor performance began before Oct. 20, 1978 or performance would have been allowed by policy and regulations in effect before June 30, 1976; and provided that such prohibition would apply until the end of the 60 day period beginning on the date the report by the Secretary of Defense is received by the House and Senate Committees.

REPORTING REQUIREMENTS FOR SECRETARY OF DEFENSE AND PRIME CONTRACTORS CONCERNING PAYMENTS BY PRIME CONTRACTORS FOR WORK PERFORMED BY SUBCONTRACTORS

Pub. L. 95–111, title VIII, § 836, Sept. 21, 1977, 91 Stat. 906, which directed the Secretary of Defense to require all prime contractors with more than $500,000 of defense contract awards to report in dollars at the end of each year the amount of work done in that year and the State where performed, and requiring the Secretary of Defense to report annually to Congress the amount of funds spent for such work in each State, was repealed and restated in subsec. (i) of this section by Pub. L. 97–295, §§ 1(24)(C), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1315.

PERFORMANCE REVIEW OF DEPARTMENT OF DEFENSE COMMERCIAL OR INDUSTRIAL FUNCTIONS

Pub. L. 95–79, title VIII, § 809, July 30, 1977, 91 Stat. 334, directed the Secretary of Defense and the Director of the Office of Management and Budget to review criteria used in determining whether commercial or industrial type functions at Department of Defense installations within the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors and to report to the House and Senate Armed Services Committees before Jan. 1, 1978, the results of the review; prohibited commercial or industrial type functions being performed on July 30, 1977 by Department of Defense personnel from being converted to performance by private contractors before the earlier of Mar. 15, 1978 or the end of the 90-day period beginning on the date the report is received by the House and Senate Committees; exempted from such prohibition the conversion to performance by private contractors of industrial or commercial type functions if the conversion would have been made under policies and regulations in effect before June 30, 1976; and required the Secretary of Defense to report to the House and Senate Committees on Armed Services before Jan. 1, 1978, detailing the Department's rationale for establishing goals for the percentage of work at defense research installations to be performed by private contractors and for any direction in effect on July 30, 1977 establishing a minimum or maximum percentage for the allocation of work at any defense research installation to be performed by private contractors or directing a change in any such allocation in effect on July 30, 1977.

DISCRIMINATION IN PETROLEUM SUPPLIES TO ARMED FORCES PROHIBITED; ENFORCEMENT PROCEDURE; PENALTIES; EXPIRATION

Pub. L. 94–106, title VIII, § 816, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 98–620, title IV, § 402(8), Nov. 8, 1984, 98 Stat. 3357, provided a remedy for discrimination by citizens of nationals of the United States or corporations organized or operating within the United States, and by organizations controlled by them, against the Department of Defense in the supply of petroleum products for two years after Oct. 7, 1975.

ANNOUNCEMENTS OF AWARD OF CONTRACTS BY DEPARTMENT OF DEFENSE; DISCLOSURE OF IDENTITY OF CONTRACTOR PRIOR TO ANNOUNCEMENT PROHIBITED

Pub. L. 91–441, title V, § 507, Oct. 7, 1970, 84 Stat. 913, which had provided that the identity or location of a recipient of a contract from the Department of Defense may not be revealed prior to the public announcement of such identity by the Secretary of Defense, was repealed and restated in section 2316 of this title by Pub. L. 97–295, §§ 1(26)(A), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1314.

AWARD OF CONTRACTS THROUGH FORMAL ADVERTISING AND COMPETITIVE BIDDING WHERE PRACTICABLE

Pub. L. 90–5, title III, § 304, Mar. 16, 1967, 81 Stat. 6, which had provided that the Secretary of Defense was

directed, insofar as practicable, that all contracts be formally advertised and awarded on a competitive bid basis to the lowest responsible bidder, was repealed and restated in subsec. (a) of this section by Pub. L. 97–295, §§1(24)(A), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1314.

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

Provisions of the National Emergencies Act not applicable to the powers and authorities conferred by subsec. (a)(1) of this section and actions taken hereunder, see section 1651(a)(5) of Title 50, War and National Defense.

§ 2304a. Task and delivery order contracts: general authority

(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task or delivery order contract (as defined in section 2304d of this title) for procurement of services or property.

(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include the following:

(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—(1) The head of an agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

(2) No determination under section 2304(b) of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

(3) No task or delivery order contract in an amount estimated to exceed $100,000,000 (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

(A) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(B) the contract provides only for firm, fixed price task orders or delivery orders for—

(i) products for which unit prices are established in the contract; or

(ii) services for which prices are established in the contract for the specific tasks to be performed;

(C) only one source is qualified and capable of performing the work at a reasonable price to the government; or

(D) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

(4) The regulations implementing this subsection shall—

(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) CONTRACT PERIOD.—The head of an agency entering into a task or delivery order contract under this section may provide for the contract to cover any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.

(g) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 2304b of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

(h) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3249; amended Pub. L. 108–136, div. A, title VIII, §843(b), Nov. 24, 2003, 117 Stat. 1553; Pub. L. 108–375, div. A, title VIII, §813(a), Oct. 28, 2004, 118 Stat. 2014; Pub. L. 110–181, div. A, title VIII, §843(a)(1), Jan. 28, 2008, 122 Stat. 236; Pub. L. 111–84, div. A, title VIII, §814(a), Oct. 28, 2009, 123 Stat. 2407; Pub. L. 112–81, div. A, title VIII, §809(b), Dec. 31, 2011, 125 Stat. 1490.)

CODIFICATION

Another section 2304a was renumbered section 2304e of this title.

AMENDMENTS

2011—Subsec. (d)(3). Pub. L. 112–81 struck out subpar. (A) designation before ''No task'', redesignated cls. (i) to (iv) of former subpar. (A) as subpars. (A) to (D), re-

spectively, of par. (3), redesignated subcls. (I) and (II) of former cl. (ii) as cls. (i) and (ii), respectively, of subpar. (B), and struck out former subpar. (B) which read as follows: ''The head of the agency shall notify the congressional defense committees within 30 days after any determination under clause (i), (ii), (iii), or (iv) of subparagraph (A).''

2009—Subsec. (d)(3)(B). Pub. L. 111–84 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The head of the agency shall notify Congress within 30 days after any determination under subparagraph (A)(iv).''

2008—Subsec. (d)(3), (4). Pub. L. 110–181 added par. (3) and redesignated former par. (3) as (4).

2004—Subsec. (f). Pub. L. 108–375 substituted ''any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period'' for ''a total period of not more than five years''.

2003—Subsecs. (f) to (h). Pub. L. 108–136 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 843(a)(3)(A), Jan. 28, 2008, 122 Stat. 237, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to any contract awarded on or after such date.''

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

CONGRESSIONAL INTELLIGENCE COMMITTEES

Pub. L. 111–84, div. A, title VIII, § 814(b), Oct. 28, 2009, 123 Stat. 2407, provided that: ''In the case of a task or delivery order contract awarded with respect to intelligence activities of the Department of Defense, any notification provided under [former] subparagraph (B) of section 2304a(d)(3) of title 10, United States Code, as amended by subsection (a), shall also be provided at the same time as notification is provided to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] under that subparagraph—

''(1) to the Permanent Select Committee on Intelligence of the House of Representatives insofar as such task or delivery order contract relates to tactical intelligence and intelligence-related activities of the Department; and

''(2) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives insofar as such task or delivery order contract relates to intelligence and intelligence-related activities of the Department other than those specified in paragraph (1).''

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Pub. L. 103–355, title I, § 1004(d), Oct. 13, 1994, 108 Stat. 3253, as amended by Pub. L. 108–136, div. A, title X, § 1045(f), Nov. 24, 2003, 117 Stat. 1613, provided that: ''Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b) and (c) [amending sections 2304 and 2331 of this title], shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under chapter 11 of title 40, United States Code.''

§ 2304b. Task order contracts: advisory and assistance services

(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services.

(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

(b) LIMITATION ON CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

(c) CONTENT OF NOTICE.—The notice required by section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(d) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—(1) The solicitation for the proposed task order contract shall include the information (regarding services) described in section 2304a(b) of this title.

(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(e) MULTIPLE AWARDS.—(1) The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

(3) Paragraph (2) does not apply in the case of a solicitation for which the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

(f) CONTRACT MODIFICATIONS.—(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) Unless use of procedures other than competitive procedures is authorized by an excep-

tion in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

(3) Notice regarding the modification shall be provided in accordance with section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(g) CONTRACT EXTENSIONS.—(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(h) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term ''advisory and assistance services'' has the meaning given such term in section 1105(g) of title 31.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3251; amended Pub. L. 111–350, §5(b)(13), Jan. 4, 2011, 124 Stat. 3843.)

AMENDMENTS

2011—Subsecs. (c), (f)(3). Pub. L. 111–350 substituted ''section 1708 of title 41'' for ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)''.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

WAIVERS TO EXTEND TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES

Pub. L. 109–364, div. A, title VIII, §834, Oct. 17, 2006, 120 Stat. 2332, provided that:

''(a) DEFENSE CONTRACTS.—

''(1) WAIVER AUTHORITY.—The head of an agency may issue a waiver to extend a task order contract entered into under section 2304b of title 10, United States Code, for a period not exceeding 10 years, through five one-year options, if the head of the agency determines in writing—

''(A) that the contract provides engineering or technical services of such a unique and substantial technical nature that award of a new contract would be harmful to the continuity of the program for which the services are performed;

''(B) that award of a new contract would create a large disruption in services provided to the Department of Defense; and

''(C) that the Department of Defense would, through award of a new contract, endure program risk during critical program stages due to loss of program corporate knowledge of ongoing program activities.

''(2) DELEGATION.—The authority of the head of an agency under paragraph (1) may be delegated only to the senior procurement executive of the agency.

''(3) REPORT.—Not later than April 1, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on advisory and assistance services. The report shall include the following information:

''(A) The methods used by the Department of Defense to identify a contract as an advisory and assistance services contract, as defined in section 2304b of title 10, United States Code.

''(B) The number of such contracts awarded by the Department during the five-year period preceding the date of the enactment of this Act [Oct. 17, 2006].

''(C) The average annual expenditures by the Department for such contracts.

''(D) The average length of such contracts.

''(E) The number of such contracts recompeted and awarded to the previous award winner.

''(4) PROHIBITION ON USE OF AUTHORITY BY DEPARTMENT OF DEFENSE IF REPORT NOT SUBMITTED.—The head of an agency may not issue a waiver under paragraph (1) if the report required by paragraph (3) is not submitted by the date set forth in that paragraph.

''(b) CIVILIAN AGENCY CONTRACTS.—

''(1) WAIVER AUTHORITY.—The head of an executive agency may issue a waiver to extend a task order contract entered into under section 303I of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253i) [see 41 U.S.C. 4105] for a period not exceeding 10 years, through five one-year options, if the head of the agency determines in writing—

''(A) that the contract provides engineering or technical services of such a unique and substantial technical nature that award of a new contract would be harmful to the continuity of the program for which the services are performed;

''(B) that award of a new contract would create a large disruption in services provided to the executive agency; and

''(C) that the executive agency would, through award of a new contract, endure program risk during critical program stages due to loss of program corporate knowledge of ongoing program activities.

''(2) DELEGATION.—The authority of the head of an executive agency under paragraph (1) may be delegated only to the Chief Acquisition Officer of the agency (or the senior procurement executive in the case of an agency for which a Chief Acquisition Officer has not been appointed or designated under section 16(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 414(a)) [now 41 U.S.C. 1702(a), (b)(1), (2)]).

''(3) REPORT.—Not later than April 1, 2007, the Administrator for Federal Procurement Policy shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on advisory and assistance serv-

ices. The report shall include the following information:

''(A) The methods used by executive agencies to identify a contract as an advisory and assistance services contract, as defined in section 303I(i) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253i(i)) [now 41 U.S.C. 4105(a)].

''(B) The number of such contracts awarded by each executive agency during the five-year period preceding the date of the enactment of this Act [Oct. 17, 2006].

''(C) The average annual expenditures by each executive agency for such contracts.

''(D) The average length of such contracts.

''(E) The number of such contracts recompeted and awarded to the previous award winner.

''(4) PROHIBITION ON USE OF AUTHORITY BY EXECUTIVE AGENCIES IF REPORT NOT SUBMITTED.—The head of an executive agency may not issue a waiver under paragraph (1) if the report required by paragraph (3) is not submitted by the date set forth in that paragraph.

''(c) TERMINATION OF AUTHORITY.—A waiver may not be issued under this section after December 31, 2011.

''(d) COMPTROLLER GENERAL REVIEW.—

''(1) REPORT REQUIREMENT.—Not later than one year after the date of the enactment of this Act [Oct. 17, 2006], the Comptroller General shall submit to the committees described in paragraph (3) a report on the use of advisory and assistance services contracts by the Federal Government.

''(2) DEFENSE AND CIVILIAN AGENCY CONTRACTS COVERED.—The report shall cover both of the following:

''(A) Advisory and assistance services contracts as defined in section 2304b of title 10, United States Code.

''(B) Advisory and assistance services contracts as defined in section 303I(i) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253i(i)) [now 41 U.S.C. 4105(a)].

''(3) MATTERS COVERED.—The report shall address the following issues:

''(A) The extent to which executive agencies and elements of the Department of Defense require advisory and assistance services for periods of greater than five years.

''(B) The extent to which such advisory and assistance services are provided by the same contractors under recurring contracts.

''(C) The rationale for contracting for advisory and assistance services that will be needed on a continuing basis, rather than performing the services inside the Federal Government.

''(D) The contract types and oversight mechanisms used by the Federal Government in contracts for advisory and assistance services and the extent to which such contract types and oversight mechanisms are adequate to protect the interests of the Government and taxpayers.

''(E) The actions taken by the Federal Government to prevent organizational conflicts of interest and improper personal services contracts in its contracts for advisory and assistance services.

''(4) COMMITTEES.—The committees described in this paragraph are the following:

''(A) The Committees on Armed Services and on Homeland Security and Governmental Affairs of the Senate.

''(B) The Committees on Armed Services and on Government Reform [now Oversight and Government Reform] of the House of Representatives.''

§ 2304c. Task and delivery order contracts: orders

(a) ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for such order under section 1708 of title 41 or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (b), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.

(b) MULTIPLE AWARD CONTRACTS.—When multiple task or delivery order contracts are awarded under section 2304a(d)(1)(B) or 2304b(e) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts unless—

(1) the agency's need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee.

(c) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF $5,000,000.—In the case of a task or delivery order in excess of $5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (b) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the agency's requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting the basis for the award and the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 2305(b)(5) of this title.

(e) PROTESTS.—(1) A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of $10,000,000.

(2) Notwithstanding section 3556 of title 31, the Comptroller General of the United States shall

have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(f) TASK AND DELIVERY ORDER OMBUDSMAN.—Each head of an agency who awards multiple task or delivery order contracts pursuant to section 2304a(d)(1)(B) or 2304b(e) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (b). The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

(g) APPLICABILITY.—This section applies to task and delivery order contracts entered into under sections 2304a and 2304b of this title.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3252; amended Pub. L. 110–181, div. A, title VIII, §843(a)(2), Jan. 28, 2008, 122 Stat. 237; Pub. L. 111–350, §5(b)(14), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 111–383, div. A, title VIII, §825, title X, §1075(f)(5)(A), Jan. 7, 2011, 124 Stat. 4270, 4376; Pub. L. 112–239, div. A, title VIII, §830, Jan. 2, 2013, 126 Stat. 1842.)

AMENDMENTS

2013—Subsec. (e)(3). Pub. L. 112–239 struck out par. (3) which read as follows: ''Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.''

2011—Subsec. (a)(1). Pub. L. 111–350 substituted ''section 1708 of title 41'' for ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)''.

Subsec. (e). Pub. L. 111–383, §1075(f)(5)(A), made technical correction to directory language of Pub. L. 110–181, §843(a)(2)(C). See 2008 Amendment note below.

Subsec. (e)(3). Pub. L. 111–383, §825, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''This subsection shall be in effect for three years, beginning on the date that is 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008.''

2008—Subsec. (d). Pub. L. 110–181, §843(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–181, §843(a)(2)(C), as amended by Pub. L. 111–383, §1075(f)(5)(A), added subsec. (e) and struck out former subsec. (e). Former text read as follows: ''A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.''

Pub. L. 110–181, §843(a)(2)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 110–181, §843(a)(2)(A), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, §843(a)(3)(B), Jan. 28, 2008, 122 Stat. 238, provided that: ''The amendments made by paragraph (2) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to any task or delivery order awarded on or after such date.''

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

§ 2304d. Task and delivery order contracts: definitions

In sections 2304a, 2304b, and 2304c of this title:

(1) The term ''task order contract'' means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

(2) The term ''delivery order contract'' means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3253.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

§ 2304e. Contracts: prohibition on competition between Department of Defense and small businesses and certain other entities

(a) EXCLUSION.—In any case in which the Secretary of Defense plans to use competitive procedures for a procurement, if the procurement is to be conducted as described in subsection (b), then the Secretary shall exclude the Department of Defense from competing in the procurement.

(b) PROCUREMENT DESCRIPTION.—The requirement to exclude the Department of Defense under subsection (a) applies in the case of a procurement to be conducted by excluding from competition entities in the private sector other than—

(1) small business concerns in furtherance of section 8 or 15 of the Small Business Act (15 U.S.C. 637 or 644); or

(2) entities described in subsection (a)(1) of section 2323 of this title in furtherance of the goal specified in that subsection.

(Added Pub. L. 103–160, div. A, title VIII, §848(a)(1), Nov. 30, 1993, 107 Stat. 1724, §2304a; renumbered §2304e, Pub. L. 104–106, div. D, title XLIII, §4321(b)(6)(A), Feb. 10, 1996, 110 Stat. 672.)

AMENDMENTS

1996—Pub. L. 104–106 renumbered section 2304a of this title as this section.

EFFECTIVE DATE

Pub. L. 103–160, div. A, title VIII, § 848(b), Nov. 30, 1993, 107 Stat. 1725, provided that: ''Section 2304a [now 2304e] of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 30, 1993].''

§ 2305. Contracts: planning, solicitation, evaluation, and award procedures

(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

(i) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(ii) use advance procurement planning and market research; and

(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(B) Each solicitation under this chapter shall include specifications which—

(i) consistent with the provisions of this chapter, permit full and open competition; and

(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(i) function, so that a variety of products or services may qualify;

(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) design requirements.

(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(A) a statement of—

(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(ii) the relative importance assigned to each of those factors and subfactors; and

(B)(i) in the case of sealed bids—

(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

(II) the time and place for the opening of the sealed bids; or

(ii) in the case of competitive proposals—

(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(II) the time and place for submission of proposals.

(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(ii) shall include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(iii) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(I) significantly more important than cost or price;

(II) approximately equal in importance to cost or price; or

(III) significantly less important than cost or price.

(B) The regulations implementing clause (iii) of subparagraph (A) may not define the terms ''significantly more important'' and ''significantly less important'' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(4) Nothing in this subsection prohibits an agency from—

(A) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(5) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.

(b)(1) The head of an agency shall evaluate sealed bids and competitive proposals and make an award based solely on the factors specified in the solicitation.

(2) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

(3) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The head of the agency shall evaluate the bids in accordance with paragraph (1) without discussions with the bidders and, except as provided in para-

graph (2), shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

(4)(A) The head of an agency shall evaluate competitive proposals in accordance with paragraph (1) and may award a contract—

(i) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(ii) based on the proposals received, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) provided that the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.

(B) If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subparagraph (A)(i) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.

(C) Except as provided in paragraph (2), the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only cost or price and the other factors included in the solicitation. The head of the agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to such source and, within three days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals. This subparagraph does not apply with respect to the award of a contract for the acquisition of perishable subsistence items.

(5)(A) When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

(B) The debriefing shall include, at a minimum—

(i) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(ii) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(iii) the overall ranking of all offers;

(iv) a summary of the rationale for the award;

(v) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

(vi) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(C) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(D) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.

(E) If, within one year after the date of the contract award and as a result of a successful procurement protest, the agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

(i) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

(ii) the same information that would have been provided to the original offerors.

(6)(A) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

(B) The contracting officer is required to debrief an excluded offeror in accordance with paragraph (5) only if that offeror requested and was refused a preaward debriefing under subparagraph (A).

(C) The debriefing conducted under subparagraph (A) shall include—

(i) the executive agency's evaluation of the significant elements in the offeror's offer;

(ii) a summary of the rationale for the offeror's exclusion; and

(iii) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(D) The debriefing conducted under subparagraph (A) may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

(7) The contracting officer shall include a summary of any debriefing conducted under paragraph (5) or (6) in the contract file.

(8) The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

(9) If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the Attorney General for appropriate action.

(c) The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

(1) when the appropriate officials of the Department are making an assessment of the most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

(A) through the supply system of the Department of Defense; and

(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

(d)(1)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a development contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) Proposals referred to in the first sentence of subparagraph (A) are the following:

(i) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(ii) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

(2)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a production contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) Proposals referred to in the first sentence of subparagraph (A) are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

(i) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

(ii) Proposals for the qualification or development of multiple sources of supply for the item.

(3) If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in paragraphs (1) and (2) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded. Such objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

(4)(A) Whenever the head of an agency requires that proposals described in paragraph (1)(B) or (2)(B) be submitted by an offeror in its offer, the offeror shall not be required to provide a proposal that enables the United States to acquire competitively in the future an identical item if the item was developed exclusively at private expense unless the head of the agency determines that—

(i) the original supplier of such item will be unable to satisfy program schedule or delivery requirements; or

(ii) proposals by the original supplier of such item to meet the mobilization requirements are insufficient to meet the agency's mobilization needs.

(B) In considering offers in response to a solicitation requiring proposals described in paragraph (1)(B) or (2)(B), the head of an agency shall base any evaluation of items developed exclusively at private expense on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(e) PROTEST FILE.—(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the proce-

dures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(f) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency—

(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.

(g) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of an agency named in section 2303 of this title may not be made available to any person under section 552 of title 5.

(2) Paragraph (1) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal.

(3) In this subsection, the term ''proposal'' means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 85–861, §1(44), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 90–268, §3, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98–369, div. B, title VII, §2723(b), July 18, 1984, 98 Stat. 1191; Pub. L. 98–525, title XII, §1213(a), Oct. 19, 1984, 98 Stat. 2591; Pub. L. 99–145, title XIII, §1303(a)(14), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–500, §101(c) [title X, §924(a), (b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, §101(c) [title X, §924(a), (b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title III, §313(b), title IX, formerly title IV, §924(a), (b), Nov. 14, 1986, 100 Stat. 3853, 3932, 3933, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–456, div. A, title VIII, §806, Sept. 29, 1988, 102 Stat. 2010; Pub. L. 101–189, div. A, title VIII, §853(f), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 101–510, div. A, title VIII, §802(a)–(d), Nov. 5, 1990, 104 Stat. 1588, 1589; Pub. L. 103–160, div. A, title XI, §1182(a)(5), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 103–355, title I, §§1011–1016, title IV, §4401(b), Oct. 13, 1994, 108 Stat. 3254–3257, 3347; Pub. L. 104–106, div. D, title XLI, §§4103(a), 4104(a), title XLII, §4202(a)(2), div. E, title LVI, §5601(a), Feb. 10, 1996, 110 Stat. 643, 644, 653, 699; Pub. L. 104–201, div. A, title VIII, §821(a), title X, §1074(a)(11), (b)(4)(A), Sept. 23, 1996, 110 Stat. 2609, 2659, 2660; Pub. L. 106–65, div. A, title VIII, §821, Oct. 5, 1999, 113 Stat. 714.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2305(a)	41:152 (less clause (b)).	Feb. 19, 1948, ch. 65, §§2(d), 3, 62 Stat. 22.
2305(b)	41:152 (clause (b)).	
2305(c)	41:151(d).	

In subsection (a), the word ''needed'' is substituted for the words ''necessary to meet the requirements''.

In subsection (b), the words ''United States'' are substituted for the word ''Government''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2305	41:152(c).	Aug. 9, 1955, ch. 628, §15, 69 Stat. 551.

Reference to bids is omitted as surplusage (see opinion of the Judge Advocate General of the Army (JAGT 1956/9122, 21 Dec. 1956)). The word ''attachments'' is substituted for the words ''material required''. The words ''the specifications in'' are inserted in the second sentence for clarity. The word ''available'' is omitted as covered by the word ''accessible.'' The words ''no award may be made'' are substituted for the words ''and any award or awards made to any bidder in such case shall be invalidated and rejected''.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1999—Subsec. (g)(1). Pub. L. 106–65 substituted ''an agency named in section 2303 of this title'' for ''the Department of Defense''.

1996—Subsec. (a)(2). Pub. L. 104–106, §4202(a)(2), inserted ''a procurement for commercial items using special simplified procedures or'' after ''(other than for''.

Subsec. (b)(4)(B). Pub. L. 104–106, §4103(a)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 104–106, §4103(a)(1), transferred text of subpar. (C) to end of subpar. (B) and substituted ''This subparagraph'' for ''Subparagraph (B)'' at beginning of that text.

Subsec. (b)(4)(C). Pub. L. 104–106, §4103(a)(2), redesignated subpar. (B) as (C).

Pub. L. 104–106, §4103(a)(1), struck out ''(C)'' before ''Subparagraph (B)'' and transferred text of subpar. (C) to end of subpar. (B).

Subsec. (b)(5)(F). Pub. L. 104–106, §4104(a)(1), struck out subpar. (F) which read as follows: ''The contracting officer shall include a summary of the debriefing in the contract file.''

Subsec. (b)(6). Pub. L. 104–106, §4104(a)(3), added par. (6). Former par. (6) redesignated (9).

Subsec. (b)(6)(B). Pub. L. 104–201, §1074(a)(11)(A), struck out ''of this section'' after ''paragraph (5)'' and ''of this paragraph'' after ''subparagraph (A)''.

Subsec. (b)(6)(C). Pub. L. 104–201, §1074(a)(11)(B), substituted ''subparagraph (A)'' for ''this subsection'' in introductory provisions.

Subsec. (b)(6)(D). Pub. L. 104–201, §1074(a)(11)(C), substituted ''under subparagraph (A)'' for ''pursuant to this subsection''.

Subsec. (b)(7), (8). Pub. L. 104–106, §4104(a)(3), added pars. (7) and (8).

Subsec. (b)(9). Pub. L. 104–106, §4104(a)(2), redesignated par. (6) as (9).

Subsec. (e)(3). Pub. L. 104–106, §5601(a), as amended by Pub. L. 104–201, §1074(b)(4)(A), struck out par. (3) which read as follows: ''Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).''

Subsec. (g). Pub. L. 104–201, § 821(a), added subsec. (g).

1994—Subsec. (a)(2). Pub. L. 103–355, § 4401(b), substituted ''a purchase for an amount not greater than the simplified acquisition threshold)'' for ''small purchases)'' in introductory provisions.

Subsec. (a)(2)(A)(i). Pub. L. 103–355, § 1011(a)(1), substituted ''and significant subfactors'' for ''(and significant subfactors)'' and ''cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors'' for ''cost- or price-related factors, and noncost- or nonprice-related factors''.

Subsec. (a)(2)(A)(ii). Pub. L. 103–355, § 1011(a)(2), substituted ''and subfactors'' for ''(and subfactors)''.

Subsec. (a)(2)(B)(ii)(I). Pub. L. 103–355, § 1011(a)(3), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), unless discussions are determined to be necessary; and''.

Subsec. (a)(3). Pub. L. 103–355, § 1011(b), added par. (3) and struck out former par. (3), which read as follows: ''In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, and prior experience of the offeror).''

Subsec. (a)(4). Pub. L. 103–355, § 1011(b), added par. (4).

Subsec. (a)(5). Pub. L. 103–355, § 1012, added par. (5).

Subsec. (b)(3). Pub. L. 103–355, § 1013(a), substituted ''transmitting, in writing or by electronic means, notice'' for ''transmitting written notice'' and inserted at end ''Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.''

Subsec. (b)(4)(B). Pub. L. 103–355, § 1013(b), substituted ''transmitting, in writing or by electronic means, notice'' for ''transmitting written notice'' and '', within three days after the date of contract award, shall notify, in writing or by electronic means,'' for ''shall promptly notify''.

Subsec. (b)(5), (6). Pub. L. 103–355, § 1014, added par. (5) and redesignated former par. (5) as (6).

Subsec. (e). Pub. L. 103–355, § 1015, added subsec. (e).

Subsec. (f). Pub. L. 103–355, § 1016, added subsec. (f).

1993—Subsec. (b)(4)(A). Pub. L. 103–160 realigned margins of cls. (i) and (ii).

1990—Subsec. (a)(2)(A)(i). Pub. L. 101–510, § 802(a)(1), inserted ''(and significant subfactors)'' after ''significant factors'' and substituted ''(including cost or price, cost- or price-related factors, and noncost- or nonprice-related factors)'' for ''(including cost or price)''.

Subsec. (a)(2)(A)(ii). Pub. L. 101–510, § 802(a)(2), inserted ''(and subfactors)'' after ''those factors''.

Subsec. (a)(2(B)(ii)(I). Pub. L. 101–510, § 802(b), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and''.

Subsec. (a)(3). Pub. L. 101–510, § 802(c), substituted ''the evaluation factors and subfactors, including the quality of the product or services'' for ''the quality of the services''.

Subsec. (b)(1). Pub. L. 101–510, § 802(d)(1), inserted ''and make an award'' after ''competitive proposals''.

Subsec. (b)(3). Pub. L. 101–510, § 802(d)(2), inserted ''in accordance with paragraph (1)'' after ''shall evaluate the bids''.

Subsec. (b)(4)(A). Pub. L. 101–510, § 802(d)(3)(A), substituted ''competitive proposals in accordance with paragraph (1)'' for ''competitive proposals'' in introductory provisions, added cls. (i) and (ii), and struck out former cls. (i) and (ii) which read as follows:

''(i) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

''(ii) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States.''

Subsec. (b)(4)(B) to (E). Pub. L. 101–510, § 802(d)(3)(B)–(D), redesignated subpars. (D) and (E) as (B) and (C), respectively, substituted ''Subparagraph (B)'' for ''Subparagraph (D)'' in subpar. (C), and struck out former subpars. (B) and (C) which read as follows:

''(B) In the case of award of a contract under subparagraph (A)(i), the head of the agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only cost or price and the other factors included in the solicitation.

''(C) In the case of award of a contract under subparagraph (A)(ii), the head of the agency shall award the contract based on the proposals received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).''

1989—Subsec. (b)(4)(D). Pub. L. 101–189 inserted ''cost or'' after ''considering only''.

1988—Subsec. (d)(1)(B). Pub. L. 100–456, § 806(b), substituted ''Proposals referred to in the first sentence of subparagraph (A) are'' for ''The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are''.

Subsec. (d)(2)(B). Pub. L. 100–456, § 806(b), substituted ''Proposals referred to in the first sentence of subparagraph (A) are'' for ''The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are''.

Subsec. (d)(3). Pub. L. 100–456, § 806(a)(2), inserted provision that objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

Subsec. (d)(4). Pub. L. 100–456, § 806(a)(1), added par. (4).

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 924(a)], Pub. L. 99–661, § 924(a), amended subsec. (a) identically, in par. (2)(A)(i) striking out ''(including price)'' after ''factors'' and inserting ''(including price)'' and ''(including cost and price)'' and adding par. (3).

Subsec. (b)(4)(B). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 924(b)], Pub. L. 99–661, § 924(b), amended subpar. (B) identically, inserting ''cost or''.

Subsec. (b)(4)(E). Pub. L. 99–661, § 313(b), added subpar. (E).

1985—Subsec. (b)(5). Pub. L. 99–145 aligned the margin of par. (5).

1984—Subsecs. (c), (d). Pub. L. 98–525 added subsecs. (c) and (d).

Catchline, subsecs. (a) to (d). Pub. L. 98–369 substituted ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' and completely revised the text to substitute a program using solicitation requirements covering military procurement for former provisions which had used the approach of utilizing formal advertisements, struck out former provisions which had directed that, except in cases where the Secretary of Defense had determined that military requirements necessitated the specification of container size, no advertisement or invitation to bid for the carriage of government property in other than government-owned cargo containers could specify carriage of such property in cargo containers of any stated length, height, or width, and carried forward into new subsecs. (a)(1)(A)(iii), (B)(i), and (b)(2) and (5) the content of former section.

1968—Subsec. (a). Pub. L. 90–268 inserted provision that, except in cases where the Secretary of Defense de-

termines that military requirements necessitate such specification, no advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

1958—Subsecs. (b) to (d). Pub. L. 85–861 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by sections 4103(a), 4104(a), and 4202(a)(2) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

Amendment by section 5601(a) of Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VIII, §802(e), Nov. 5, 1990, 104 Stat. 1589, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply with respect to solicitations for sealed bids or competitive proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act [Nov. 5, 1990].

''(2) The Secretary of Defense may require the amendments made by this section to apply with respect to solicitations issued before the end of the period referred to in paragraph (1). The Secretary of Defense shall publish in the Federal Register notice of any such earlier effective date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, §101(c) [title X, §924(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, Pub. L. 99–591, §101(c) [title X, §924(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153, and Pub. L. 99–661, div. A, title IX, formerly title IV, §924(c), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by this section [amending this section] shall apply with respect to solicitations for sealed bids or competitive proposals issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98–525, title XII, §1213(b), Oct. 19, 1984, 98 Stat. 2592, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

GUIDANCE ON USE OF TIERED EVALUATIONS OF OFFERS FOR CONTRACTS AND TASK ORDERS UNDER CONTRACTS

Pub. L. 109–163, div. A, title VIII, §816, Jan. 6, 2006, 119 Stat. 3382, provided that:

''(a) GUIDANCE REQUIRED.—The Secretary of Defense shall prescribe guidance for the military departments and the Defense Agencies on the use of tiered evaluations of offers for contracts and for task or delivery orders under contracts.

''(b) ELEMENTS.—The guidance prescribed under subsection (a) shall include a prohibition on the initiation by a contracting officer of a tiered evaluation of an offer for a contract or for a task or delivery order under a contract unless the contracting officer—

''(1) has conducted market research in accordance with part 10 of the Federal Acquisition Regulation in order to determine whether or not a sufficient number of qualified small businesses are available to justify limiting competition for the award of such contract or task or delivery order under applicable law and regulations;

''(2) is unable, after conducting market research under paragraph (1), to make the determination described in that paragraph; and

''(3) includes in the contract file a written explanation of why such contracting officer was unable to make such determination.''

AUTHORIZATION OF EVALUATION FACTOR FOR DEFENSE CONTRACTORS EMPLOYING OR SUBCONTRACTING WITH MEMBERS OF THE SELECTED RESERVE OF THE RESERVE COMPONENTS OF THE ARMED FORCES

Pub. L. 109–163, div. A, title VIII, §819, Jan. 6, 2006, 119 Stat. 3385, provided that:

''(a) DEFENSE CONTRACTS.—In awarding any contract for the procurement of goods or services to an entity, the Secretary of Defense is authorized to use as an evaluation factor whether the entity intends to carry out the contract using employees or individual subcontractors who are members of the Selected Reserve of the reserve components of the Armed Forces.

''(b) DOCUMENTATION OF SELECTED RESERVE-RELATED EVALUATION FACTOR.—Any entity claiming intent to carry out a contract using employees or individual subcontractors who are members of the Selected Reserve of the reserve components of the Armed Forces shall submit proof of the use of such employees or subcontractors for the Department of Defense to consider in carrying out subsection (a) with respect to that contract.

''(c) REGULATIONS.—The Federal Acquisition Regulation shall be revised as necessary to implement this section.''

CERTIFICATE OF COMPETENCY REQUIREMENTS

Pub. L. 102–484, div. A, title VIII, §804, Oct. 23, 1992, 106 Stat. 2447, provided that, in case of contract to be entered into pursuant to this chapter, other than pursuant to simplified procedures under section 2304(g) of this title, solicitation was to contain notice of right of bidding small business concern, in case of determination by contracting officer that concern was nonresponsible, to request Small Business Administration to make determination of responsibility under section 637(b)(7) of Title 15, Commerce and Trade, that if contracting officer determined that concern was nonresponsible, such officer was to notify concern in writing, of such determination, that concern had right to request Small Business Administration to make determination, and that, if concern desired to request such determination, concern was to inform officer in writing, within 14 days after receipt of notice, of such desire, and that, after being so informed, officer was to transmit request to Administration, or, if not so informed, officer was to proceed with award of contract, and contained provisions relating to effective and termination dates and report to be submitted to Congress, prior to repeal by Pub. L. 103–355, title VII, §7101(b), Oct. 13, 1994, 108 Stat. 3367.

CONSTRUCTION OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 as not superseding or affecting the provisions of section 637(a) of Title 15, Commerce and Trade, see section 2723(c) of Pub. L. 98–369, set out as a note under section 2304 of this title.

§ 2305a. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under chapter 11 of title 40 is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-

phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the offer, and the contracting officer has considered information such as the following:

(1) The extent to which the project requirements have been adequately defined.

(2) The time constraints for delivery of the project.

(3) The capability and experience of potential contractors.

(4) The suitability of the project for use of the two-phase selection procedures.

(5) The capability of the agency to manage the two-phase selection process.

(6) Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with chapter 11 of title 40.

(2) The contracting officer solicits phase-one proposals that—

(A) include information on the offeror's—

(i) technical approach; and

(ii) technical qualifications; and

(B) do not include—

(i) detailed design information; or

(ii) cost or price information.

(3) The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team) and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

(A) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

(B) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with paragraphs (2), (3), and (4) of section 2305(a) of this title.

The contracting officer separately evaluates the submissions described in subparagraphs (A) and (B).

(5) The agency awards the contract in accordance with section 2305(b)(4) of this title.

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). If the contract value exceeds $4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government's interest. The contracting officer shall provide written documentation of how a maximum number exceeding 5 is consistent with the purposes and objectives of the two-phase selection procedures.

(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

(2) regarding the factors that may be used in selecting contractors; and

(3) providing for a uniform approach to be used Government-wide.

(f) SPECIAL AUTHORITY FOR MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department may use funds available to the Secretary under section 2807(a) or 18233(e) of this title to accelerate the design effort in connection with a military construction project for which the two-phase selection procedures described in subsection (c) are used to select the contractor for both the design and construction portion of the project before the project is specifically authorized by law and before funds are appropriated for the construction portion of the project. Notwithstanding the limitations contained in such sections, use of such funds for the design portion of a military construction project

may continue despite the subsequent authorization of the project. The advance notice requirement of section 2807(b) of this title shall continue to apply whenever the estimated cost of the design portion of the project exceeds the amount specified in such section.

(2) Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience before funds are first made available for construction may not exceed an amount attributable to the final design of the project.

(3) For each fiscal year during which the authority provided by this subsection is in effect, the Secretary of a military department may select not more than two military construction projects to include the accelerated design effort authorized by paragraph (1) for each armed force under the jurisdiction of the Secretary. To be eligible for selection under this subsection, a request for the authorization of the project, and for the authorization of appropriations for the project, must have been included in the annual budget of the President for a fiscal year submitted to Congress under section 1105(a) of title 31.

(4) Not later than March 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report evaluating the usefulness of the authority provided by this subsection in expediting the design and construction of military construction projects. The authority provided by this subsection expires September 30, 2008, except that, if the report required by this paragraph is not submitted by March 1, 2008, the authority shall expire on that date.

(Added Pub. L. 104–106, div. D, title XLI, §4105(a)(1), Feb. 10, 1996, 110 Stat. 645; amended Pub. L. 105–85, div. A, title X, §1073(a)(44), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–217, §3(b)(4), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–178, §4(b)(3), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 108–375, div. B, title XXVIII, §2807, Oct. 28, 2004, 118 Stat. 2123; Pub. L. 109–163, div. B, title XXVIII, §2807, Jan. 6, 2006, 119 Stat. 3508; Pub. L. 113–291, div. A, title VIII, §814, Dec. 19, 2014, 128 Stat. 3430.)

PRIOR PROVISIONS

A prior section 2305a was renumbered section 2438 of this title.

AMENDMENTS

2014—Subsec. (d). Pub. L. 113–291 substituted ''If the contract value exceeds $4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government's interest. The contracting officer shall provide written documentation of how a maximum number exceeding 5 is consistent with the purposes and objectives of the two-phase selection procedures.'' for ''The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government's interest and is consistent with the purposes and objectives of the two-phase selection process.''

2006—Subsec. (f)(2). Pub. L. 109–163, §2807(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience may not exceed the actual costs incurred as of the termination date.''

Subsec. (f)(4). Pub. L. 109–163, §2807(b), substituted ''2008'' for ''2007'' wherever appearing.

2004—Subsec. (f). Pub. L. 108–375 added subsec. (f).

2003—Subsec. (c)(1). Pub. L. 108–178 substituted ''chapter 11 of title 40'' for ''the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)''.

2002—Subsec. (a). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)''.

1997—Subsec. (a). Pub. L. 105–85 substituted ''(40 U.S.C.'' for ''(41 U.S.C.''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2302 of this title.

§ 2306. Kinds of contracts

(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States.

(b) Each contract awarded under this chapter after using procedures other than sealed-bid procedures shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration. This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.

(c) A contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting. This prohibition is in addition to the prohibition specified in subsection (a) on the use of the cost-plus-a-percentage-of-cost system of contracting and applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the armed forces.

(d) The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or

research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(e)(1) Except as provided in paragraph (2), each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(A) a cost-plus-a-fixed-fee subcontract; or

(B) a fixed-price subcontract or purchase order involving more than the greater of (i) the simplified acquisition threshold, or (ii) 5 percent of the estimated cost of the prime contract.

(2) Paragraph (1) shall not apply to a prime contract with a contractor that maintains a purchasing system approved by the contracting officer for the contract.

(f) So-called ''truth-in-negotiations'' provisions relating to cost or pricing data to be submitted by certain contractors and subcontractors are provided in section 2306a of this title.

(g) Multiyear contracting authority for the acquisition of services is provided in section 2306c of this title.

(h) Multiyear contracting authority for the purchase of property is provided in section 2306b of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 87–653, §1(d), (e), Sept. 10, 1962, 76 Stat. 528; Pub. L. 90–378, §1, July 5, 1968, 82 Stat. 289; Pub. L. 90–512, Sept. 25, 1968, 82 Stat. 863; Pub. L. 96–513, title V, §511(77), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–86, title IX, §§907(b), 909(b), Dec. 1, 1981, 95 Stat. 1117, 1118; Pub. L. 98–369, div. B, title VII, §2724, July 18, 1984, 98 Stat. 1192; Pub. L. 99–145, title XIII, §1303(a)(15), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–500, §101(c) [title X, §952(b)(1), (c)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, §101(c) [title X, §952(b)(1), (c)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, §952(b)(1), (c)(1), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title VIII, §805(a), Nov. 29, 1989, 103 Stat. 1488; Pub. L. 101–510, div. A, title VIII, §808, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 102–25, title VII, §701(d)(3), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, §§1021, 1022(b), title IV, §§4102(b), 4401(c), title VIII, §8105(a), Oct. 13, 1994, 108 Stat. 3257, 3260, 3340, 3348, 3392; Pub. L. 105–85, div. A, title X, §1073(a)(45), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–398, §1 [[div. A], title VIII, §802(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205; Pub. L. 108–136, div. A, title VIII, §842, Nov. 24, 2003, 117 Stat. 1552; Pub. L. 112–81, div. B, title XXVIII, §2801(a), Dec. 31, 2011, 125 Stat. 1684.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2306(a)	41:153(a) (1st sentence). 41:153(b) (1st 14 words of 1st sentence).	Feb. 19, 1948, ch. 65, §4 (less words after semicolon of last sentence of (b), and less (c)), 62 Stat. 23.
2306(b)	41:153(a) (less 1st sentence).	
2306(c)	41:153(b) (2d sentence).	
2306(d)	41:153(b) (1st sentence, less 1st 14 words).	
2306(e)	41:153(b) (less 1st and 2d sentences; and less words after semicolon of last sentence).	

In subsection (a), the words ''subject to subsections (b)–(e)'' are substituted for the words ''Except as provided in subsection (b) of this section''. The words ''United States'' are substituted for the word ''Government''.

In subsection (b), the words ''under section 2304 of this title'' are substituted for the words ''pursuant to section 151(c) of this title''. The words ''full amount of such'' and ''violation'' are omitted as surplusage.

In subsection (c), the words ''under section 2304 of this title'' are inserted for clarity.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Provisions similar to those in subsec. (h)(11) of this section were contained in Pub. L. 100–526, title I, §104(a), Oct. 24, 1988, 102 Stat. 2624, which was set out below, prior to repeal by Pub. L. 101–189, §805(b).

AMENDMENTS

2011—Subsec. (c). Pub. L. 112–81 added subsec. (c).

2003—Subsec. (e). Pub. L. 108–136 substituted ''(1) Except as provided in paragraph (2), each'' for ''Each'', redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (1), respectively, redesignated cls. (A) and (B) of former par. (2) as cls. (i) and (ii) of subpar. (B) of par. (1), respectively, and added par. (2).

2000—Subsec. (g). Pub. L. 106–398 amended subsec. (g) generally. Prior to amendment, subsec. (g) consisted of pars. (1) to (3) authorizing the head of an agency to enter into contracts for periods of not more than five years for certain types of services.

1997—Subsec. (h). Pub. L. 105–85 inserted ''for the purchase of property'' after ''Multiyear contracting authority''.

1994—Subsec. (b). Pub. L. 103–355, §§4102(b), 8105(a), inserted at end ''This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.''

Subsec. (c). Pub. L. 103–355, §1021, struck out subsec. (c) which read as follows: ''No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made under this chapter unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.''

Subsec. (e)(2)(A). Pub. L. 103–355, §4401(c), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Subsec. (h). Pub. L. 103–355, §1022(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to requirements for multiyear contracts for purchase of property, including weapon systems and items and services associated with weapons systems.

1991—Subsec. (e)(2)(A). Pub. L. 102–25 substituted ''the small purchase threshold'' for ''the small purchase amount under section 2304(g) of this title''.

1990—Subsec. (h)(1). Pub. L. 101–510, §808(a), struck out ''(other than contracts described in paragraph (6))'' after ''multiyear contracts'' in introductory provisions

and substituted ''substantial savings of the total anticipated costs of carrying out the program through annual contracts'' for ''reduced total costs under the contract'' in subpar. (A).

Subsec. (h)(6). Pub. L. 101–510, § 808(b), struck out ''contracts for the construction, alteration, or major repair of improvements to real property or'' after ''not apply to''.

Subsec. (h)(9). Pub. L. 101–510, § 808(c)(1), inserted ''for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority'' after ''under this subsection'' in introductory provisions.

Subsec. (h)(9)(C). Pub. L. 101–510, § 808(c)(2), struck out subpar. (C) which read as follows: ''The proposed multiyear contract—

''(i) achieves a 10 percent savings as compared to the cost of current negotiated contracts, adjusted for changes in quantity and for inflation; or

''(ii) achieves a 10 percent savings as compared to annual contracts if no recent contract experience exists.''

1989—Subsec. (h)(9) to (11). Pub. L. 101–189 added pars. (9) to (11).

1986—Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 952(c)(1)], Pub. L. 99–661, § 952(c)(1), amended section identically, striking out '': cost or pricing data: truth in negotiation'' after ''contracts'' in section catchline.

Subsec. (f). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 952(b)(1)], Pub. L. 99–661, § 952(b)(1), amended generally subsec. (f) identically, substituting provision that ''truth-in-negotiations'' provisions relating to cost and pricing data for contractors and subcontractors are provided in section 2306a of this title for provision relating to certification by contractors and subcontractors on cost and pricing data, circumstances under which such certification will be required, circumstances under which such certification, although not required, may be requested, and evaluation of the accuracy of the data submitted.

1985—Subsec. (a). Pub. L. 99–145, § 1303(a)(15)(A), inserted a period at end.

Subsec. (b). Pub. L. 99–145, § 1303(a)(15)(B), struck out ''of this title'' before ''shall contain''.

1984—Pub. L. 98–369, § 2724(f), substituted ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 2724(a), substituted ''the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into'' for ''this limitation and subject to subsections (b)–(f), the head of any agency may, in negotiating contracts under section 2304 of this title, make''.

Subsec. (b). Pub. L. 98–369, § 2724(b), substituted ''awarded under this chapter after using procedures other than sealed-bid procedures'' for ''negotiated under section 2304''.

Subsec. (c). Pub. L. 98–369, § 2724(c), substituted ''this chapter'' for ''section 2304 of this title,''.

Subsec. (e)(2). Pub. L. 98–369, § 2724(d), substituted ''the greater of (A) the small purchase amount under section 2304(g) of this title, or (B)'' for ''$25,000 or''.

Subsec. (f)(1). Pub. L. 98–369, § 2724(e)(A)(i), (ii), substituted ''such contractor's or subcontractor's'' for ''his'' and struck out ''he'' before ''submitted was accurate'' in provisions preceding subpar. (A).

Subsec. (f)(1)(A). Pub. L. 98–369, § 2724(3)(A)(iii), (vi), (vii), substituted ''prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if'' for ''negotiated prime contract under this title where'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(B). Pub. L. 98–369, § 2724(e)(A)(iv), (vi), (vii), substituted ''if'' for ''for which'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(C). Pub. L. 98–369, § 2724(e)(A)(v)–(vii), substituted ''when'' for ''where'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(D). Pub. L. 98–369, § 2724(e)(A)(iv), (vi), (vii), substituted ''if'' for ''for which'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(2). Pub. L. 98–369, § 2724(e)(B), (D), (E), struck out ''negotiated'' before ''price as is practicable'' and before ''is based on adequate price competition'', redesignated as par. (3) the proviso formerly set out in this par., and as part of the redesignation substituted a period for '': *Provided*, That'' after ''or noncurrent''.

Subsec. (f)(3). Pub. L. 98–369, § 2724(e)(E), designated as par. (3) the proviso formerly set out in par. (2). Former par. (3) redesignated (5).

Subsec. (f)(4). Pub. L. 98–369, § 2724(e)(F), added par. (4).

Subsec. (f)(5). Pub. L. 98–369, § 2724(e)(C), redesignated former par. (3) as (5) and substituted ''proposal for the contract, the discussions conducted on the proposal'' for ''negotiation''.

1981—Subsec. (f)(1). Pub. L. 97–86, § 907(b), substituted ''$500,000'' for ''$100,000'' in subpars. (A) to (D).

Subsec. (g)(1). Pub. L 97–86, § 909(b)(1), struck out ''to be performed outside the forty-eight contiguous States and the District of Columbia'' after ''(and items of supply related to such services)'' in provisions preceding subpar. (A).

Subsec. (h). Pub. L. 97–86, § 909(b)(2), added subsec. (h).

1980—Subsec. (f). Pub. L. 96–513, § 511(77)(A), designated existing provisions as pars. (1) to (3) and in par. (1), as so designated, substituted ''(A)'' to ''(D)'' for ''(1)'' to ''(4)'', respectively, ''prior'' for ''Prior'' wherever appearing, and ''clause (C)'' for ''(3) above''.

Subsec. (g). Pub. L. 96–513, § 511(77)(B), in par. (1) substituted ''that—'' for ''that:'', in par. (2) substituted ''(A) The'' for ''(A) the'', ''(B) Consideration'' for ''(B) consideration'', and ''(C) Consideration'' for ''(C) consideration'', and in par. (3) substituted ''from—'' for ''from:''.

1968—Subsec. (f). Pub. L. 90–512 inserted last par.

Subsec. (g). Pub. L. 90–378 added subsec. (g).

1962—Subsec. (a). Pub. L. 87–653, § 1(d), substituted ''subsections (b)–(f)'' for ''subsections (b)–(e)''.

Subsec. (f). Pub. L. 87–653, § 1(e), added subsec. (f).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. B, title XXVIII, § 2801(b), Dec. 31, 2011, 125 Stat. 1684, provided that: ''Subsection (c) of section 2306 of title 10, United States Code, as added by subsection (a), shall apply with respect to any contract entered into by the United States in connection with a military construction project or a military family housing project after the date of the enactment of this Act [Dec. 31, 2011].''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 101(c) [title X, § 952(b)(1)] of Pub. L. 99–500 and Pub. L. 99–591, and section 952(b)(1) of Pub. L. 99–661 applicable with respect to contracts or modifications on contracts entered into after end of 120-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 952(d) of Pub. L. 99–661, set out as a note under section 2306a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

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.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653 see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

TRANSITION PROVISION

Pub. L. 101–189, div. A, title VIII, § 805(c), Nov. 29, 1989, 103 Stat. 1489, provided that: ''Subparagraph (C) of paragraph (9) of section 2306(h) of title 10, United States Code, as added by subsection (a), does not apply to programs that are under a multiyear contract on the date of the enactment of this Act [Nov. 29, 1989].''

DETERMINATION OF CONTRACT TYPE FOR DEVELOPMENT PROGRAMS

Pub. L. 109–364, div. A, title VIII, § 818(b)–(e), Oct. 17, 2006, 120 Stat. 2329, 2330, provided that:

''(b) MODIFICATION OF REGULATIONS.—Not later than 120 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall modify the regulations of the Department of Defense regarding the determination of contract type for development programs.

''(c) ELEMENTS.—As modified under subsection (b), the regulations shall require the Milestone Decision Authority for a major defense acquisition program to select the contract type for a development program at the time of a decision on Milestone B approval (or Key Decision Point B approval in the case of a space program) that is consistent with the level of program risk for the program. The Milestone Decision Authority may select—

''(1) a fixed-price type contract (including a fixed price incentive contract); or

''(2) a cost type contract.

''(d) CONDITIONS WITH RESPECT TO AUTHORIZATION OF COST TYPE CONTRACT.—As modified under subsection (b), the regulations shall provide that the Milestone Decision Authority may authorize the use of a cost type contract under subsection (c) for a development program only upon a written determination that—

''(1) the program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

''(2) the complexity and technical challenge of the program is not the result of a failure to meet the requirements established in section 2366a of title 10, United States Code.

''(e) JUSTIFICATION FOR SELECTION OF CONTRACT TYPE.—As modified under subsection (b), the regulations shall require the Milestone Decision Authority to document the basis for the contract type selected for a program. The documentation shall include an explanation of the level of program risk for the program and, if the Milestone Decision Authority determines that the level of program risk is high, the steps that have been taken to reduce program risk and reasons for proceeding with Milestone B approval despite the high level of program risk.''

MULTIYEAR PROCUREMENT AUTHORITY; REQUESTS FOR RELIEF

Pub. L. 100–526, title I, § 104(a), Oct. 24, 1988, 102 Stat. 2624, which provided that if for any fiscal year a multiyear contract was to be entered into under 10 U.S.C. 2306(h) was authorized by law for a particular procurement program and that authorization was subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appeared (after negotiations with contractors) that such savings could not be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President was to submit to Congress a request for relief from the specified cost savings that was to be achieved through multiyear contracting for that program and that any such request by the President was to include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions, was repealed and restated as subsec. (h)(11) of this section by Pub. L. 101–189, § 805(b), (c).

TECHNICAL DATA AND COMPUTER SOFTWARE PACKAGES; PROCUREMENT; CONTRACTING PERIOD; DEFERRED ORDERING CLAUSE; EXEMPTIONS; REPORT TO CONGRESSIONAL COMMITTEES; DEFINITIONS

Pub. L. 94–361, title VIII, § 805, July 14, 1976, 90 Stat. 932, required that military contracts entered into during Oct. 1, 1976 to Sept. 30, 1978 for development or procurement of a major system include a deferred ordering clause with an option to purchase from the contractor technical data and computer software packages relating to the system, directed that such clause require such packages to be sufficiently detailed so as to enable procurement of such system or subsystem from another contractor, authorized that a particular contract may be exempted from the deferred ordering clause if the procuring authority reports to the House and Senate Committees on Armed Services his intent to so contract with an explanation for the exemption, and set out definitions for ''major system'', ''deferred ordering'', and ''technical data''.

§ 2306a. Cost or pricing data: truth in negotiations

(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

(i) in the case of a prime contract entered into after December 5, 1990, the price of the contract to the United States is expected to exceed $500,000; and

(ii) in the case of a prime contract entered into on or before December 5, 1990, the price of the contract to the United States is expected to exceed $100,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed $500,000;

(ii) in the case of a change or modification made after December 5, 1991, to a prime contract that was entered into on or before December 5, 1990, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $500,000; and

(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $100,000.

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and—

(i) in the case of a subcontract under a prime contract referred to in subparagraph

(A)(i), the price of the subcontract is expected to exceed $500,000;

(ii) in the case of a subcontract entered into after December 5, 1991, under a prime contract that was entered into on or before December 5, 1990, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $500,000; and

(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $100,000.

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed $500,000; and

(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $100,000.

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) A waiver of requirements for submission of certified cost or pricing data that is granted under subsection (b)(1)(C) in the case of a contract or subcontract does not waive the requirement under paragraph (1)(C) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before December 5, 1990, the head of the agency that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

(A) for which the price agreed upon is based on—

(i) adequate price competition; or

(ii) prices set by law or regulation;

(B) for the acquisition of a commercial item;

(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination; or

(D) to the extent such data—

(i) relates to an offset agreement in connection with a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm; and

(ii) does not relate to a contract or subcontract under the offset agreement for work performed in such foreign country or by such foreign firm that is directly related to the weapon system or defense-related item being purchased under the contract.

(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if—

(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(3) NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL ITEMS.—(A) The exception in paragraph (1)(B) does not apply to cost or pricing data on noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than the amount specified in subsection (a)(1)(A)(i), as adjusted from time to time under subsection (a)(7), or 5 percent of the total price of the contract (at the time of contract award), whichever is greater.

(B) In this paragraph, the term ''noncommercial modification'', with respect to a

commercial item, means a modification of such item that is not a modification described in section 103(3)(A) of title 41.

(C) Nothing in subparagraph (A) shall be construed—

(i) to limit the applicability of the exception in subparagraph (A) or (C) of paragraph (1) to cost or pricing data on a noncommercial modification of a commercial item; or

(ii) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial item other than the cost and pricing of noncommercial modifications of such item.

(4) COMMERCIAL ITEM DETERMINATION.—(A) For purposes of applying the commercial item exception under paragraph (1)(B) to the required submission of certified cost or pricing data, the contracting officer may presume that a prior commercial item determination made by a military department, a Defense Agency, or another component of the Department of Defense shall serve as a determination for subsequent procurements of such item.

(B) If the contracting officer does not make the presumption described in subparagraph (A) and instead chooses to proceed with a procurement of an item previously determined to be a commercial item using procedures other than the procedures authorized for the procurement of a commercial item, the contracting officer shall request a review of the commercial item determination by the head of the contracting activity.

(C) Not later than 30 days after receiving a request for review of a commercial item determination under subparagraph (B), the head of a contracting activity shall—

(i) confirm that the prior determination was appropriate and still applicable; or

(ii) issue a revised determination with a written explanation of the basis for the revision.

(5) A contracting officer shall consider evidence provided by an offeror of recent purchase prices paid by the Government for the same or similar commercial items in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison after considering the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased or applicable terms and conditions.

(c) COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—

(1) AUTHORITY TO REQUIRE SUBMISSION.—Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

(2) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

(3) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this paragraph.

(d) SUBMISSION OF OTHER INFORMATION.—

(1) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement. If the contracting officer determines that the offeror does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price.

(2) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

(A) Reasonable limitations on requests for sales data relating to commercial items.

(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(C) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude

any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—

(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(i) was the sole source of the property or services procured; or

(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if—

(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if—

(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or

(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

(A) for interest on the amount of such overpayment, to be computed—

(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the authority provided by section 2313(a)(2) of this title.

(h) DEFINITIONS.—In this section:

(1) COST OR PRICING DATA.—The term ''cost or pricing data'' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

(2) SUBCONTRACT.—The term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(3) COMMERCIAL ITEM.—The term ''commercial item'' has the meaning provided such term in section 103 of title 41.

(Added Pub. L. 99–500, § 101(c) [title X, § 952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, § 101(c) [title X, § 952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 804(a), (b), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 101–510, div. A, title VIII, § 803(a)(1), (d), Nov. 5, 1990, 104 Stat. 1589, 1590; Pub. L. 102–25, title VII, § 701(b), (f)(8), Apr. 6, 1991, 105 Stat. 113, 115; Pub. L. 102–190, div. A, title VIII, § 804(a)–(c)(1), title X, § 1061(a)(9), Dec. 5, 1991, 105 Stat. 1415, 1416, 1472; Pub. L. 103–355, title I, §§ 1201–1209, Oct. 13, 1994, 108 Stat. 3273–3277; Pub. L. 104–106, div. D, title XLII, § 4201(a), title XLIII, § 4321(a)(2), (b)(7), Feb. 10, 1996, 110 Stat. 649, 671, 672; Pub. L. 104–201, div. A, title X, § 1074(a)(12), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 105–85, div. A, title X, § 1073(a)(46), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 105–261, div. A, title VIII, §§ 805(a), 808(a), Oct. 17, 1998, 112 Stat. 2083, 2085; Pub. L. 108–375, div. A, title VIII, § 818(a), Oct. 28, 2004, 118 Stat. 2015; Pub. L. 110–181, div. A, title VIII, § 814, Jan. 28, 2008, 122 Stat. 222; Pub. L. 111–350, § 5(b)(15), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 113–291, div. A, title X, § 1071(a)(3), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, §§ 812, 851(b), 852(e), 853, Nov. 25, 2015, 129 Stat. 891, 916, 918, 919.)

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in subsec. (f)(1)(A)(ii), is classified to section 6621 of Title 26, Internal Revenue Code.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2015—Subsec. (b)(1)(D). Pub. L. 114–92, § 812, added subpar. (D).

Subsec. (b)(4). Pub. L. 114–92, § 851(b), added par. (4).

Subsec. (b)(5). Pub. L. 114–92, § 853, added par. (5).

Subsec. (d)(1). Pub. L. 114–92, § 852(e), inserted at end ''If the contracting officer determines that the offeror does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price.''

2014—Subsec. (b)(3)(B). Pub. L. 113–291 substituted ''section 103(3)(A) of title 41'' for ''section 4(12)(C)(i) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(C)(i))''.

2011—Subsec. (h)(3). Pub. L. 111–350 substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

2008—Subsec. (b)(3)(A). Pub. L. 110–181 substituted ''the amount specified in subsection (a)(1)(A)(i), as adjusted from time to time under subsection (a)(7),'' for ''$500,000'' and inserted ''(at the time of contract award)'' after ''total price of the contract''.

2004—Subsec. (b)(3). Pub. L. 108–375 added par. (3).

1998—Subsec. (a)(5). Pub. L. 105–261, § 805(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''For purposes of paragraph (1)(C), a contractor or subcontractor granted a waiver under subsection (b)(1)(C) shall be considered as having been required to make available cost or pricing data under this section.''

Subsec. (d)(1). Pub. L. 105–261, § 808(a), substituted ''the contracting officer shall require that the data submitted'' for ''the data submitted shall''.

1997—Subsec. (a)(5). Pub. L. 105–85 substituted ''subsection (b)(1)(C)'' for ''subsection (b)(1)(B)''.

1996—Subsec. (b). Pub. L. 104–106, § 4321(a)(2), made technical correction to directory language of Pub. L. 103–355, § 1202(a). See 1994 Amendment note below.

Pub. L. 104–106, § 4201(a)(1), amended subsec. (b) generally, revising and restating as pars. (1) and (2) the provisions of former pars. (1) and (2) and striking out par. (3).

Subsec. (c). Pub. L. 104–106, § 4201(a)(1), amended subsec. (c) generally, revising and restating as subsec. (c) the provisions of former subsec. (c)(1).

Subsec. (d). Pub. L. 104–106, § 4321(b)(7)(A), which directed amendment of subsec. (d)(2)(A)(ii), by inserting ''to'' after ''The information referred'', could not be executed because subsec. (d)(2)(A) did not contain a cl. (ii) or the language ''The information referred'' subsequent to amendment by Pub. L. 104–106, § 4201(a)(1). See below.

Pub. L. 104–106, § 4201(a)(1), amended subsec. (d) generally, revising and restating as pars. (1) and (2) provisions of former subsecs. (c)(2) and (d)(2), (4) and striking out provisions of former subsec. (d)(1), (3) relating to procurements based on adequate price competition and authority to audit.

Subsec. (e)(4)(B)(ii). Pub. L. 104–106, § 4321(b)(7)(B), struck out second comma after ''parties''.

Subsec. (h). Pub. L. 104–106, § 4201(a)(2), redesignated subsec. (i) as (h) and struck out former subsec. (h) which read as follows: ''REQUIRED REGULATIONS.—The Federal Acquisition Regulation shall contain provisions concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed the applicable threshold amount set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.''

Subsec. (h)(3). Pub. L. 104–201 inserted ''(41 U.S.C. 403(12))'' before period at end.

Subsec. (i). Pub. L. 104–106, § 4201(a)(2)(B), redesignated subsec. (i) as (h).

Subsec. (i)(3). Pub. L. 104–106, § 4321(b)(7)(C), which directed amendment of subsec. (i)(3) by inserting ''(41 U.S.C. 403(12))'' before period at end, could not be executed because section did not contain a subsec. (i) subsequent to the amendment by Pub. L. 104–106, § 4201(a)(2)(B), redesignating subsec. (i) as (h). See above.

1994—Subsec. (a)(1)(A)(i). Pub. L. 103–355, § 1201(a)(1), struck out ''and before January 1, 1996,'' after ''December 5, 1990,''.

Subsec. (a)(1)(A)(ii). Pub. L. 103–355, § 1201(a)(2), struck out ''or after December 31, 1995,'' after ''December 5, 1990,''.

Subsec. (a)(5). Pub. L. 103–355, § 1202(b), substituted ''subsection (b)(1)(B)'' for ''subsection (b)(2)''.

Subsec. (a)(6). Pub. L. 103–355, § 1201(c), struck out subpar. (A) designation and subpar. (B) which read as follows: ''The head of an agency is not required to modify a contract under subparagraph (A) if that head of an agency determines that the submission of cost or pricing data with respect to that contract should be required under subsection (c).''

Subsec. (a)(7). Pub. L. 103–355, § 1201(b), added par. (7).

Subsec. (b). Pub. L. 103–355, § 1202(a), as amended by Pub. L. 104–106, § 4321(a)(2), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''This section need not be applied to a contract or subcontract—

''(1) for which the price agreed upon is based on—

''(A) adequate price competition;

''(B) established catalog or market prices of commercial items sold in substantial quantities to the general public; or

''(C) prices set by law or regulation; or

''(2) in an exceptional case when the head of the agency determines that the requirements of this section may be waived and states in writing his reasons for such determination.''

Subsec. (c). Pub. L. 103–355, §1203, amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''When cost or pricing data are not required to be submitted by subsection (a), such data may nevertheless be required to be submitted by the head of the agency if the head of the agency determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract. In any case in which the head of the agency requires such data to be submitted under this subsection, the head of the agency shall document in writing the reasons for such requirement.''

Subsec. (d). Pub. L. 103–355, §1204, added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 103–355, §1204(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(4)(A)(ii), (B)(ii). Pub. L. 103–355, §1207, inserted ''or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties,'' after ''(or price of the modification)''.

Subsec. (f). Pub. L. 103–355, §1204(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 103–355, §1209, struck out ''with the Department of Defense'' before ''subject to this section'' in introductory provisions.

Subsec. (g). Pub. L. 103–355, §1205, added subsec. (g) and struck out heading and text of former subsec. (g). Text read as follows:

''(1) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section with respect to a contract or subcontract, the head of the agency, acting through any authorized representative of the head of the agency who is an employee of the United States or a member of the armed forces, shall have the right to examine all records of the contractor or subcontractor related to—

''(A) the proposal for the contract or subcontract;

''(B) the discussions conducted on the proposal;

''(C) pricing of the contract or subcontract; or

''(D) performance of the contract or subcontract.

''(2) The right of the head of an agency under paragraph (1) shall expire three years after final payment under the contract or subcontract.

''(3) In this subsection, the term 'records' includes books, documents, and other data.''

Pub. L. 103–355, §1204(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 103–355, §1206, added subsec. (h).

Subsec. (i). Pub. L. 103–355, §1208, amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ''In this section, the term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.''

Pub. L. 103–355, §1204(1), redesignated subsec. (g) as (i).

1991—Subsec. (a)(1)(A). Pub. L. 102–190, §804(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of the contract if the price of the contract to the United States is expected to exceed $500,000 or, in the case of a contract to be awarded after December 31, 1995, $100,000.''

Subsec. (a)(1)(B). Pub. L. 102–190, §804(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The contractor for a contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected to exceed the dollar amount applicable under subparagraph (A) to that contract (or such lesser amount as may be prescribed by the head of the agency).''

Pub. L. 102–25, §701(b)(1), substituted ''the dollar amount applicable under subparagraph (A) to that contract'' for ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to a contract to be made after December 31, 1995, $100,000''.

Subsec. (a)(1)(C). Pub. L. 102–190, §804(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if—

''(i) the price of the subcontract is expected to exceed the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract; and

''(ii) the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section.''

Subsec. (a)(1)(C)(i). Pub. L. 102–25, §701(b)(2), substituted ''the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract'' for ''$500,000 or, in the case of a subcontract to be awarded after December 31, 1995, $100,000''.

Subsec. (a)(1)(D). Pub. L. 102–190, §804(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if the price adjustment is expected to exceed the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract (or such lesser amount as may be prescribed by the head of the agency).''

Pub. L. 102–25, §701(b)(3), substituted ''the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract'' for ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to be made after December 31, 1995, $100,000''.

Subsec. (a)(5). Pub. L. 102–190, §804(c)(1), substituted ''paragraph (1)(C)'' for ''paragraph (1)(C)(ii)''.

Subsec. (a)(6). Pub. L. 102–190, §804(b), added par. (6).

Subsec. (e)(1)(A)(i). Pub. L. 102–25, §701(f)(8), which directed the substitution of ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', could not be executed because ''Internal Revenue Code of 1954'' does not appear.

Subsec. (e)(1)(A)(ii). Pub. L. 102–190, §1061(a)(9), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1990—Subsec. (a)(1)(A). Pub. L. 101–510, §803(a)(1)(A), substituted ''$500,000 or, in the case of a contract to be awarded after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(B). Pub. L. 101–510, §803(a)(1)(B), substituted ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to a contract to be made after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(C)(i). Pub. L. 101–510, §803(a)(1)(C), substituted ''$500,000 or, in the case of a subcontract to be awarded after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(D). Pub. L. 101–510, §803(a)(1)(D), substituted ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to be made after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (c). Pub. L. 101–510, §803(d), inserted at end ''In any case in which the head of the agency requires

such data to be submitted under this subsection, the head of the agency shall document in writing the reasons for such requirement.''

1987—Subsec. (a)(5). Pub. L. 100–180, § 804(b)(1), substituted ''a waiver under subsection (b)(2)'' for ''such a waiver'', and struck out first sentence authorizing head of an agency to waive requirement under this subsection for contractor, subcontractor, or offeror to submit cost or pricing data.

Subsec. (e)(2). Pub. L. 100–180, § 804(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided under subsection (d), the liability of a contractor under this subsection shall not be affected by the contractor's refusal to submit a certification under subsection (a)(2) with respect to the cost or pricing data involved.''

Subsec. (g). Pub. L. 100–180, § 804(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''In this section, the term 'cost or pricing data' means all information that is verifiable and that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title VIII, § 818(b), Oct. 28, 2004, 118 Stat. 2016, as amended by Pub. L. 109–364, div. A, title X, § 1071(g)(11), Oct. 17, 2006, 120 Stat. 2403, provided that: ''Paragraph (3) of subsection (b) of section 2306a of title 10, United States Code (as added by subsection (a)), shall take effect on June 1, 2005, and shall apply with respect to offers submitted, and to modifications of contracts or subcontracts made, on or after that date.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by sections 4201(a) and 4321(b)(7) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

Pub. L. 104–106, div. D, title XLIII, § 4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VIII, § 803(a)(2), Nov. 5, 1990, 104 Stat. 1590, as amended by Pub. L. 102–25, title VII, § 704(a)(4), Apr. 6, 1991, 105 Stat. 118, provided that the amendments to this section by Pub. L. 101–510 would apply to contracts entered into after Dec. 5, 1990, subcontracts under such contracts, and modifications or changes to such contracts and subcontracts, prior to repeal by Pub. L. 102–190, div. A, title VIII, § 804(c)(2), Dec. 5, 1991, 105 Stat. 1416.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VIII, § 804(c), Dec. 4, 1987, 101 Stat. 1125, provided that:

''(1) Subsection (a) [amending this section] shall apply to any contract, or modification of a contract, entered into after the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].

''(2) The amendments made by subsection (b) [amending this section] shall apply with respect to contracts, or modifications of contracts, entered into after the end of the 120-day period beginning on October 18, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 952(d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, Pub. L. 99–591, § 101(c) [title X, § 952(d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(d), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) Except as provided in paragraph (2), section 2306a of title 10, United States Code (as added by subsection (a)), and the amendment and repeal made by subsection (b) [amending section 2306 of this title and repealing a provision set out as a note under section 2304 of this title], shall apply with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].

''(2) Subsection (e) of such section shall apply with respect to contracts or modifications on contracts entered into after November 7, 1985.''

REGULATIONS

Pub. L. 114–92, div. A, title VIII, § 851(d), Nov. 25, 2015, 129 Stat. 917, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Defense Federal Acquisition Regulation Supplement shall be updated to reflect the requirements of this section [enacting section 2380 of this title, amending this section, and enacting provisions set out as notes under this section] and the amendments made by this section.''

Pub. L. 101–510, div. A, title VIII, § 803(c), Nov. 5, 1990, 104 Stat. 1590, directed Secretary of Defense to prescribe regulations identifying type of procurements for which contracting officers should consider requiring submission of certified cost or pricing data under subsec. (c) of this section, and also directed Secretary to prescribe regulations concerning types of information that offerors had to submit for contracting officer to consider in determining whether price of procurement to Government was fair and reasonable when certified cost or pricing data were not required to be submitted under this section because price of procurement to the United States was not expected to exceed $500,000, such information, at minimum, to include appropriate information on prices at which such offeror had previously sold same or similar products, with such regulations to be prescribed not later than six months after Nov. 5, 1990, prior to repeal by Pub. L. 103–355, title I, § 1210, Oct. 13, 1994, 108 Stat. 3277.

CONSTRUCTION

Pub. L. 114–92, div. A, title VIII, § 851(e), Nov. 25, 2015, 129 Stat. 917, provided that: ''Nothing in this section [enacting section 2380 of this title, amending this section, and enacting provisions set out as notes under this section] or the amendments made by this section shall be construed to preclude the contracting officer for the procurement of a commercial item from requiring the contractor to supply information that is sufficient to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement.''

PILOT PROGRAM FOR STREAMLINING AWARDS FOR INNOVATIVE TECHNOLOGY PROJECTS

Pub. L. 114–92, div. A, title VIII, § 873(a)–(d), Nov. 25, 2015, 129 Stat. 939, 940, provided that:

''(a) EXCEPTION FROM CERTIFIED COST AND PRICING DATA REQUIREMENTS.—The requirements under section 2306a(a) of title 10, United States Code, shall not apply to a contract, subcontract, or modification of a contract or subcontract valued at less than $7,500,000 awarded to a small business or nontraditional defense contractor pursuant to—

''(1) a technical, merit-based selection procedure, such as a broad agency announcement, or

''(2) the Small Business Innovation Research Program,

unless the head of the agency determines that submission of cost and pricing data should be required based

on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

''(b) EXCEPTION FROM RECORDS EXAMINATION REQUIREMENT.—The requirements under subsection (b) of section 2313 of title 10, United States Code, shall not apply to a contract valued at less than $7,500,000 awarded to a small business or nontraditional defense contractor pursuant to—

''(1) a technical, merit-based selection procedure, such as a broad agency announcement, or

''(2) the Small Business Innovation Research Program,

unless the head of the agency determines that auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

''(c) SUNSET.—The exceptions under subsections (a) and (b) shall terminate on October 1, 2020.

''(d) DEFINITIONS.—In this section [enacting this note and amending section 638 of Title 15, Commerce and Trade]:

''(1) SMALL BUSINESS.—The term 'small business' has the meaning given the term 'small business concern' under section 3 of the Small Business Act (15 U.S.C. 632).

''(2) NONTRADITIONAL DEFENSE CONTRACTOR.—The term 'nontraditional defense contractor' has the meaning given that term in section 2302(9) of title 10, United States Code.''

PILOT PROGRAM REGARDING RISK-BASED CONTRACTING FOR SMALLER CONTRACT ACTIONS UNDER THE TRUTH IN NEGOTIATIONS ACT

Pub. L. 114–92, div. A, title VIII, §899, Nov. 25, 2015, 129 Stat. 955, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a pilot program to demonstrate the efficacy of using risk-based techniques in requiring submission of data on a sampling basis for purposes of section 2306a of title 10, United States Code (popularly known as the 'Truth in Negotiations Act').

''(b) INCREASE IN THRESHOLDS.—For purposes of a pilot program under subsection (a), $5,000,000 shall be the threshold applicable to requirements under paragraph (1) of section 2306a(a) of such title, as follows:

''(1) The requirement under subparagraph (A) of such paragraph to submit cost or pricing data for a prime contract entered into during the pilot program period.

''(2) The requirement under subparagraph (B) of such paragraph to submit cost or pricing data for the change or modification to a prime contract made during the pilot program period.

''(3) The requirement under subparagraph (C) of such paragraph to submit cost or pricing data for a subcontract entered into during the pilot program period.

''(4) The requirement under subparagraph (D) of such paragraph to submit cost or pricing data for the change or modification to a subcontract made during the pilot program period.

''(c) RISK-BASED CONTRACTING.—

''(1) AUTHORITY TO REQUIRE SUBMISSION OF COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—Subject to paragraph (4), when certified cost or pricing data are not required to be submitted pursuant to subsection (b) for a contract or subcontract entered into or modified during the pilot program period, such data may nevertheless be required to be submitted by the head of the procuring activity, if the head of the procuring activity—

''(A) determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract; or

''(B) requires the submission of such data in accordance with a risk-based contracting approach established pursuant to paragraph (3).

''(2) WRITTEN DETERMINATION REQUIRED.—In any case in which the head of the procuring activity requires certified cost or pricing data to be submitted under paragraph (1)(A), the head of the procuring activity shall justify in writing the reason for such requirement.

''(3) RISK-BASED CONTRACTING.—The head of an agency shall establish a risk-based sampling approach under which the submission of certified cost or pricing data may be required for a risk-based sample of contracts, the price of which is expected to exceed $750,000 but not $5,000,000. The authority to require certified cost or pricing data under this paragraph shall not apply to any contract of an offeror that has not been awarded, for at least the one-year period preceding the issuance of a solicitation for the contract, any other contract in excess of $5,000,000 under which the offeror was required to submit certified cost or pricing data under section 2306a of title 10, United States Code.

''(4) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this subsection for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of section 2306a(b)(1) of title 10, United States Code.

''(5) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this subsection.

''(d) REPORTS.—Not later than January 1, 2017, and January 1, 2019, 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 activities undertaken under this section.

''(e) DEFINITIONS.—In this section:

''(1) HEAD OF AN AGENCY.—The term 'head of an agency' has the meaning given the term in section 2302 of title 10, United States Code.

''(2) PILOT PROGRAM PERIOD.—The term 'pilot program period' means the period beginning on October 1, 2016, and ending on September 30, 2019.''

GUIDANCE AND TRAINING RELATED TO EVALUATING REASONABLENESS OF PRICE

Pub. L. 112–239, div. A, title VIII, §831, Jan. 2, 2013, 126 Stat. 1842, provided that:

''(a) GUIDANCE.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue guidance on the use of the authority provided by sections 2306a(d) and 2379 of title 10, United States Code. The guidance shall—

''(1) include standards for determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price;

''(2) include standards for determining the extent of uncertified cost information that should be required in cases in which price information is not adequate for evaluating the reasonableness of price;

''(3) ensure that in cases in which such uncertified cost information is required, the information shall be provided in the form in which it is regularly maintained by the offeror in its business operations; and

''(4) provide that no additional cost information may be required by the Department of Defense in any case in which there are sufficient non-Government sales to establish reasonableness of price.

''(b) TRAINING AND EXPERTISE.—Not later than 270 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall develop and begin implementation of a plan of action to—

''(1) train the acquisition workforce on the use of the authority provided by sections 2306a(d) and 2379 of title 10, United States Code, in evaluating reasonableness of price in procurements of commercial items; and

''(2) develop a cadre of experts within the Department of Defense to provide expert advice to the acquisition workforce in the use of the authority provided by such sections in accordance with the guidance issued pursuant to subsection (a).

''(c) DOCUMENTATION REQUIREMENTS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that requests for uncertified cost information for the purposes of evaluating reasonableness of price are sufficiently documented. The Under Secretary shall require that the contract file include, at a minimum, the following:

''(1) A justification of the need for additional cost information.

''(2) A copy of any request from the Department of Defense to a contractor for additional cost information.

''(3) Any response received from the contractor to the request, including any rationale or justification provided by the contractor for a failure to provide the requested information.

''(d) COMPTROLLER GENERAL REVIEW AND REPORT.—

''(1) REVIEW REQUIREMENT.—The Comptroller General of the United States shall conduct a review of data collected pursuant to sections 2306a(d) and 2379 of title 10, United States Code, during the two-year period beginning on the date of the enactment of this Act.

''(2) REPORT REQUIREMENT.—Not later than 180 days after the end of the two-year period referred to in paragraph (1), the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on—

''(A) the extent to which the Department of Defense needed access to additional cost information pursuant to sections 2306a(d) and 2379 of title 10, United States Code, during such two-year period in order to determine price reasonableness;

''(B) the extent to which acquisition officials of the Department of Defense complied with the guidance issued pursuant to subsection (a) during such two-year period;

''(C) the extent to which the Department of Defense needed access to additional cost information during such two-year period to determine reasonableness of price, but was not provided such information by the contractor on request; and

''(D) recommendations for improving evaluations of reasonableness of price by Department of Defense acquisition professionals, including recommendations for any amendments to law, regulations, or guidance.''

PRICE TREND ANALYSIS FOR SUPPLIES AND EQUIPMENT PURCHASED BY THE DEPARTMENT OF DEFENSE

Pub. L. 111–383, div. A, title VIII, § 892, Jan. 7, 2011, 124 Stat. 4310, which provided for the analysis of information on price trends for certain supplies and equipment purchased by the Department of Defense, was repealed by Pub. L. 114–92, div. A, title X, § 1073(f), Nov. 25, 2015, 129 Stat. 996.

GRANTS OF EXCEPTIONS TO COST OR PRICING DATA CERTIFICATION REQUIREMENTS AND WAIVERS OF COST ACCOUNTING STANDARDS

Pub. L. 107–314, div. A, title VIII, § 817, Dec. 2, 2002, 116 Stat. 2610, as amended by Pub. L. 112–81, div. A, title VIII, § 809(a), Dec. 31, 2011, 125 Stat. 1490; Pub. L. 113–291, div. A, title X, § 1071(b)(7), Dec. 19, 2014, 128 Stat. 3507, provided that:

''(a) GUIDANCE FOR EXCEPTIONS IN EXCEPTIONAL CIRCUMSTANCES.—Not later than 60 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall issue guidance on the circumstances under which it is appropriate to grant an exceptional case exception or waiver with respect to certified cost and pricing data and cost accounting standards.

''(b) DETERMINATION REQUIRED FOR EXCEPTIONAL CASE EXCEPTION OR WAIVER.—The guidance shall, at a minimum, include a limitation that a grant of an exceptional case exception or waiver is appropriate with respect to a contract, subcontract, or (in the case of submission of certified cost and pricing data) modification only upon a determination that—

''(1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver;

''(2) the price can be determined to be fair and reasonable without the submission of certified cost and pricing data or the application of cost accounting standards, as the case may be; and

''(3) there are demonstrated benefits to granting the exception or waiver.

''(c) APPLICABILITY OF NEW GUIDANCE.—The guidance issued under subsection (a) shall apply to each exceptional case exception or waiver that is granted on or after the date on which the guidance is issued.

''(d) ANNUAL REPORT ON BOTH COMMERCIAL ITEM AND EXCEPTIONAL CASE EXCEPTIONS AND WAIVERS.—(1) The Secretary of Defense shall transmit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] promptly after the end of each fiscal year a report on commercial item exceptions, and exceptional case exceptions and waivers, described in paragraph (2) that were granted during that fiscal year.

''(2) The report for a fiscal year shall include—

''(A) with respect to any commercial item exception granted in the case of a contract, subcontract, or contract or subcontract modification that is expected to have a price of $15,000,000 or more, an explanation of the basis for the determination that the products or services to be purchased are commercial items, including an identification of the specific steps taken to ensure price reasonableness;

''(B) with respect to any exceptional case exception or waiver granted in the case of a contract or subcontract that is expected to have a value of $15,000,000 or more, an explanation of the basis for the determination described in subsection (b), including an identification of the specific steps taken to ensure that the price was fair and reasonable; and

''(C) with respect to any determination pursuant to section 2304a(d)(3)(D) of title 10, United States Code, that because of exceptional circumstances it is necessary in the public interest to award a task or delivery order contract with an estimated value in excess of $100,000,000 to a single source, an explanation of the basis for the determination.

''(e) DEFINITIONS.—In this section:

''(1) The term 'exceptional case exception or waiver' means either of the following:

''(A) An exception pursuant to section 2306a(b)(1)(C) of title 10, United States Code, relating to submission of certified cost and pricing data.

''(B) A waiver pursuant to section 1502(b)(3)(B) of title 41, United States Code, relating to the applicability of cost accounting standards to contracts and subcontracts.

''(2) The term 'commercial item exception' means an exception pursuant to section 2306a(b)(1)(B) of title 10, United States Code, relating to submission of certified cost and pricing data.''

DEFENSE COMMERCIAL PRICING MANAGEMENT IMPROVEMENT

Pub. L. 105–261, div. A, title VIII, § 803, Oct. 17, 1998, 112 Stat. 2081, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title VIII, § 823, Dec. 2, 2002, 116 Stat. 2615; Pub. L. 109–364, div. A, title VIII, § 819, Oct. 17, 2006, 120 Stat. 2330; Pub. L. 113–291, div. A, title X, § 1071(b)(9), Dec. 19, 2014, 128 Stat. 3507, provided that:

''(a) MODIFICATION OF PRICING REGULATIONS FOR CERTAIN COMMERCIAL ITEMS EXEMPT FROM COST OR PRICING DATA CERTIFICATION REQUIREMENTS.—(1) The Federal Acquisition Regulation issued in accordance with sec-

tions 6 and 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405, 421) [see 41 U.S.C. 1121, 1303] shall be revised to clarify the procedures and methods to be used for determining the reasonableness of prices of exempt commercial items (as defined in subsection (d)).

''(2) The regulations shall, at a minimum, provide specific guidance on—

''(A) the appropriate application and precedence of such price analysis tools as catalog-based pricing, market-based pricing, historical pricing, parametric pricing, and value analysis;

''(B) the circumstances under which contracting officers should require offerors of exempt commercial items to provide—

''(i) information on prices at which the offeror has previously sold the same or similar items; or

''(ii) other information other than certified cost or pricing data;

''(C) the role and responsibility of Department of Defense support organizations in procedures for determining price reasonableness; and

''(D) the meaning and appropriate application of the term 'purposes other than governmental purposes' in section 4(12) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403(12)) [see 41 U.S.C. 103].

''(3) This subsection shall cease to be effective 1 year after the date on which final regulations prescribed pursuant to paragraph (1) take effect.

''(b) UNIFIED MANAGEMENT OF PROCUREMENT OF EXEMPT COMMERCIAL ITEMS.—The Secretary of Defense shall develop and implement procedures to ensure that, whenever appropriate, a single item manager or contracting officer is responsible for negotiating and entering into all contracts from a single contractor for the procurement of exempt commercial items or for the procurement of items in a category of exempt commercial items.

''(c) COMMERCIAL PRICE TREND ANALYSIS.—(1) The Secretary of Defense shall develop and implement procedures that, to the maximum extent that is practicable and consistent with the efficient operation of the Department of Defense, provide for the collection and analysis of information on price trends for categories of exempt commercial items described in paragraph (2).

''(2) A category of exempt commercial items referred to in paragraph (1) consists of exempt commercial items—

''(A) that are in a single Federal Supply Group or Federal Supply Class, are provided by a single contractor, or are otherwise logically grouped for the purpose of analyzing information on price trends; and

''(B) for which there is a potential for the price paid to be significantly higher (on a percentage basis) than the prices previously paid in procurements of the same or similar items for the Department of Defense, as determined by the head of the procuring Department of Defense agency or the Secretary of the procuring military department on the basis of criteria prescribed by the Secretary of Defense.

''(3) The head of a Department of Defense agency or the Secretary of a military department shall take appropriate action to address any unreasonable escalation in prices being paid for items procured by that agency or military department as identified in an analysis conducted pursuant to paragraph (1).

''(4) Not later than April 1 of each of fiscal years 2000 through 2009, the Secretary of Defense 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 analyses of price trends that were conducted by the Secretary of each military department and the Director of the Defense Logistics Agency for categories of exempt commercial items during the preceding fiscal year under the procedures prescribed pursuant to paragraph (1). The report shall include a description of the actions taken by each Secretary and the Director to identify and address any unreasonable price escalation for the categories of items.

''(d) EXEMPT COMMERCIAL ITEMS DEFINED.—For the purposes of this section, the term 'exempt commercial item' means a commercial item that is exempt under subsection (b)(1)(B) of section 2306a of title 10, United States Code, or section 3503(a)(2) of title 41, United States Code, from the requirements for submission of certified cost or pricing data under that section.''

REVIEW BY INSPECTOR GENERAL

Pub. L. 101–510, div. A, title VIII, §803(b), Nov. 5, 1990, 104 Stat. 1590, provided that (1) after increase in threshold for submission of cost or pricing data under subsec. (a) of this section, as amended by section 803(a) of Pub. L. 101–510, had been in effect for three years, Inspector General of Department of Defense was to conduct review of effects of increase in threshold, (2) that such review was to address whether increasing threshold improved acquisition process in terms of reduced paperwork, financial or other savings to government, an increase in number of contractors participating in defense contracting process, and adequacy of information available to contracting officers in cases in which certified cost or pricing data were not required under this section, (3) that Inspector General was to submit to Secretary of Defense a report on review conducted under paragraph (1), with Secretary of Defense required to submit such report to Congress, along with appropriate comments, upon completion of report (and comments) but not later than date on which President submitted budget to Congress pursuant to section 1105 of Title 31, Money and Finance, for fiscal year 1996, prior to repeal by Pub. L. 103–355, title I, §1210, Oct. 13, 1994, 108 Stat. 3277.

DEFINITION OF COMMERCIAL ITEM

Pub. L. 114–92, div. A, title VIII, §851(c), Nov. 25, 2015, 129 Stat. 917, provided that: ''Nothing in this section [enacting section 2380 of this title, amending this section, and enacting provisions set out as notes under this section] or the amendments made by this section shall affect the meaning of the term 'commercial item' under subsection (a)(5) of section 2464 of title 10, United States Code, or any requirement under subsection (a)(3) or subsection (c) of such section.''

§ 2306b. Multiyear contracts: acquisition of property

(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in significant savings of the total anticipated costs of carrying out the program through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

(3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.

(4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

(5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(6) In the case of a purchase by the Department of Defense, that the use of such a con-

tract will promote the national security of the United States.

(7) In the case of a contract in an amount equal to or greater than $500,000,000, that the conditions required by subparagraphs (C) through (F) of subsection (i)(3) will be met, in accordance with the Secretary's certification and determination under such subsection, by such contract.

(b) REGULATIONS.—(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

(2)(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

(B) The Secretary of Homeland Security shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(c) CONTRACT CANCELLATIONS.—The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(d) PARTICIPATION BY SUBCONTRACTORS, VENDORS, AND SUPPLIERS.—In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable—

(1) multiyear contracting under subsection (a) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(e) PROTECTION OF EXISTING AUTHORITY.—The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency—

(1) to provide for competition in the production of items to be delivered under such a contract; or

(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(f) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the event funds are not made available for the continuation of a contract made under this section into a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(g) CONTRACT CANCELLATION CEILINGS EXCEEDING $100,000,000.—(1) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(2) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by subsection (i)(1)(A), give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(h) DEFENSE ACQUISITIONS OF WEAPON SYSTEMS.—In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

(i) DEFENSE ACQUISITIONS SPECIFICALLY AUTHORIZED BY LAW.—(1) In the case of the Department of Defense, a multiyear contract in an amount equal to or greater than $500,000,000 may not be entered into under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act.

(2) In submitting a request for a specific authorization by law to carry out a defense acquisition program using multiyear contract authority under this section, the Secretary of Defense shall include in the request the following:

(A) A report containing preliminary findings of the agency head required in paragraphs (1) through (6) of subsection (a), together with the basis for such findings.

(B) Confirmation that the preliminary findings of the agency head under subparagraph (A) were made after the completion of a cost analysis performed by the Director of Cost Assessment and Program Evaluation for the purpose of section 2334(e)(1) of this title, and that the analysis supports those preliminary findings.

(3) A multiyear contract may not be entered into under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless the Secretary of Defense certifies in writing, not later than 30 days before entry into the contract, that each of the following conditions is satisfied:

(A) The Secretary has determined that each of the requirements in paragraphs (1) through (6) of subsection (a) will be met by such contract and has provided the basis for such determination to the congressional defense committees.

(B) The Secretary's determination under subparagraph (A) was made after completion of a cost analysis conducted on the basis of section 2334(e)(2) of this title, and the analysis supports the determination.

(C) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to section 2433(d) of this title within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded.

(D) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic.

(E) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation.

(F) The contract is a fixed price type contract.

(G) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(4) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that significant savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(5)(A) The Secretary may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

(B) The Secretary may obligate funds appropriated for any fiscal year for advance procurement under a contract for the purchase of property only for the procurement of those long-lead items necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

(6) The Secretary may make the certification under paragraph (3) notwithstanding the fact that one or more of the conditions of such certification are not met, if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification.

(7) The Secretary may not delegate the authority to make the certification under paragraph (3) or the determination under paragraph (6) to an official below the level of Under Secretary of Defense for Acquisition, Technology, and Logistics.

(j) DEFENSE CONTRACT OPTIONS FOR VARYING QUANTITIES.—The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(k) MULTIYEAR CONTRACT DEFINED.—For the purposes of this section, a multiyear contract is a contract for the purchase of property for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(*l*) VARIOUS ADDITIONAL REQUIREMENTS WITH RESPECT TO MULTIYEAR DEFENSE CONTRACTS.—(1)(A) The head of an agency may not initiate a contract described in subparagraph (B) unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(B) Subparagraph (A) applies to the following contracts:

(i) A multiyear contract—

(I) that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract; or

(II) that includes an unfunded contingent liability in excess of $20,000,000.

(ii) Any contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year.

(2) The head of an agency may not initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability.

(3) The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided in an appropriations Act.

(4) Not later than the date of the submission of the President's budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year, shown for each year in the current future-years defense program and in the aggregate over the period of the current future-years defense program:

(A) The amount of total obligational authority under the contract (or contract extension) and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(B) The amount of total obligational authority under all multiyear procurements of the agency concerned (determined without regard to the amount of the multiyear contract (or contract extension)) under multiyear contracts in effect at the time the report is submitted and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(C) The amount equal to the sum of the amounts under subparagraphs (A) and (B), and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(D) The amount of total obligational authority under all Department of Defense multiyear procurements (determined without regard to the amount of the multiyear contract (or contract extension)), including any multiyear contract (or contract extension) that has been authorized by the Congress but not yet entered into, and the percentage that such amount represents of the procurement accounts of the Department of Defense treated in the aggregate.

(5) The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract), the value of which would exceed $500,000,000 (when entered into or when extended, as the case may be), until the Secretary of Defense submits to the congressional defense committees a report containing the information described in paragraph (4) with respect to the contract (or contract extension).

(6) The head of an agency may not terminate a multiyear procurement contract until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(7) The execution of multiyear contracting authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

(8) This subsection does not apply to the National Aeronautics and Space Administration or to the Coast Guard.

(9) In this subsection:

(A) The term ''applicable procurement account'' means, with respect to a multiyear procurement contract (or contract extension), the appropriation account from which payments to execute the contract will be made.

(B) The term ''agency procurement total'' means the procurement accounts of the agency entering into a multiyear procurement contract (or contract extension) treated in the aggregate.

(m) INCREASED FUNDING AND REPROGRAMMING REQUESTS.—Any request for increased funding for the procurement of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary under subsection (i).

(Added Pub. L. 103–355, title I, §1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; amended Pub. L. 104–106, div. A, title XV, §1502(a)(10), div. E, title LVI, §5601(b), Feb. 10, 1996, 110 Stat. 503, 699; Pub. L. 105–85, div. A, title VIII, §806(a)(1), (b)(1), (c), title X, §1073(a)(47), (48)(A), Nov. 18, 1997, 111 Stat. 1834, 1835, 1903; Pub. L. 106–65, div. A, title VIII, §809, title X, §1067(1), Oct. 5, 1999, 113 Stat. 705, 774; Pub. L. 106–398, §1 [[div. A], title VIII, §§802(c), 806], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–207; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VIII, §820(a), Dec. 2, 2002, 116 Stat. 2613; Pub. L. 108–136, div. A, title X, §1043(b)(10), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 108–375, div. A, title VIII, §814(a), title X, §1084(b)(2), Oct. 28, 2004, 118 Stat. 2014, 2060; Pub. L. 110–181, div. A, title VIII, §811(a), Jan. 28, 2008, 122 Stat. 217; Pub. L. 111–23, title I, §101(d)(2), May 22, 2009, 123 Stat. 1709; Pub. L. 113–291, div. A, title VIII, §816(a), (b), Dec. 19, 2014, 128 Stat. 3430, 3432; Pub. L. 114–92, div. A, title VIII, §811, Nov. 25, 2015, 129 Stat. 891.)

AMENDMENTS

2015—Subsecs. (a)(1), (i)(4). Pub. L. 114–92 substituted ''significant'' for ''substantial''.

2014—Subsec. (a)(7). Pub. L. 113–291, §816(b), substituted ''subparagraphs (C) through (F) of subsection (i)(3)'' for ''subparagraphs (C) through (F) of paragraph (1) of subsection (i)''.

Subsec. (i). Pub. L. 113–291, §816(a), amended subsec. (i) generally. Prior to amendment, subsec. (i) related to defense acquisitions specifically authorized by law.

2009—Subsec. (i)(1)(B). Pub. L. 111–23 substituted ''Director of Cost Assessment and Program Analysis'' for ''Cost Analysis Improvement Group of the Department of Defense''.

2008—Subsec. (a)(7). Pub. L. 110–181, §811(a)(1), added par. (7).

Subsec. (i)(1). Pub. L. 110–181, §811(a)(2), (3), inserted ''the Secretary of Defense certifies in writing by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contract that'' after ''unless'' in introductory provisions, added subpars. (A) to (F), redesignated former subpar. (B) as (G), and struck out former subpar. (A) which read as follows: ''The Secretary of Defense certifies to Congress that the current future-years defense program fully funds the support costs associated with the multiyear program.''

Subsec. (i)(5) to (7). Pub. L. 110–181, §811(a)(4), added pars. (5) to (7).

Subsec. (m). Pub. L. 110–181, §811(a)(5), added subsec. (m).

2004—Subsec. (g). Pub. L. 108–375, §814(a)(1), designated existing provisions as par. (1).

Subsec. (g)(1). Pub. L. 108–375, §§814(a)(2), 1084(b)(2), amended par. (1) identically, substituting ''congressional defense committees'' for ''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''.

Subsec. (g)(2). Pub. L. 108–375, §814(a)(3), added par. (2).

2003—Subsec. (*l*)(9), (10). Pub. L. 108–136 redesignated par. (10) as (9) and struck out former par. (9) which read as follows: ''In this subsection, the term 'congressional defense committees' means the following:

''(A) The Committee on Armed Services of the Senate and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

''(B) The Committee on Armed Services of the House of Representatives and the Subcommittee on National Security of the Committee on Appropriations of the House of Representatives.''

2002—Subsec. (b)(2)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Subsec. (i)(4). Pub. L. 107–314 added par. (4).

2000—Subsec. (k). Pub. L. 106–398, §1 [[div. A], title VIII, §802(c)], struck out ''or services'' after ''purchase of property''.

Subsec. (*l*)(4). Pub. L. 106–398, §1 [[div. A], title VIII, §806(1)(A)], in introductory provisions, substituted ''Not later than the date of the submission of the President's budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year'' for ''The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract) until the Secretary of Defense submits to the congressional defense committees a report with respect to that contract (or contract extension) that provides the following information''.

Subsec. (*l*)(4)(B). Pub. L. 106–398, §1 [[div. A], title VIII, §806(1)(B)], substituted ''in effect at the time the report is submitted'' for ''in effect immediately before the contract (or contract extension) is entered into'' in introductory provisions.

Subsec. (*l*)(5) to (10). Pub. L. 106–398, §1 [[div. A], title VIII, §806(2), (3)], added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

1999—Subsec. (g). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Subsec. (*l*)(4) to (7). Pub. L. 106–65, §809(1), (2), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively. Former par. (7) redesignated (8).

Subsec. (*l*)(8). Pub. L. 106–65, §809(1), redesignated par. (7) as (8).

Subsec. (*l*)(8)(B). Pub. L. 106–65, §1067(1), substituted ''Committee on Armed Services'' for ''Committee on National Security''.

Subsec. (*l*)(9). Pub. L. 106–65, §809(3), added par. (9).

1997—Pub. L. 105–85, §1073(a)(48)(A), inserted '': acquisition of property'' in section catchline.

Subsec. (a). Pub. L. 105–85, §806(c)(1), substituted ''finds each of the following:'' for ''finds—'' in introductory provisions, capitalized first letter of first word in pars. (1) to (6), and substituted a period for semicolon at end of pars. (1) to (4) and for ''; and'' at end of par. (5).

Subsec. (d)(1). Pub. L. 105–85, §806(c)(2), substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (i)(1)(A). Pub. L. 105–85, §806(c)(3), substituted ''future-years'' for ''five-year''.

Subsec. (i)(3). Pub. L. 105–85, §806(a)(1), added par. (3).

Subsec. (k). Pub. L. 105–85, §1073(a)(47), substituted ''this section'' for ''this subsection''.

Subsec. (*l*). Pub. L. 105–85, §806(b)(1), added subsec. (*l*).

1996—Subsec. (g). Pub. L. 104–106, §1502(a)(10), substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

Subsecs. (k), (*l*). Pub. L. 104–106, §5601(b), redesignated subsec. (*l*) as (k) and struck out former subsec. (k) which read as follows: ''INAPPLICABILITY TO AUTOMATIC DATA PROCESSING CONTRACTS.—This section does not apply to contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title VIII, §816(c), Dec. 19, 2014, 128 Stat. 3432, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 2014], and shall apply with respect to requests for specific authorization by law to carry out defense acquisition programs using multiyear contract authority that are made on or after that date.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, §811(b), Jan. 28, 2008, 122 Stat. 219, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 28, 2008] and shall apply with respect to multiyear contracts for the purchase of major systems for which legislative authority is requested on or after that date.''

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–314, div. A, title VIII, §820(b), Dec. 2, 2002, 116 Stat. 2614, provided that:

''(1) Paragraph (4) of section 2306b(i) of title 10, United States Code, as added by subsection (a), shall not apply with respect to any contract awarded before the date of the enactment of this Act [Dec. 2, 2002].

''(2) Nothing in this section [amending this section] shall be construed to authorize the expenditure of funds under any contract awarded before the date of the enactment of this Act for any purpose other than the purpose for which such funds have been authorized and appropriated.''

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.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, §806(a)(2), Nov. 18, 1997, 111 Stat. 1834, provided that: ''Paragraph (3) of section 2306b(i) of title 10, United States Code, as added by paragraph (1), shall not apply with respect to a contract authorized by law before the date of the enactment of this Act [Nov. 18, 1997].''

Pub. L. 105–85, div. A, title VIII, §806(b)(2), Nov. 18, 1997, 111 Stat. 1835, provided that: ''The amendment

made by paragraph (1) [amending this section] shall take effect on October 1, 1998.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 5601(b) of Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

MULTIYEAR PROCUREMENT CONTRACTS

Pub. L. 105–56, title VIII, § 8008, Oct. 8, 1997, 111 Stat. 1221, provided that:

''(a) None of the funds provided in this Act [see Tables for classification] shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year, unless the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services and Subcommittee on Defense of the Committee on Appropriations of the Senate] have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

''Funds appropriated in title III of this Act [111 Stat. 1211] may be used for multiyear procurement contracts as follows:

''Apache Longbow radar;

''AV–8B aircraft; and

''Family of Medium Tactical Vehicles.

''(b) None of the funds provided in this Act and hereafter may be used to submit to Congress (or to any committee of Congress) a request for authority to enter into a contract covered by those provisions of subsection (a) that precede the first proviso of that subsection unless—

''(1) such request is made as part of the submission of the President's Budget for the United States Government for any fiscal year and is set forth in the Appendix to that budget as part of proposed legislative language for appropriations bills for the next fiscal year; or

''(2) such request is formally submitted by the President as a budget amendment; or

''(3) the Secretary of Defense makes such request in writing to the congressional defense committees.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 114–113, div. C, title VIII, § 8010, Dec. 18, 2015, 129 Stat. 2352.

Pub. L. 113–235, div. C, title VIII, § 8010, Dec. 16, 2014, 128 Stat. 2253.

Pub. L. 113–76, div. C, title VIII, § 8010, Jan. 17, 2014, 128 Stat. 105.

Pub. L. 113–6, div. C, title VIII, § 8010, Mar. 26, 2013, 127 Stat. 297.

Pub. L. 112–74, div. A, title VIII, § 8010, Dec. 23, 2011, 125 Stat. 806.

Pub. L. 112–10, div. A, title VIII, § 8010, Apr. 15, 2011, 125 Stat. 57.

Pub. L. 111–118, div. A, title VIII, § 8011, Dec. 19, 2009, 123 Stat. 3428, as amended by Pub. L. 111–212, title I, § 305, July 29, 2010, 124 Stat. 2311.

Pub. L. 110–329, div. C, title VIII, § 8011, Sept. 30, 2008, 122 Stat. 3621.

Pub. L. 110–116, div. A, title VIII, § 8010, Nov. 13, 2007, 121 Stat. 1315.

Pub. L. 109–289, div. A, title VIII, § 8008, Sept. 29, 2006, 120 Stat. 1273.

Pub. L. 109–148, div. A, title VIII, § 8008, Dec. 30, 2005, 119 Stat. 2698.

Pub. L. 108–287, title VIII, § 8008, Aug. 5, 2004, 118 Stat. 970.

Pub. L. 108–87, title VIII, § 8008, Sept. 30, 2003, 117 Stat. 1072.

Pub. L. 107–248, title VIII, § 8008, Oct. 23, 2002, 116 Stat. 1537.

Pub. L. 107–117, div. A, title VIII, § 8008, Jan. 10, 2002, 115 Stat. 2248.

Pub. L. 106–259, title VIII, § 8008, Aug. 9, 2000, 114 Stat. 675.

Pub. L. 106–79, title VIII, § 8008, Oct. 25, 1999, 113 Stat. 1232.

Pub. L. 105–262, title VIII, § 8008, Oct. 17, 1998, 112 Stat. 2298.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8009], Sept. 30, 1996, 110 Stat. 3009–71, 3009–89.

Pub. L. 104–61, title VIII, § 8010, Dec. 1, 1995, 109 Stat. 653.

Pub. L. 103–335, title VIII, § 8010, Sept. 30, 1994, 108 Stat. 2618.

Pub. L. 103–139, title VIII, § 8011, Nov. 11, 1993, 107 Stat. 1439.

Pub. L. 102–396, title IX, § 9013, Oct. 6, 1992, 106 Stat. 1903.

Pub. L. 102–172, title VIII, § 8013, Nov. 26, 1991, 105 Stat. 1173.

Pub. L. 101–511, title VIII, § 8014, Nov. 5, 1990, 104 Stat. 1877.

Pub. L. 101–165, title IX, § 9021, Nov. 21, 1989, 103 Stat. 1133.

§ 2306c. Multiyear contracts: acquisition of services

(a) AUTHORITY.—Subject to subsections (d) and (e), the head of an agency may enter into contracts for periods of not more than five years for services described in subsection (b), and for items of supply related to such services, for which funds would otherwise be available for obligation only within the fiscal year for which appropriated whenever the head of the agency finds that—

(1) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(2) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(b) COVERED SERVICES.—The authority under subsection (a) applies to the following types of services:

(1) Operation, maintenance, and support of facilities and installations.

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(3) Specialized training necessitating high quality instructor skills (for example, pilot and air crew members; foreign language training).

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

(5) Environmental remediation services for—

(A) an active military installation;

(B) a military installation being closed or realigned under a base closure law; or

(C) a site formerly used by the Department of Defense.

(c) APPLICABLE PRINCIPLES.—In entering into multiyear contracts for services under the authority of this section, the head of the agency shall be guided by the following principles:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(2) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(3) Consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(d) RESTRICTIONS APPLICABLE GENERALLY.—(1) The head of an agency may not initiate under this section a contract for services that includes an unfunded contingent liability in excess of $20,000,000 unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(2) The head of an agency may not initiate a multiyear contract for services under this section if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided by law.

(3) The head of an agency may not terminate a multiyear procurement contract for services until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(4) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(5) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (4), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(e) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING AFTER FIRST YEAR.—In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(f) MULTIYEAR CONTRACT DEFINED.—For the purposes of this section, a multiyear contract is a contract for the purchase of services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

[(g) Repealed. Pub. L. 108–136, div. A, title VIII, § 843(a), Nov. 24, 2003, 117 Stat. 1553.]

(h) MILITARY INSTALLATION DEFINED.—In this section, the term ''military installation'' has the meaning given such term in section 2801(c)(4) of this title.

(Added Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203; amended Pub. L. 107–314, div. A, title VIII, §§ 811(a), 827, Dec. 2, 2002, 116 Stat. 2608, 2617; Pub. L. 108–136, div. A, title VIII, § 843(a), title X, § 1043(c)(1), Nov. 24, 2003, 117 Stat. 1553, 1611; Pub. L. 108–375, div. A, title VIII, § 814(b), Oct. 28, 2004, 118 Stat. 2014; Pub. L. 111–84, div. A, title X, § 1073(a)(22), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Subsec. (h). Pub. L. 111–84 substituted ''section 2801(c)(4)'' for ''section 2801(c)(2)''.

2004—Subsec. (d)(1), (3), (4). Pub. L. 108–375, § 814(b)(1), substituted ''congressional defense committees'' for ''committees of Congress named in paragraph (5)''.

Subsec. (d)(5). Pub. L. 108–375, § 814(b)(2), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The committees of Congress referred to in paragraphs (1), (3), and (4) are as follows:

''(A) The Committee on Armed Services and the Committee on Appropriations of the Senate.

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

2003—Subsec. (g). Pub. L. 108–136, § 843(a), struck out heading and text of subsec. (g). Text read as follows:

''(1) The authority and restrictions of this section, including the authority to enter into contracts for periods of not more than five years, shall apply with respect to task order and delivery order contracts entered into under the authority of section 2304a, 2304b, or 2304c of this title.

''(2) The regulations implementing this subsection shall establish a preference that, to the maximum extent practicable, multi-year requirements for task order and delivery order contracts be met with separate awards to two or more sources under the authority of section 2304a(d)(1)(B) of this title.''

Subsec. (h). Pub. L. 108–136, § 1043(c)(1), substituted ''MILITARY INSTALLATION DEFINED.—In this section, the term'' for ''ADDITIONAL DEFINITIONS.—In this section:

''(1) The term 'base closure law' has the meaning given such term in section 2667(h)(2) of this title.

''(2) The term''.

2002—Subsec. (b)(5). Pub. L. 107–314, § 827(a), added par. (5).

Subsec. (g). Pub. L. 107–314, § 811(a), added subsec. (g).

Subsec. (h). Pub. L. 107–314, § 827(b), added subsec. (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VIII, § 811(b), Dec. 2, 2002, 116 Stat. 2608, as amended by Pub. L. 108–11, title I, § 1315, Apr. 16, 2003, 117 Stat. 570, provided that: ''Subsection (g) of section 2306c of title 10, United States Code, as added by subsection (a), shall apply to all task order and delivery order contracts entered into on or after January 1, 2004.''

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, provided that: ''Section 2306c of title 10, United States Code (as added by subsection (a)), shall apply with respect to contracts for which solicitations of offers are issued after the date of the enactment of this Act [Oct. 30, 2000].''

§ 2307. Contract financing

(a) PAYMENT AUTHORITY.—The head of any agency may—

(1) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (a) shall be made on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(c) PAYMENT AMOUNT.—Payments made under subsection (a) may not exceed the unpaid contract price.

(d) SECURITY FOR ADVANCE PAYMENTS.—Advance payments made under subsection (a) may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(2) The Secretary shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(3) This subsection applies to any contract in an amount greater than $25,000.

(f) CONDITIONS FOR PAYMENTS FOR COMMERCIAL ITEMS.—(1) Payments under subsection (a) for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States. The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) Advance payments made under subsection (a) for commercial items may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(3) The conditions of subsections (d) and (e) need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to paragraphs (1) and (2).

(g) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—

(A) 95 percent, in the case of a firm considered to be a small business; and

(B) 90 percent, in the case of any other firm.

(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.

(3) The Secretary of the Navy shall provide, in each contract for construction or conversion of

a naval vessel, that, when partial, progress, or other payments are made under such contract, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.

(h) VESTING OF TITLE IN THE UNITED STATES.—If a contract paid by a method authorized under subsection (a)(1) provides for title to property to vest in the United States, the title to the property shall vest in accordance with the terms of the contract, regardless of any security interest in the property that is asserted before or after the contract is entered into.

(i) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the head of the agency reduce or suspend further payments to such contractor.

(2) The head of an agency receiving a recommendation under paragraph (1) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

(3) The extent of any reduction or suspension of payments by the head of an agency under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

(4) A written justification for each decision of the head of an agency whether to reduce or suspend payments under paragraph (2) and for each recommendation received by such agency head in connection with such decision shall be prepared and be retained in the files of such agency.

(5) The head of an agency shall prescribe procedures to ensure that, before such agency head decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the head of the agency in response to such proposed reduction or suspension.

(6) Not later than 180 days after the date on which the head of an agency reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of such agency shall—

(A) review the determination of fraud on which the reduction or suspension is based; and

(B) transmit a recommendation to the head of such agency whether the suspension or reduction should continue.

(7) The head of an agency shall prepare for each year a report containing the recommendations made by the remedy coordination official of that agency to reduce or suspend payments under paragraph (2), the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. The Secretary of each military department shall transmit the annual report of such department to the Secretary of Defense. Each such report shall be available to any member of Congress upon request.

(8) This subsection applies to the agencies named in paragraphs (1), (2), (3), (4), and (6) of section 2303(a) of this title.

(9) The head of an agency may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.

(10) In this subsection, the term ''remedy coordination official'', with respect to an agency, means the person or entity in that agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85–800, §9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 93–155, title VIII, §807(c), Nov. 16, 1973, 87 Stat. 616; Pub. L. 100–370, §1(f)(1)(A), July 19, 1988, 102 Stat. 846; Pub. L. 101–510, div. A, title VIII, §836(a), (b), title XIII, §1322(a)(4), Nov. 5, 1990, 104 Stat. 1615, 1616, 1671; Pub. L. 102–25, title VII, §701(d)(4), (j)(2)(A), Apr. 6, 1991, 105 Stat. 114, 116; Pub. L. 102–190, div. A, title X, §1061(a)(10), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title X, §1052(24), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title II, §2001(a)–(g), Oct. 13, 1994, 108 Stat. 3301, 3302; Pub. L. 105–85, div. A, title VIII, §802, Nov. 18, 1997, 111 Stat. 1831; Pub. L. 106–391, title III, §306, Oct. 30, 2000, 114 Stat. 1592.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2307(a)	41:154(a).	Feb. 19, 1948, ch. 65, §5, 62 Stat. 23.
2307(b)	41:154 (less (a)).	

In subsection (a), the words ''and appropriate'' are omitted as surplusage. The words ''whether or not the contract previously provided for such payments'' are substituted for the words ''heretofore or hereafter executed''.

In subsection (b), the words ''under subsection (a)'' are inserted for clarity. The words ''provide for'' are substituted for the words ''include as security provision for''. The words ''United States'' are substituted for the word ''Government''.

1988 ACT

Subsection (e) is based on Pub. L. 99–145, title IX, §916, Nov. 8, 1985, 99 Stat. 688.

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (i)(9), is set out in section 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in subsec. (g) of this section were contained in sections 7312, 7364, and 7521 of this title prior to repeal by Pub. L. 103–355, §2001(j)(1).

AMENDMENTS

2000—Subsec. (i)(8). Pub. L. 106–391 substituted ''(4), and (6)'' for ''and (4)''.

1997—Subsecs. (h), (i). Pub. L. 105–85 added subsec. (h) and redesignated former subsec. (h) as (i).

1994—Pub. L. 103–355, §2001(a)(1), substituted ''Contract financing'' for ''Advance payments'' in section catchline.

Subsec. (a). Pub. L. 103–355, §2001(a)(2), inserted heading.

Subsec. (a)(2). Pub. L. 103–355, §2001(c), struck out ''bid'' before ''solicitations''.

Subsec. (b). Pub. L. 103–355, §2001(a)(7), (b), added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 103–355, §2001(a)(3), inserted heading.

Subsec. (c). Pub. L. 103–355, §2001(a)(7), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 103–355, §2001(a)(4), inserted heading.

Subsec. (d). Pub. L. 103–355, §2001(d), inserted before period at end ''and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States''.

Pub. L. 103–355, §2001(a)(7), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 103–355, §2001(a)(5), inserted heading.

Subsec. (e). Pub. L. 103–355, §2001(a)(7), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (h).

Pub. L. 103–355, §2001(a)(6), inserted heading.

Subsec. (e)(1). Pub. L. 103–355, §2001(e)(1), substituted ''work accomplished that meets standards established under the contract'' for ''work, which meets standards of quality established under the contract, that has been accomplished''.

Subsec. (e)(3). Pub. L. 103–355, §2001(e)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''This subsection does not apply to any contract for an amount not in excess of the amount of the small purchase threshold.''

Subsecs. (f), (g). Pub. L. 103–355, §2001(f), (g), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 103–355, §2001(a)(7), redesignated subsec. (e) as (h).

1992—Subsec. (e)(1). Pub. L. 102–484 substituted ''(1)'' for ''(*l*)'' as par. designation after ''(e)''.

1991—Subsec. (d)(3). Pub. L. 102–25, §701(d)(4), substituted ''any contract for an amount not in excess of the amount of the small purchase threshold'' for ''contracts for amounts less than the maximum amount for small purchases specified in section 2304(g)(2) of this title''.

Subsec. (e). Pub. L. 102–25, §701(j)(2)(A), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 102–190, which directed the substitution of ''(1)'' for ''(*l*)'' as par. designation after ''(f)'', could not be executed because ''(*l*)'' did not appear after ''(f)''.

Pub. L. 102–25, §701(j)(2)(A), redesignated subsec. (f) as (e).

1990—Subsec. (d). Pub. L. 101–510, §1322(a)(4), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''Payments under subsection (a) in the case of any contract, other than partial, progress, or other payments specifically provided for in such contract at the time such contract was initially entered into, may not exceed $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period.''

Subsec. (e). Pub. L. 101–510, §1322(a)(4)(B), redesignated subsec. (e) as (d).

Pub. L. 101–510, §836(b), inserted at end of par. (1) ''The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.''

Subsec. (f). Pub. L. 101–510, §836(a), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–370 added subsec. (e).

1973—Subsec. (d). Pub. L. 93–155 added subsec. (d).

1958—Pub. L. 85–800 authorized advance or other payments under contracts for property or services by agency, authorized insertion in bid solicitations of provision limiting advance or progress payments to small business concerns, restricted payments under subsec. (a) to unpaid contract price, and reworded generally conditions for making advance payments.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VIII, §836(c), Nov. 5, 1990, 104 Stat. 1616, as amended by Pub. L. 102–25, title VII, §701(j)(2)(B), Apr. 6, 1991, 105 Stat. 116, provided that: ''The provisions of section 2307 of title 10, United States Code, that are added by the amendments made by subsections (a) and (b) shall apply with respect to contracts entered into on or after May 6, 1991.''

RELATIONSHIP OF 1994 AMENDMENT TO PROMPT PAYMENT REQUIREMENTS

Pub. L. 103–355, title II, §2001(h), Oct. 13, 1994, 108 Stat. 3303, provided that: ''The amendments made by this section [amending this section and section 7522 of this title and repealing sections 7312, 7364, and 7521 of this title] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.''

LIMITATIONS ON PROGRESS PAYMENTS

Pub. L. 99–145, title IX, §916, Nov. 8, 1985, 99 Stat. 688, which required Secretary of Defense to ensure that any progress payment under a defense contract be commensurate with work accomplished at standard of quality in contract, that such payments be limited to 80 percent of work accomplished so long as contract terms are indefinite, that this provision be waived for small purchases, and that this provision apply only to contracts for which solicitations were issued on or after 150 days after Nov. 8, 1985, was repealed and restated in subsec. (e) of this section by Pub. L. 100–370, §1(f)(1), July 19, 1988, 102 Stat. 846.

OBLIGATIONS ENTERED INTO BEFORE NOVEMBER 16, 1973

Pub. L. 93–155, title VIII, §807(e), Nov. 16, 1973, 87 Stat. 616, provided that: ''The amendments made by this section [amending this section and sections 1431, 3816, and 4532 of Title 50, War and National Defense] shall not affect the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to the date of enactment of this section [Nov. 16, 1973].''

§ 2308. Buy-to-budget acquisition: end items

(a) AUTHORITY TO ACQUIRE ADDITIONAL END ITEMS.—Using funds available to the Department of Defense for the acquisition of an end item, the head of an agency making the acquisition may acquire a higher quantity of the end item than the quantity specified for the end item in a law providing for the funding of that acquisition if that head of an agency makes each of the following findings:

(1) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition.

(2) It is possible to acquire the higher quantity of the end item without additional fund-

ing because of production efficiencies or other cost reductions.

(3) The amount of the funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item.

(4) The amount so provided is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall include, at a minimum, the following:

(1) The level of approval within the Department of Defense that is required for a decision to acquire a higher quantity of an end item under subsection (a).

(2) Authority (subject to subsection (a)) to acquire up to 10 percent more than the quantity of an end item approved in a justification and approval of the use of procedures other than competitive procedures for the acquisition of the end item under section 2304 of this title.

(c) NOTIFICATION OF CONGRESS.—The head of an agency is not required to notify Congress in advance regarding a decision under the authority of this section to acquire a higher quantity of an end item than is specified in a law described in subsection (a), but shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision.

(d) WAIVER BY OTHER LAW.—A provision of law may not be construed as prohibiting the acquisition of a higher quantity of an end item under this section unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that the acquisition of the higher quantity of the end item is prohibited notwithstanding the authority provided in this section.

(e) DEFINITIONS.—(1) For the purposes of this section, a quantity of an end item shall be considered specified in a law if the quantity is specified either in a provision of that law or in any related representation that is set forth separately in a table, chart, or explanatory text included in a joint explanatory statement or governing committee report accompanying the law.

(2) In this section:

(A) The term ''end item'' means a production product assembled, completed, and ready for issue or deployment.

(B) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(Added Pub. L. 107–314, div. A, title VIII, §801(a)(1), Dec. 2, 2002, 116 Stat. 2600; amended Pub. L. 108–136, div. A, title X, §1043(b)(11), Nov. 24, 2003, 117 Stat. 1611.)

PRIOR PROVISIONS

A prior section 2308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 131; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, §820(a), 106 Stat. 2458; May 31, 1993, Pub. L. 103–35, title II, §201(e)(2), 107 Stat. 99; Nov. 30, 1993, Pub. L. 103–160, div. A, title IX, §904(d)(1), 107 Stat. 1728, related to assignment and delegation of procurement functions and responsibilities, prior to repeal by Pub. L. 103–355, title I, §1503(b)(1), title X, §10001, Oct. 13, 1994, 108 Stat. 3297, 3404, effective Oct. 13, 1994, except as otherwise provided.

AMENDMENTS

2003—Subsec. (e)(2). Pub. L. 108–136 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''The term 'congressional defense committees' means—

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

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

TIME FOR ISSUANCE OF FINAL REGULATIONS

Pub. L. 107–314, div. A, title VIII, §801(b), Dec. 2, 2002, 116 Stat. 2602, provided that: ''The Secretary of Defense shall issue the final regulations under section 2308(b) of title 10, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].''

§ 2309. Allocation of appropriations

(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 97–258, §2(b)(1)(B), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2309(a)	41:159 (2d sentence).	Feb. 19, 1948, ch. 65, §10 (less 1st sentence), 62 Stat. 25.
2309(b)	41:159 (less 1st and 2d sentences).	

In subsection (a), the words ''an agency named in section 2303 of this title'' are substituted for the words ''any such agency''.

In subsection (b), the words ''an allotment under subsection (a)'' are substituted for the words ''such allotments''.

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–258 substituted ''disbursing official'' for ''disbursing officer''.

§ 2310. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(g)(1), 2307(d), or 2313(c)(2)(B) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set

out facts and circumstances that support the determination or decision.

(2) Each finding referred to in paragraph (1) is final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 85–800, § 10, Aug. 28, 1958, 72 Stat. 967; Pub. L. 87–653, § 1(f), Sept. 10, 1962, 76 Stat. 529; Pub. L. 89–607, § 1(1), Sept. 27, 1966, 80 Stat. 850; Pub. L. 90–378, § 2, July 5, 1968, 82 Stat. 290; Pub. L. 98–369, div. B, title VII, § 2725, July 18, 1984, 98 Stat. 1193; Pub. L. 99–145, title XIII, § 1303(a)(16), Nov. 8, 1985, 99 Stat. 739; Pub. L. 103–355, title I, § 1504, Oct. 13, 1994, 108 Stat. 3297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2310(a)	41:156(a) (1st sentence).	Feb. 19, 1948, ch. 65, § 7(a) (1st sentence), (c), 62 Stat. 24.
2310(b)	41:156(c).	

In subsection (a), the words ''required * * * under'' are substituted for the words ''provided in''.

In subsection (b), the word ''person'' is substituted for the word ''official''. The words ''to which it applies'' are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally. Prior to amendment, section read as follows:

''(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except for determinations and decisions under section 2304 or 2305 of this title, for a class of purchases or contracts. Such a determination or decision, including a determination or decision under section 2304 or 2305 of this title, is final.

''(b) Each determination or decision under section 2306(c), 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that—

''(1) clearly indicate why the type of contract selected under section 2306(c) of this title is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

''(2) support the findings required by section 2306(g)(1) of this title;

''(3) clearly indicate why advance payments under section 2307(c) of this title would be in the public interest; or

''(4) clearly indicate why the application of section 2313(b) of this title to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest.

Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.''

1985—Subsec. (a). Pub. L. 99–145 inserted ''this'' after ''2305 of''.

1984—Subsec. (a). Pub. L. 98–369, § 2725(1), inserted '', except for determinations and decisions under section 2304 or 2305 of title,'' and '', including a determination or decision under section 2304 or 2305 of this title,''.

Subsec. (b). Pub. L. 98–369, § 2725(2), amended subsec. (b) generally, striking out requirement that determinations to negotiate contracts be based on written findings by the contracting officers making the determinations.

1968—Subsec. (b). Pub. L. 90–378 inserted ''section 2306(g)(1),'' after ''clauses (11)–(16) of section 2304(a), section 2306(c),'', and ''(3) support the findings required by section 2306(g)(1),'' after ''kind or quality required except under such a contract,'', and redesignated former cls. (3) to (5) as (4) to (6), respectively.

1966—Subsec. (b). Pub. L. 89–607 inserted reference to section 2313(c), added cl. (4), and redesignated former cl. (4) as (5).

1962—Subsec. (b). Pub. L. 87–653 substituted ''section 2306(c)'' for ''section 2306'', required decisions to negotiate contracts under section 2304(a)(2), (7), (8), (10) to (12) of this title to be based on a written finding by the person making the decision, which findings shall set out facts and circumstances illustrative of conditions described in section 2304(a)(11) to (16), indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other or that its impracticable to obtain the required property or services except under such contract, indicate why advance payments under section 2307(c) would be in the public interest, or establish with respect to section 2304(a), (2), (7), (8), (10) to (12) that formal advertising would not have been feasible and practicable.

1958—Subsec. (b). Pub. L. 85–800 substituted ''2307(c)'' for ''2307(a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

§ 2311. Assignment and delegation of procurement functions and responsibilities

(a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.

(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

(1) the head of an agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within such agency;

(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

(c) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of Defense shall prescribe regulations that prohibit each military department participating in a joint acquisition program approved

by the Under Secretary of Defense for Acquisition, Technology, and Logistics from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.

(2) The regulations shall include the following provisions:

(A) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council of the Department of Defense.

(B) A provision that authorizes the Under Secretary of Defense for Acquisition, Technology, and Logistics to require a military department whose participation in a joint acquisition program has been approved for termination or substantial reduction to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 85–800, § 11, Aug. 28, 1958, 72 Stat. 967; Pub. L. 87–653, § 1(g), Sept. 10, 1962, 76 Stat. 529; Pub. L. 90–378, § 3, July 5, 1968, 82 Stat. 290; Pub. L. 97–86, title IX, §§ 907(c), 909(f), Dec. 1, 1981, 95 Stat. 1117, 1120; Pub. L. 98–369, div. B, title VII, § 2726, July 18, 1984, 98 Stat. 1194; Pub. L. 98–525, title XII, § 1214, Oct. 19, 1984, 98 Stat. 2592; Pub. L. 98–577, title V, § 505, Oct. 30, 1984, 98 Stat. 3087; Pub. L. 103–355, title I, § 1503(a)(1), Oct. 13, 1994, 108 Stat. 3296; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2311	41:156(a) (less 1st sentence). 41:156(b).	Feb. 19, 1948, ch. 65, § 7(a) (less 1st sentence), (b), 62 Stat. 24.

The words ''in his discretion and'' and ''including the making of such determinations and decisions'' are omitted as surplusage. The words ''except the power to make determinations and decisions'' are substituted for the words ''Except as provided in subsection (b) of this section'' and ''The power of the agency head to make the determinations or decisions specified in paragraphs (12)–(16) of section 151(c) of this title and in section 154(a) of this title shall not be delegable''.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2308 of this title prior to repeal by Pub. L. 103–355, § 1503(b)(1).

AMENDMENTS

2001—Subsec. (c)(1), (2)(B). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1994—Pub. L. 103–355 substituted ''Assignment and delegation of procurement functions and responsibilities'' for ''Delegation'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''Except as provided in section 2304(d)(2) of this title, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.''

1984—Pub. L. 98–577 struck out ''(a)'' before ''Except as provided in'' and struck out subsec. (b) which related to delegation of authority by heads of procuring activities of agencies of certain functions.

Pub. L. 98–525 designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 98–369 inserted provision relating to the exception provided in section 2304(d)(2) of this title and struck out provision that the power to make determinations and decisions under cls. (11)–(16) of section 2304(a) of this title could not be delegated, but that the power to make a determination or decision under section 2304(a)(11) of this title could be delegated to any other officer of official of that agency who was responsible for procurement, and only for contracts requiring the expenditure of not more than $5,000,000.

1981—Pub. L. 97–86 struck out in first sentence cl. (1) designation and cl. (2) relating to authorizing of contracts in excess of three years under section 2306(g) of this title, and in second sentence substituted ''$5,000,000'' for ''$100,000''.

1968—Pub. L. 90–378 designated provisions after ''the power to make determinations and decisions'' as cl. (1) and added cl. (2).

1962—Pub. L. 87–653 substituted ''delegated to any other officer'' for ''delegated only to a chief officer'' and ''$100,000'' for ''$25,000''.

1958—Pub. L. 85–800 struck out '', or section 2307(a)'' after ''of section 2304(a)'' in first sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

§ 2312. Remission of liquidated damages

Upon the recommendation of the head of an agency, the Secretary of the Treasury may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 104–316, title II, § 202(c), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2312	41:155.	Feb. 19, 1948, ch. 65, § 6, 62 Stat. 24.

The words ''a contract, made by that agency, that provides for'' are substituted for the words ''any contract made on behalf of the Government by the agency head or by officers authorized by him so to do includes a provision''.

AMENDMENTS

1996—Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General''.

§ 2313. Examination of records of contractor

(a) AGENCY AUTHORITY.—(1) The head of an agency, acting through an authorized representative, is authorized to inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials,

labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and

(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract or any combination of such subcontracts under a contract referred to in subparagraph (A).

(2) The head of an agency, acting through an authorized representative, is authorized, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to section 2306a of this title with respect to a contract or subcontract, to examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(b) DCAA SUBPOENA AUTHORITY.—(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of any records of a contractor that the Secretary of Defense is authorized to audit or examine under subsection (a).

(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

(3) The authority provided by paragraph (1) may not be redelegated.

(c) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are authorized to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract and to interview any current employee regarding such transactions.

(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

(d) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(e) LIMITATION.—The authority of the head of an agency under subsection (a), and the authority of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is for an amount not greater than the simplified acquisition threshold.

(g) FORMS OF ORIGINAL RECORD STORAGE.—Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form.

(h) USE OF IMAGES OF ORIGINAL RECORDS.—The head of an agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(i) RECORDS DEFINED.—In this section, the term ''records'' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 89–607, § 1(2), Sept. 27, 1966, 80 Stat. 850; Pub. L. 98–369, div. B, title VII, § 2727(c), July 18, 1984, 98 Stat. 1195; Pub. L. 99–145, title IX, § 935, Nov. 8, 1985, 99 Stat. 700; Pub. L. 100–26, § 7(g)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 101–510, div. A, title XIII, § 1301(9), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103–355, title II, § 2201(a)(1), title IV, § 4102(c), Oct. 13, 1994, 108 Stat. 3316, 3340; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat.

502; Pub. L. 104–201, div. A, title VIII, § 808(a), Sept. 23, 1996, 110 Stat. 2607; Pub. L. 106–65, div. A, title X, § 1032(a)(2), Oct. 5, 1999, 113 Stat. 751; Pub. L. 110–417, [div. A], title VIII, § 871(b), Oct. 14, 2008, 122 Stat. 4555.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2313(a)	41:153(b) (words after semicolon of last sentence).	Feb. 19, 1948, ch. 65, § 4(b) (words after semicolon of last sentence), 62 Stat. 23.
2313(b)	41:153(c).	Feb. 19, 1948, ch. 65, § 4(c); added Oct. 31, 1951, ch. 652 (as applicable to § 4(c); of the Act of Feb. 19, 1948, ch. 65), 65 Stat. 700.

In subsection (a), the words ''An agency named in section 2303 of this title'' are substituted for the words ''a procuring agency''. The words ''made by that agency under this chapter'' are inserted for clarity.

In subsection (b), the word ''under'' is substituted for the words ''pursuant to authority contained in''. The word ''provide'' is substituted for the words ''include a clause to the effect''. The words ''are entitled'' are substituted for the words ''shall * * * have * * * the right''. The words ''of the United States'', ''duly authorized'', ''have access to and'', and ''engaged in the performance of'' are omitted as surplusage.

AMENDMENTS

2008—Subsec. (c)(1). Pub. L. 110–417 inserted ''and to interview any current employee regarding such transactions'' before period at end.

1999—Subsec. (b)(4). Pub. L. 106–65 struck out par. (4) which read as follows: ''The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.''

1996—Subsec. (b)(4). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (d). Pub. L. 104–201 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this chapter in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.''

1994—Pub. L. 103–355, § 2201(a)(1), amended section generally, striking out ''of books'' before ''and records'' in section catchline, and substituting subsecs. (a) to (i) for former subsecs. (a) to (d).

Subsec. (f)(2). Pub. L. 103–355, § 4102(c), added par. (2).

1990—Subsec. (c). Pub. L. 101–510 struck out after cl. (2) ''If subsection (b) is not applied to a contract or subcontract based on a determination under clause (2), a written report shall be furnished to the Congress.''

1987—Subsec. (d)(1). Pub. L. 100–26 substituted ''section 2306a'' for ''section 2306(f)''.

1985—Subsec. (d). Pub. L. 99–145 added subsec. (d).

1984—Subsec. (b). Pub. L. 98–369 substituted ''awarded after using procedures other than sealed bid procedures'' for ''negotiated under this chapter''.

1966—Subsec. (b). Pub. L. 89–607, § 1(2)(A), substituted ''Except as provided in subsection (c), each'' for ''Each''.

Subsec. (c). Pub. L. 89–607, § 1(2)(B), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EXCEPTION FROM RECORDS EXAMINATION REQUIREMENT

Requirements under subsec. (b) of this section not applicable to certain contracts valued at less than $7,500,000 awarded to small business or nontraditional defense contractors, with certain exceptions, see section 873(b) of Pub. L. 114–92, set out as a Pilot Program for Streamlining Awards for Innovative Technology Projects note under section 2306a of this title.

IMPROVED AUDITING OF CONTRACTS

Pub. L. 114–92, div. A, title VIII, § 893, Nov. 25, 2015, 129 Stat. 952, provided that:

''(a) PROHIBITION ON PERFORMANCE OF NON-DEFENSE AUDITS BY DCAA.—

''(1) IN GENERAL.—Effective on the date of the enactment of this Act [Nov. 25, 2015], the Defense Contract Audit Agency may not provide audit support for non-Defense Agencies unless the Secretary of Defense certifies that the backlog for incurred cost audits is less than 18 months of incurred cost inventory.

''(2) ADJUSTMENT IN FUNDING FOR REIMBURSEMENTS FROM NON-DEFENSE AGENCIES.—The amount appropriated and otherwise available to the Defense Contract Audit Agency for a fiscal year beginning after September 30, 2016, shall be reduced by an amount equivalent to any reimbursements received by the Agency from non-Defense Agencies for audit support provided.

''(b) AMENDMENTS TO DEFENSE CONTRACT AUDIT AGENCY ANNUAL REPORT.—[Amended section 2313a of this title.]

''(c) REVIEW OF ACQUISITION OVERSIGHT AND AUDITS.—

''(1) REVIEW REQUIRED.—The Secretary of Defense shall review the oversight and audit structure of the Department of Defense with the goals of—

''(A) enhancing the productivity of oversight and program and contract auditing to avoid duplicative audits; and

''(B) streamlining of oversight reviews.

''(2) RECOMMENDATIONS.—The Secretary shall ensure streamlined oversight reviews and avoidance of duplicative audits and make recommendations in the report required under paragraph (3) for any necessary changes in law.

''(3) REPORT.—

''(A) Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], 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 actions taken to avoid duplicative audits and streamline oversight reviews.

''(B) The report required under this paragraph shall include the following elements:

''(i) A description of actions taken to avoid duplicative audits and streamline oversight reviews based on the review conducted under paragraph (1).

''(ii) A comparison of commercial industry accounting practices, including requirements under the Sarbanes-Oxley Act of 2002 (Public Law 107–204; 15 U.S.C. 7201 et seq.), with the cost accounting standards prescribed under chapter 15 of title 41, United States Code, to determine if some portions of cost accounting standards compliance can be met through such practices or requirements.

''(iii) A description of standards of materiality used by the Defense Contract Audit Agency and the Inspector General of the Department of Defense for defense contract audits.

''(iv) An estimate of average delay and range of delays in contract awards due to the time necessary for the Defense Contract Audit Agency to complete pre-award audits.

''(v) The total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs.

''(d) INCURRED COST INVENTORY DEFINED.—In this section, the term 'incurred cost inventory' means the level of contractor incurred cost proposals in inventory from prior fiscal years that are currently being audited by the Defense Contract Audit Agency.''

DEPARTMENT OF DEFENSE ACCESS TO, USE OF, AND SAFEGUARDS AND PROTECTIONS FOR CONTRACTOR INTERNAL AUDIT REPORTS

Pub. L. 112–239, div. A, title VIII, § 832, Jan. 2, 2013, 126 Stat. 1844, provided that:

''(a) REVISED GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Director of the Defense Contract Audit Agency shall revise guidance on access to defense contractor internal audit reports (including the Contract Audit Manual) to incorporate the requirements of this section.

''(b) DOCUMENTATION REQUIREMENTS.—The revised guidance shall ensure that requests for access to defense contractor internal audit reports are appropriately documented. The required documentation shall include, at a minimum, the following:

''(1) Written determination that access to such reports is necessary to complete required evaluations of contractor business systems.

''(2) A copy of any request from the Defense Contract Audit Agency to a contractor for access to such reports.

''(3) A record of response received from the contractor, including the contractor's rationale or justification if access to requested reports was not granted.

''(b) [sic] SAFEGUARDS AND PROTECTIONS.—The revised guidance shall include appropriate safeguards and protections to ensure that contractor internal audit reports cannot be used by the Defense Contract Audit Agency for any purpose other than evaluating and testing the efficacy of contractor internal controls and the reliability of associated contractor business systems.

''(c) RISK-BASED AUDITING.—A determination by the Defense Contract Audit Agency that a contractor has a sound system of internal controls shall provide the basis for increased reliance on contractor business systems or a reduced level of testing with regard to specific audits, as appropriate. Internal audit reports provided by a contractor pursuant to this section may be considered in determining whether or not a contractor has a sound system of internal controls, but shall not be the sole basis for such a determination.

''(d) COMPTROLLER GENERAL REVIEW.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall initiate a review of the documentation required by subsection (a). Not later than 90 days after completion of the review, the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of the review, with findings and recommendations for improving the audit processes of the Defense Contract Audit Agency.''

ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS

Pub. L. 112–81, div. A, title VIII, § 842, Dec. 31, 2011, 125 Stat. 1513, as amended by Pub. L. 113–291, div. A, title VIII, § 842(c)(2), Dec. 19, 2014, 128 Stat. 3456, provided that:

''(a) DEPARTMENT OF DEFENSE CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that—

''(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of the Department of Defense that is awarded on or after the date of the enactment of this Act; and

''(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of the Department that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

''(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the Secretary, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds available under the contract, grant, or cooperative agreement—

''(A) are not subject to extortion or corruption; and

''(B) are not provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

''(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer or comparable official responsible for a grant or cooperative agreement, upon a finding by the Commander of the United States Central Command, that there is reason to believe that funds available under the contract, grant, or cooperative agreement concerned may have been subject to extortion or corruption or may have been provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

''(4) FLOWDOWN.—A clause described in paragraph (2) shall also be required in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of $100,000.

''(b) REPORTS.—Not later than March 1 of each of 2013, 2014, and 2015, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of the authority provided by this section in the preceding calendar year. Each report shall identify, for the calendar year covered by such report, each instance in which the Department of Defense exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken,[.] Any report under this subsection may be submitted in classified form.

''(c) DEFINITIONS.—In this section:

''(1) The term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code.

''(2) The term 'covered contract, grant, or cooperative agreement' means a contract, grant, or cooperative agreement with an estimated value in excess of $100,000 that will be performed in the United States Central Command theater of operations in support of a contingency operation.

''(d) SUNSET.—

''(1) IN GENERAL.—The clause described by subsection (a)(2) shall not be required in any contract, grant, or cooperative agreement that is awarded after

the date that is three years after the date of the enactment of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 [Dec. 19, 2014].

''(2) CONTINUING EFFECT OF CLAUSES INCLUDED BEFORE SUNSET.—Any clause described by subsection (a)(2) that is included in a contract, grant, or cooperative agreement pursuant to this section before the date specified in paragraph (1) shall remain in effect in accordance with its terms.''

EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside limits of United States or District of Columbia under Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising authority provided in amendment of this section by Pub. L. 89–607 to exempt certain contracts with foreign contractors from requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. (11) of Part I of Ex. Ord. No. 10789, and that alternate sources of supply are not reasonably available, see par. (11) of Part I of Ex. Ord. No. 10789, Nov. 14, 1958, 23 F.R. 8897, as amended, set out as a note under section 1431 of Title 50, War and National Defense.

§ 2313a. Defense Contract Audit Agency: annual report

(a) REQUIRED REPORT.—The Director of the Defense Contract Audit Agency shall prepare an annual report of the activities of the Agency during the previous fiscal year. The report shall include, at a minimum—

(1) a description of significant problems, abuses, and deficiencies encountered during the conduct of contractor audits;

(2) statistical tables showing—

(A) the total number of audit reports completed and pending;

(B) the priority given to each type of audit;

(C) the length of time taken for each type of audit;

(D) the total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs; and

(E) an assessment of the number and types of audits pending for a period longer than allowed pursuant to guidance of the Defense Contract Audit Agency;

(3) a summary of any recommendations of actions or resources needed to improve the audit process;

(4) a description of outreach actions toward industry to promote more effective use of audit resources; and

(5) any other matters the Director considers appropriate.

(b) SUBMISSION OF ANNUAL REPORT.—Not later than March 30 of each year, the Director shall submit to the congressional defense committees the report required by subsection (a).

(c) PUBLIC AVAILABILITY.—Not later than 60 days after the submission of an annual report to the congressional defense committees under subsection (b), the Director shall make the report available on the publicly available website of the Agency or such other publicly available website as the Director considers appropriate.

(Added Pub. L. 112–81, div. A, title VIII, § 805(a), Dec. 31, 2011, 125 Stat. 1486; amended Pub. L. 114–92, div. A, title VIII, § 893(b), Nov. 25, 2015, 129 Stat. 952.)

AMENDMENTS

2015—Subsec. (a)(2)(D). Pub. L. 114–92, § 893(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs); and''.

Subsec. (a)(4), (5). Pub. L. 114–92, § 893(b)(2)–(4), added par. (4) and redesignated former par. (4) as (5).

§ 2314. Laws inapplicable to agencies named in section 2303 of this title

Sections 6101 and 6304 of title 41 do not apply to the procurement or sale of property or services by the agencies named in section 2303 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 133; Pub. L. 96–513, title V, § 511(78), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 103–160, div. A, title VIII, § 822(b)(2), Nov. 30, 1993, 107 Stat. 1706; Pub. L. 111–350, § 5(b)(16), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 113–291, div. A, title X, § 1071(a)(4), Dec. 19, 2014, 128 Stat. 3504.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2314	41:160.	Feb. 19, 1948, ch. 65, § 11(b), 62 Stat. 25.

AMENDMENTS

2014—Pub. L. 113–291 substituted ''Sections 6101'' for ''Sections 6101(b)–(d)''.

2011—Pub. L. 111–350 substituted ''Sections 6101(b)–(d) and 6304 of title 41'' for ''Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)''.

1993—Pub. L. 103–160 inserted ''or sale'' after ''procurement''.

1980—Pub. L. 96–513 substituted ''Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)'' for ''Sections 5, 6, 6a, and 13 of title 41''.

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.

§ 2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes

For purposes of subtitle III of title 40, the term ''national security system'', with respect to a telecommunications and information system operated by the Department of Defense, has the meaning given that term by section 3552(b)(6) of title 44.

(Added Pub. L. 97–86, title IX, § 908(a)(1), Dec. 1, 1981, 95 Stat. 1117; amended Pub. L. 97–295, § 1(25), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 104–106, div. E, title LVI, § 5601(c), Feb. 10, 1996, 110 Stat. 699; Pub. L. 104–201, div. A, title X, § 1074(b)(4)(B), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 105–85, div. A, title X, § 1073(a)(49), Nov. 18, 1997, 111 Stat.

1903; Pub. L. 107–217, § 3(b)(5), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 109–364, div. A, title IX, § 906(c), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 113–283, § 2(e)(5)(C), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 114–92, div. A, title X, § 1081(a)(7), Nov. 25, 2015, 129 Stat. 1001.)

AMENDMENTS

2015—Pub. L. 114–92 substituted ''section 3552(b)(6)'' for ''section 3552(b)(5)''.

2014—Pub. L. 113–283 substituted ''section 3552(b)(5)'' for ''section 3542(b)(2)''.

2006—Pub. L. 109–364 amended text generally. Prior to amendment, section consisted of subsecs. (a) and (b) defining ''national security systems'' as meaning telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which involves intelligence or cryptologic activities, command and control of military forces, or equipment that is an integral part of a weapons system or is critical to military or intelligence missions but is not equipment or services to be used for routine administrative and business applications.

2002—Subsec. (a). Pub. L. 107–217 substituted ''subtitle III of title 40'' for ''division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–85 substituted ''division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)'' for ''the Information Technology Management Reform Act of 1996''.

1996—Subsec. (a). Pub. L. 104–106, as amended by Pub. L. 104–201, substituted ''For the purposes of the Information Technology Management Reform Act of 1996, the term 'national security systems' means those telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which'' for ''Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is not applicable to the procurement by the Department of Defense of automatic data processing equipment or services if the function, operation, or use of the equipment or services''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''(40 U.S.C. 759)'' for ''(40 U.S.C. 795)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE

Pub. L. 97–86, title IX, § 908(b), Dec. 1, 1981, 95 Stat. 1118, provided that: ''Section 2315 of title 10, United States Code, as added by subsection (a), does not apply to a contract made before the date of the enactment of this Act [Dec. 1, 1981].''

LIMITATION REGARDING TELECOMMUNICATIONS REQUIREMENTS

Pub. L. 103–337, div. A, title X, § 1075, Oct. 5, 1994, 108 Stat. 2861, provided that:

''(a) LIMITATION.—No funds available to the Department of Defense or any other Executive agency may be expended to provide for meeting Department of Defense telecommunications requirements through the telecommunications procurement known as 'FTS–2000' or through any other Government-wide telecommunications procurement until—

''(1) the Secretary of Defense submits to the Congress a report containing—

''(A) a certification by the Secretary that the FTS–2000 procurement or the other telecommunications procurement will provide assured, secure telecommunications support (including associated telecommunications services) for Department of Defense activities; and

''(B) a description of how the procurement will be implemented and managed to meet defense information infrastructure requirements, including requirements to support deployed forces and intelligence activities; and

''(2) 30 days elapse after the date on which such report is received by the committees.

''(b) DEFINITIONS.—In this section:

''(1) The term 'defense telecommunications requirements' means requirements for telecommunications equipment and services that, if procured by the Department of Defense, would be exempt from the requirements of section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759) pursuant to section 2315 of title 10, United States Code.

''(2) The term 'Executive agency' has the meaning given such term in section 105 of title 5, United States Code.

''(3) The term 'procurement' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403) [see 41 U.S.C. 111].

''(c) EFFECT ON OTHER LAW.—Nothing in this section may be construed as modifying or superseding, or as intended to impair or restrict authorities or responsibilities under—

''(1) section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759); or

''(2) section 620 of Public Law 103–123 [107 Stat. 1264].''

§ 2316. Disclosure of identity of contractor

The Secretary of Defense may disclose the identity or location of a person awarded a contract by the Department of Defense to any individual, including a Member of Congress, only after the Secretary makes a public announcement identifying the contractor. When the identity of a contractor is to be made public, the Secretary shall announce publicly that the contract has been awarded and the identity of the contractor.

(Added Pub. L. 97–295, § 1(26)(A), Oct. 12, 1982, 96 Stat. 1291.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2316	10:2304 (note).	Oct. 7, 1970, Pub. L. 91–441, § 507, 84 Stat. 913.

The words ''company, or corporation'' are omitted as included in ''person'' because of section 1:1. The words ''On and after the date of enactment of this Act'' are omitted as executed. The word ''contractor'' is substituted for ''person, company, or corporation to whom such contract has been awarded'' and ''person, company, or corporation to whom any defense contract has been awarded'' to eliminate unnecessary words. The words ''and the identity of the contractor'' are substituted for ''and to whom it was awarded'' for clarity.

[§ 2317. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(2), Nov. 30, 1993, 107 Stat. 1704]

Section, added Pub. L. 98–525, title XII, § 1215, Oct. 19, 1984, 98 Stat. 2592, related to encouragement of competition and cost savings.

§ 2318. Advocates for competition

(a)(1) In addition to the advocates for competition established or designated pursuant to section 1705(a) of title 41, the Secretary of Defense shall designate an officer or employee of the Defense Logistics Agency to serve as the advocate for competition of the agency.

(2) The advocate for competition of the Defense Logistics Agency shall carry out the responsibilities and functions provided for in subsections (b) and (c) of section 1705 of title 41.

(b) Each advocate for competition of an agency named in section 2303(a) of this title shall be a general or flag officer if a member of the armed forces or a grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule), if a civilian employee and shall be designated to serve for a minimum of two years.

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100–26, §7(d)(4), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–25, title VII, §701(f)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–355, title I, §1031, Oct. 13, 1994, 108 Stat. 3260; Pub. L. 111–350, §5(b)(17), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 112–239, div. A, title X, §1076(f)(24), Jan. 2, 2013, 126 Stat. 1953.)

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 112–239 substituted ''subsections (b) and (c) of section 1705'' for ''section 1705(b) and (c)''.

2011—Subsec. (a)(1). Pub. L. 111–350, §5(b)(17)(A), substituted ''section 1705(a) of title 41'' for ''section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a))''.

Subsec. (a)(2). Pub. L. 111–350, §5(b)(17)(B), substituted ''section 1705(b) and (c) of title 41'' for ''sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c))''.

1994—Subsec. (c). Pub. L. 103–355 struck out subsec. (c) which read as follows: ''Each advocate for competition of an agency of the Department of Defense shall transmit to the Secretary of Defense a report describing his activities during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419), in the form in which it was submitted to the Secretary.''

1991—Subsec. (c). Pub. L. 102–25 substituted ''section 23'' for ''section 21''.

1987—Subsec. (a)(1). Pub. L. 100–26, §7(d)(4)(A), inserted ''(41 U.S.C. 418(a))'' after ''Policy Act''.

Subsec. (a)(2). Pub. L. 100–26, §7(d)(4)(B), inserted ''(41 U.S.C. 418(b), (c))'' after ''Policy Act''.

Subsec. (c). Pub. L. 100–26, §7(d)(4)(C), inserted ''(41 U.S.C. 419)'' after ''Policy Act''.

EFFECTIVE DATE

Pub. L. 98–525, title XII, §1216(c)(1), Oct. 19, 1984, 98 Stat. 2599, provided that: ''Section 2318 of title 10, United States Code (as added by subsection (a)), shall take effect on April 1, 1985.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2319. Encouragement of new competitors

(a) In this section, the term ''qualification requirement'' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c)(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute or administrative action before October 19, 1984, unless such requirement is a qualified products list.

(2)(A) Except as provided in subparagraph (B), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement. After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(B) The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meet-

ing a qualification requirement established after October 19, 1984, if the potential offeror can demonstrate to the satisfaction of the contracting officer (or, in the case of a contract for the procurement of an aviation critical safety item or ship critical safety item, the head of the design control activity for such item) that the potential offeror or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

(4) Nothing contained in this subsection requires the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(5) The head of an agency need not delay a proposed procurement in order to comply with subsection (b) or in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(6) The requirements of subsection (b) also apply before enforcement of any qualified products list, qualified manufacturers list, or qualified bidders list.

(d)(1) If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than two actual manufacturers or the products of two actual manufacturers, respectively, the head of the agency concerned shall—

(A) periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification, unless the contracting officer determines that such publication would compromise national security; and

(B) bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement, but such costs may be borne only if the head of the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time considering the duration and dollar value of anticipated future requirements.

(2) The head of an agency shall require a prospective contractor requesting the United States to bear testing and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) Within seven years after the establishment of a qualification requirement under subsection (b) or within seven years following an agency's enforcement of a qualified products list, qualified manufacturers list, or qualified bidders list, any such qualification requirement shall be examined and revalidated in accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).

(g) DEFINITIONS.—In this section:

(1) The term ''aviation critical safety item'' means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in the loss of or serious damage to the aircraft or weapon system, an unacceptable risk of personal injury or loss of life, or an uncommanded engine shutdown that jeopardizes safety.

(2) The term ''ship critical safety item'' means any ship part, assembly, or support equipment containing a characteristic the failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in loss of or serious damage to the ship or unacceptable risk of personal injury or loss of life.

(3) The term ''design control activity'', with respect to an aviation critical safety item or ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, or the seaworthiness of a ship or ship equipment, in which such item is to be used.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100–26, § 7(d)(5), (i)(4), (k)(3), Apr. 21, 1987, 101 Stat. 281, 282, 284; Pub. L. 108–136, div. A, title VIII, § 802(d), Nov. 24, 2003, 117 Stat. 1541; Pub. L. 109–364, div. A, title I, § 130(d), Oct. 17, 2006, 120 Stat. 2110.)

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–364, § 130(d)(1), inserted ''or ship critical safety item'' after ''aviation critical safety item''.

Subsec. (g)(2), (3). Pub. L. 109–364, § 130(d)(2), added par. (2), redesignated former par. (2) as (3), inserted ''or ship critical safety item'' after ''aviation critical safety item'' and '', or the seaworthiness of a ship or ship equipment,'' after ''or equipment'', and substituted ''such item'' for ''the item''.

2003—Subsec. (c)(3). Pub. L. 108–136, § 802(d)(1), inserted ''(or, in the case of a contract for the procurement of an aviation critical safety item, the head of the design control activity for such item)'' after ''the contracting officer''.

Subsec. (g). Pub. L. 108–136, § 802(d)(2), added subsec. (g).

1987—Subsec. (a). Pub. L. 100–26, § 7(k)(3), inserted ''the term'' after ''In this section,''.

Subsec. (c)(1), (3). Pub. L. 100–26, § 7(i)(4), substituted ''October 19, 1984,'' for ''the date of the enactment of the Defense Procurement Reform Act of 1984''.

Subsec. (c)(4). Pub. L. 100–26, § 7(d)(5)(A), inserted ''(15 U.S.C. 637(b)(7))'' after ''Small Business Act''.

Subsec. (d)(2). Pub. L. 100–26, §7(d)(5)(B), inserted ''(15 U.S.C. 632)'' after ''Small Business Act''.

EFFECTIVE DATE

Pub. L. 98–525, title XII, §1216(c)(2), Oct. 19, 1984, 98 Stat. 2599, provided that: ''Sections 2319, 2320, and 2321 of title 10, United States Code (as added by subsection (a)), shall apply with respect to solicitations issued after the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2320. Rights in technical data

(a)(1) The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to an item or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. Such regulations may not impair any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(2) Such regulations shall include the following provisions:

(A) In the case of an item or process that is developed by a contractor or subcontractor exclusively with Federal funds (other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply), the United States shall have the unlimited right to—

(i) use technical data pertaining to the item or process; or

(ii) release or disclose the technical data to persons outside the government or permit the use of the technical data by such persons.

(B) Except as provided in subparagraphs (C) and (D), in the case of an item or process that is developed by a contractor or subcontractor exclusively at private expense, the contractor or subcontractor may restrict the right of the United States to release or disclose technical data pertaining to the item or process to persons outside the government or permit the use of the technical data by such persons.

(C) Subparagraph (B) does not apply to technical data that—

(i) constitutes a correction or change to data furnished by the United States;

(ii) relates to form, fit, or function;

(iii) is necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(iv) is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(D) Notwithstanding subparagraph (B), the United States may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) such release, disclosure, or use—

(I) is necessary for emergency repair and overhaul;

(II) is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; or

(III) is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the United States and is required for evaluational or informational purposes;

(ii) such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) the contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(E) In the case of an item or process that is developed in part with Federal funds and in part at private expense, the respective rights of the United States and of the contractor or subcontractor in technical data pertaining to such item or process shall be established as early in the acquisition process as practicable (preferably during contract negotiations). The United States shall have government purpose rights in such technical data, except in any case in which the Secretary of Defense determines, on the basis of criteria established in such regulations, that negotiation of different rights in such technical data would be in the best interest of the United States. The establishment of any such negotiated rights shall be based upon consideration of all of the following factors:

(i) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(ii) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(iii) The interest of the United States in encouraging contractors to develop at private expense items for use by the Government.

(iv) Such other factors as the Secretary of Defense may prescribe.

(F) A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract—

(i) to sell or otherwise relinquish to the United States any rights in technical data except—

(I) rights in technical data described in subparagraph (A) for which a use or release

restriction has been erroneously asserted by a contractor or subcontractor;

(II) rights in technical data described in subparagraph (C); or

(III) under the conditions described in subparagraph (D); or

(ii) to refrain from offering to use, or from using, an item or process to which the contractor is entitled to restrict rights in data under subparagraph (B).

(G) The Secretary of Defense may—

(i) negotiate and enter into a contract with a contractor or subcontractor for the acquisition of rights in technical data not otherwise provided under subparagraph (C) or (D), if necessary to develop alternative sources of supply and manufacture;

(ii) agree to restrict rights in technical data otherwise accorded to the United States under this section if the United States receives a royalty-free license to use, release, or disclose the data for purposes of the United States (including purposes of competitive procurement); or

(iii) permit a contractor or subcontractor to license directly to a third party the use of technical data which the contractor is otherwise allowed to restrict, if necessary to develop alternative sources of supply and manufacture.

(3) The Secretary of Defense shall define the terms ''developed'', ''exclusively with Federal funds'', and ''exclusively at private expense'' in regulations prescribed under paragraph (1). In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of the definitions under this paragraph.

(b) Regulations prescribed under subsection (a) shall require that, whenever practicable, a contract for supplies or services entered into by an agency named in section 2303 of this title contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract and providing that, in the case of a contract for a commercial item, the item shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f);

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

(7) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data;

(8) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data;

(9) providing that, in addition to technical data that is already subject to a contract delivery requirement, the United States may require at any time the delivery of technical data that has been generated or utilized in the performance of a contract, and compensate the contractor only for reasonable costs incurred for having converted and delivered the data in the required form, upon a determination that—

(A) the technical data is needed for the purpose of reprocurement, sustainment, modification, or upgrade (including through competitive means) of a major system or subsystem thereof, a weapon system or subsystem thereof, or any noncommercial item or process; and

(B) the technical data—

(i) pertains to an item or process developed in whole or in part with Federal funds; or

(ii) is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; and

(10) providing that the United States is not foreclosed from requiring the delivery of the technical data by a failure to challenge, in accordance with the requirements of section 2321(d) of this title, the contractor's assertion of a use or release restriction on the technical data.

(c) Nothing in this section or in section 2305(d) of this title prohibits the Secretary of Defense from—

(1) prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective;

(2) notwithstanding any limitation upon the license rights conveyed under subsection (a), allowing a covered Government support con-

tractor access to and use of any technical data delivered under a contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates; or

(3) prescribing reasonable and flexible guidelines, including negotiation objectives, for the conduct of negotiations regarding the respective rights in technical data of the United States and the contractor.

(d) The Secretary of Defense shall by regulation establish programs which provide domestic business concerns an opportunity to purchase or borrow replenishment parts from the United States for the purpose of design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States. Nothing in this subsection limits the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restriction otherwise required by law.

(e) The Secretary of Defense shall require program managers for major weapon systems and subsystems of major weapon systems to assess the long-term technical data needs of such systems and subsystems and establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems and subsystems over their life cycle. Such strategies may include the development of maintenance capabilities within the Department of Defense or competition for contracts for sustainment of such systems or subsystems. Assessments and corresponding acquisition strategies developed under this section with respect to a weapon system or subsystem shall—

(1) be developed before issuance of a contract solicitation for the weapon system or subsystem;

(2) address the merits of including a priced contract option for the future delivery of technical data that were not acquired upon initial contract award;

(3) address the potential for changes in the sustainment plan over the life cycle of the weapon system or subsystem; and

(4) apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to weapons systems and subsystems that are to be supported by other sustainment approaches.

(f) In this section, the term ''covered Government support contractor'' means a contractor under a contract the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), which contractor—

(1) is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) executes a contract with the Government agreeing to and acknowledging—

(A) that proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;

(B) that the covered Government support contractor will enter into a non-disclosure agreement with the contractor to whom the rights to the technical data belong;

(C) that the covered Government support contractor will take all reasonable steps to protect the proprietary and nonpublic nature of the technical data furnished to the covered Government support contractor during the program or effort for the period of time in which the Government is restricted from disclosing the technical data outside of the Government;

(D) that a breach of that contract by the covered Government support contractor with regard to a third party's ownership or rights in such technical data may subject the covered Government support contractor—

(i) to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) to civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach; and

(E) that such technical data provided to the covered Government support contractor under the authority of this section shall not be used by the covered Government support contractor to compete against the third party for Government or non-Government contracts.

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2595; amended Pub. L. 98–577, title III, §301(b), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 99–145, title IX, §961(d)(1), Nov. 8, 1985, 99 Stat. 703; Pub. L. 99–500, §101(c) [title X, §953(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, §101(c) [title X, §953(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, §953(a), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §7(a)(4), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100–180, div. A, title VIII, §808(a), (b), Dec. 4, 1987, 101 Stat. 1128, 1130; Pub. L. 101–189, div. A, title VIII, §853(b)(2), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 103–355, title VIII, §8106(a), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 108–136, div. A, title VIII, §844, Nov. 24, 2003, 117 Stat. 1553; Pub. L. 109–364, div. A, title VIII, §802(a), Oct. 17, 2006, 120 Stat. 2312; Pub. L. 111–84, div. A, title VIII, §821, Oct. 28, 2009, 123 Stat. 2411; Pub. L. 111–383, div. A, title VIII, §§801(a), 824(b), Jan. 7, 2011, 124 Stat. 4253, 4269; Pub. L. 112–81, div. A, title VIII, §§802(b), 815(a), Dec. 31, 2011, 125 Stat. 1485, 1491.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2011—Subsec. (a)(2)(D)(i)(II), (III). Pub. L. 112–81, § 815(a)(1)(A), added subcl. (II) and redesignated former subcl. (II) as (III).

Subsec. (a)(2)(E). Pub. L. 112–81, § 815(a)(1)(B), substituted ''. The United States shall have government purpose rights in such technical data, except in any case in which the Secretary of Defense determines, on the basis of criteria established in such regulations, that negotiation of different rights in such technical data would be in the best interest of the United States. The establishment of any such negotiated rights shall'' for ''and shall be based upon negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall''.

Subsec. (a)(2)(F)(i). Pub. L. 111–383, § 824(b)(1), added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

Subsec. (a)(3). Pub. L. 112–81, § 815(a)(1)(C), substituted ''for the purposes of the definitions under this paragraph'' for ''for the purposes of paragraph (2)(B), but shall be considered to be Federal funds for the purposes of paragraph (2)(A)''.

Pub. L. 111–383, § 824(b)(2), substituted ''for the purposes of paragraph (2)(B), but shall be considered to be Federal funds for the purposes of paragraph (2)(A)'' for ''for the purposes of definitions under this paragraph''.

Subsec. (b)(9), (10). Pub. L. 112–81, § 815(a)(2), added pars. (9) and (10).

Subsec. (c)(2). Pub. L. 112–81, § 802(b)(1), substituted ''subsection (a),'' for ''subsection (a)—'', struck out ''(A)'' before ''allowing'', and struck out subpar. (B) which read as follows: ''allowing a covered litigation support contractor access to and use of any technical, proprietary, or confidential data delivered under a contract 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; or''.

Pub. L. 111–383, § 801(a)(1), substituted ''subsection (a)—'' for ''subsection (a),'', inserted ''(A)'' before ''allowing'', and added subpar. (B).

Subsec. (g). Pub. L. 112–81, § 802(b)(2), struck out subsec. (g) which defined ''covered litigation support contractor'' for purpose of this section.

Pub. L. 111–383, § 801(a)(2), added subsec. (g).

2009—Subsec. (c)(2), (3). Pub. L. 111–84, § 821(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f). Pub. L. 111–84, § 821(b), added subsec. (f).

2006—Subsec. (e). Pub. L. 109–364 added subsec. (e).

2003—Subsec. (b)(7) to (9). Pub. L. 108–136 redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: ''requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;''.

1994—Subsec. (b)(1). Pub. L. 103–355 inserted before semicolon at end ''and providing that, in the case of a contract for a commercial item, the item shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f)''.

1989—Subsec. (a)(4). Pub. L. 101–189 struck out par. (4) which provided that for purposes of this subsection, the term ''Federal Acquisition Regulation'' means the single system of Government-wide procurement regulations as defined in section 4(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).

1987—Subsec. (a)(1). Pub. L. 100–180, § 808(a)(1), inserted at end ''Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.''

Subsec. (a)(2)(A). Pub. L. 100–26, § 7(a)(4)(A), inserted ''(other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply)'' after ''Federal funds''.

Subsec. (a)(2)(E). Pub. L. 100–180, § 808(a)(2), in introductory provisions, substituted ''established'' for ''agreed upon'', struck out comma after ''negotiations)'' and inserted in lieu ''and shall be based upon negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall be'', and added cl. (iv).

Subsec. (a)(2)(F). Pub. L. 100–180, § 808(a)(3), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract, to sell or otherwise relinquish to the United States any rights in technical data except—

''(i) rights in technical data described in subparagraph (C); or

''(ii) under the conditions described in subparagraph (D).''

Subsec. (a)(2)(G)(i). Pub. L. 100–180, § 808(a)(4)(A), substituted ''not otherwise provided under subparagraph (C) or (D),'' for ''pertaining to an item or process developed by such contractor or subcontractor exclusively at private expense'' and struck out ''or'' at end.

Subsec. (a)(2)(G)(ii). Pub. L. 100–180, § 808(a)(4)(B), substituted ''this section'' for ''such regulations'' and ''; or'' for period at end.

Pub. L. 100–26, § 7(a)(4)(B), substituted ''in technical data otherwise accorded to the United States under such regulations'' for ''of the United States in technical data pertaining to an item or process developed entirely or in part with Federal funds''.

Subsec. (a)(2)(G)(iii). Pub. L. 100–180, § 808(a)(4)(C), added cl. (iii).

Subsec. (a)(3). Pub. L. 100–180, § 808(a)(5), substituted '', 'exclusively with Federal funds', and 'exclusively at private expense'" for ''and 'private expense'" and inserted at end ''In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of definitions under this paragraph.''

Subsec. (c). Pub. L. 100–180, § 808(b), substituted ''from—'' for ''from'', designated existing provisions beginning with ''prescribing standards'' as par. (1), and added par. (2).

1986—Subsec. (a). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended generally subsec. (a) substantially identically, substituting provision that regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation for provision that such regulations define the legitimate proprietary interest of the United States and a contractor and be part of the single system of Government-wide procurement regulations, detailed what such regulations must contain if the item or process is developed exclusively with Federal funds, exclusively with private funds, or partly with Federal funds and partly with private funds, inserted provision relating to relinquishment of rights in data to the United States, directed the Secretary of Defense to define ''developed'' and ''private expense'', and defined ''Federal Acquisition Regulation''. Text reflects amendment by Pub. L. 99–661, which was executed last.

1985—Subsec. (a)(1). Pub. L. 99–145 substituted ''the item or process to which the technical data pertains'' for ''the technical data''.

1984—Subsec. (a). Pub. L. 98–577 substituted ''in regulations of the Department of Defense prescribed as

part'' for ''in regulations prescribed as part'' in text preceding par. (1).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title VIII, §815(c), Dec. 31, 2011, 125 Stat. 1493, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 2321 of this title] shall take effect on the date of the enactment of this Act [Dec. 31, 2011].

''(2) EXCEPTION.—The amendment made by subsection (a)(1)(C) [amending this section] shall take effect on January 7, 2011, immediately after the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383), to which such amendment relates.''

Pub. L. 111–383, div. A, title VIII, §801(b), Jan. 7, 2011, 124 Stat. 4254, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 7, 2011].''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VIII, §808(c), Dec. 4, 1987, 101 Stat. 1130, provided that: ''The amendments made by this section [amending this section] shall take effect on the earlier of—

''(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987]; or

''(2) the date on which regulations are prescribed and made effective to implement such amendments.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, §101(c) [title X, §953(e)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, Pub. L. 99–591, §101(c) [title X, §953(e)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172, and Pub. L. 99–661, div. A, title IX, formerly title IV, §953(e), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2321 of this title] shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98–525, set out as a note under section 2319 of this title.

REGULATIONS

Pub. L. 109–364, div. A, title VIII, §802(c), Oct. 17, 2006, 120 Stat. 2313, provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall revise regulations under section 2320 of title 10, United States Code, to implement subsection (e) of such section (as added by this section), including incorporating policy changes developed under such subsection into Department of Defense Directive 5000.1 and Department of Defense Instruction 5000.2.''

Pub. L. 99–500, §101(c) [title X, §953(d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, Pub. L. 99–591, §101(c) [title X, §953(d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172, and Pub. L. 99–661, div. A, title IX, formerly title IV, §953(d), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, required that proposed regulations under subsec. (a)(1) of this section be published in Federal Register for comment not later than 90 days after Oct. 18, 1986, and that proposed final regulations be published in Federal Register not later than 180 days after Oct. 18, 1986.

GUIDANCE RELATING TO RIGHTS IN TECHNICAL DATA

Pub. L. 111–383, div. A, title VIII, §824(a), Jan. 7, 2011, 124 Stat. 4269, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall review guidance issued by the military departments on the implementation of section 2320(e) of title 10, United States Code, to ensure that such guidance is consistent with the guidance issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the requirements of this section [amending this section and section 2321 of this title]. Such guidance shall be designed to ensure that the United States—

''(1) preserves the option of competition for contracts for the production and sustainment of systems or subsystems that are developed exclusively with Federal funds as defined in accordance with the amendments made by this section; and

''(2) is not required to pay more than once for the same technical data.''

TECHNICAL DATA RIGHTS UNDER NON-FAR AGREEMENTS

Pub. L. 110–417, [div. A], title VIII, §822, Oct. 14, 2008, 122 Stat. 4532, as amended by Pub. L. 111–383, div. A, title X, §1075(e)(13), Jan. 7, 2011, 124 Stat. 4375, provided that:

''(a) POLICY GUIDANCE.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall issue policy guidance with respect to rights in technical data under a non-FAR agreement. The guidance shall—

''(1) establish criteria for defining the legitimate interests of the United States and the party concerned in technical data pertaining to an item or process to be developed under the agreement;

''(2) require that specific rights in technical data be established during agreement negotiations and be based upon negotiations between the United States and the potential party to the agreement, except in any case in which the Secretary of Defense determines, on the basis of criteria established in such policy guidance, that the establishment of rights during or through agreement negotiations would not be practicable; and

''(3) require the program manager for a major weapon system or an item of personnel protective equipment that is to be developed using a non-FAR agreement to assess the long-term technical data needs of such system or item.

''(b) REQUIREMENT TO INCLUDE PROVISIONS IN NON-FAR AGREEMENTS.—A non-FAR agreement shall contain appropriate provisions relating to rights in technical data consistent with the policy guidance issued pursuant to subsection (a).

''(c) DEFINITIONS.—In this section:

''(1) The term 'non-FAR agreement' means an agreement that is not subject to laws pursuant to which the Federal Acquisition Regulation is prescribed, including—

''(A) a transaction authorized under section 2371 of title 10, United States Code; and

''(B) a cooperative research and development agreement.

''(2) The term 'party', with respect to a non-FAR agreement, means a non-Federal entity and includes any of the following:

''(A) A contractor and its subcontractors (at any tier).

''(B) A joint venture.

''(C) A consortium.

''(d) REPORT ON LIFE CYCLE PLANNING FOR TECHNICAL DATA NEEDS.—Not later than 270 days after the date of enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the requirements in section 2320(e) of title 10, United States Code, for the assessment of long-term technical data needs to

sustain major weapon systems. Such report shall include—

''(1) a description of all relevant guidance or policies issued;

''(2) a description of the extent to which program managers have received training to better assess the long-term technical data needs of major weapon systems and subsystems; and

''(3) a description of one or more examples, if any, where a priced contract option has been used on major weapon systems for the future delivery of technical data and one or more examples, if any, where all relevant technical data were acquired upon contract award.''

GOVERNMENT-INDUSTRY COMMITTEE ON RIGHTS IN TECHNICAL DATA

Pub. L. 102–190, div. A, title VIII, § 807, Dec. 5, 1991, 105 Stat. 1421, as amended by Pub. L. 102–484, div. A, title VIII, § 814, Oct. 23, 1992, 106 Stat. 2454; Pub. L. 105–85, div. A, title X, § 1073(d)(3), Nov. 18, 1997, 111 Stat. 1905, provided that not later than Sept. 15, 1992, the Secretary of Defense was to prescribe final regulations required by subsec. (a) of this section that supersede the interim regulations prescribed before Dec. 5, 1991, for the purposes of this section and contained various provisions relating to a government-industry advisory committee, reports to Congress, publication of the regulations, and application of the regulations.

CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT

Pub. L. 102–190, div. A, title VIII, § 808, Dec. 5, 1991, 105 Stat. 1423, required Secretary of Defense to prescribe regulations ensuring that any Department of Defense employee or member of the armed forces with an appropriate security clearance who is engaged in oversight of an acquisition program maintains control of the employee's or member's work product, provided that procedures for protecting unauthorized disclosure of classified information by contractors do not require such an employee or member to relinquish control of his or her work product to any such contractor, required implementing regulations not later than 120 days after Dec. 5, 1991, and provided that this section would cease to be effective on Sept. 30, 1992.

§ 2321. Validation of proprietary data restrictions

(a) CONTRACTS COVERED BY SECTION.—This section applies to any contract for supplies or services entered into by the Department of Defense that includes provisions for the delivery of technical data.

(b) CONTRACTOR JUSTIFICATION FOR RESTRICTIONS.—A contract subject to this section shall provide that a contractor under the contract and any subcontractor under the contract at any tier shall be prepared to furnish to the contracting officer a written justification for any use or release restriction (as defined in subsection (i)) asserted by the contractor or subcontractor.

(c) REVIEW OF RESTRICTIONS.—(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section.

(2) The review of an asserted use or release restriction under paragraph (1) shall be conducted before the end of the three-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data is required to be delivered; or

(B) the date on which the technical data is delivered under the contract.

(d) CHALLENGES TO RESTRICTIONS.—(1) The Secretary of Defense may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section if the Secretary finds that—

(A) reasonable grounds exist to question the current validity of the asserted restriction; and

(B) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

(2)(A) A challenge to a use or release restriction asserted by the contractor in accordance with applicable regulations may not be made under paragraph (1) after the end of the six-year period described in subparagraph (B) unless the technical data involved—

(i) are publicly available;

(ii) have been furnished to the United States without restriction;

(iii) have been otherwise made available without restriction; or

(iv) are the subject of a fraudulently asserted use or release restriction.

(B) The six-year period referred to in subparagraph (A) is the six-year period beginning on the later of—

(i) the date on which final payment is made on the contract under which the technical data are required to be delivered; or

(ii) the date on which the technical data are delivered under the contract.

(3) If the Secretary challenges an asserted use or release restriction under paragraph (1), the Secretary shall provide written notice of the challenge to the contractor or subcontractor asserting the restriction. Any such notice shall—

(A) state the specific grounds for challenging the asserted restriction;

(B) require a response within 60 days justifying the current validity of the asserted restriction; and

(C) state that evidence of a justification described in paragraph (4) may be submitted.

(4) It is a justification of an asserted use or release restriction challenged under paragraph (1) that, within the three-year period preceding the challenge to the restriction, the Department of Defense validated a restriction identical to the asserted restriction if—

(A) such validation occurred after a challenge to the validated restriction under this subsection; and

(B) the validated restriction was asserted by the same contractor or subcontractor (or a licensee of such contractor or subcontractor).

(e) TIME FOR CONTRACTORS TO SUBMIT JUSTIFICATIONS.—If a contractor or subcontractor asserting a use or release restriction submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to

adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(f) PRESUMPTION OF DEVELOPMENT EXCLUSIVELY AT PRIVATE EXPENSE.—(1) Except as provided in paragraph (2), in the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor under a contract for commercial items, the contracting officer shall presume that the contractor or subcontractor has justified the restriction on the basis that the item was developed exclusively at private expense, whether or not the contractor or subcontractor submits a justification in response to the notice provided pursuant to subsection (d)(3). In such a case, the challenge to the use or release restriction may be sustained only if information provided by the Department of Defense demonstrates that the item was not developed exclusively at private expense.

(2) In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor for a major system or a subsystem or component thereof on the basis that the major weapon system, subsystem, or component was developed exclusively at private expense—

(A) the presumption in paragraph (1) shall apply—

(i) with regard to a commercial subsystem or component of a major system, if the major system was acquired as a commercial item in accordance with section 2379(a) of this title;

(ii) with regard to a component of a subsystem, if the subsystem was acquired as a commercial item in accordance with section 2379(b) of this title; and

(iii) with regard to any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and

(B) in all other cases, the challenge to the use or release restriction shall be sustained unless information provided by the contractor or subcontractor demonstrates that the item was developed exclusively at private expense.

(g) DECISION BY CONTRACTING OFFICER.—(1) Upon a failure by the contractor or subcontractor to submit any response under subsection (d)(3), the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

(2) After review of any justification submitted in response to the notice provided pursuant to subsection (d)(3), the contracting officer shall, within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(h) CLAIMS.—If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of chapter 71 of title 41.

(i) RIGHTS AND LIABILITY UPON FINAL DISPOSITION.—(1) If, upon final disposition, the contracting officer's challenge to the use or release restriction is sustained—

(A) the restriction shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If, upon final disposition, the contracting officer's challenge to the use or release restriction is not sustained—

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

(j) USE OR RELEASE RESTRICTION DEFINED.—In this section, the term ''use or release restriction'', with respect to technical data delivered to the United States under a contract subject to this section, means a restriction by the contractor or subcontractor on the right of the United States—

(1) to use such technical data; or

(2) to release or disclose such technical data to persons outside the Government or permit the use of such technical data by persons outside the Government.

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2597; amended Pub. L. 99–500 §101(c) [title X, §953(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–171, and Pub. L. 99–591, §101(c) [title X, §953(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–171; Pub. L. 99–661, div. A, title IX, formerly title IV, §953(b), Nov. 14, 1986, 100 Stat. 3951, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, Pub. L. 100–26, §7(a)(5), Apr. 21, 1987, 101 Stat. 276; Pub. L. 100–180, div. A, title XII, §1231(6), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103–35, title II, §201(g)(4), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title VIII, §8106(b), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 109–364, div. A, title VIII, §802(b), Oct. 17, 2006, 120 Stat. 2313; Pub. L. 110–181, div. A, title VIII, §815(a)(2), Jan. 28, 2008,

122 Stat. 223; Pub. L. 111–350, § 5(b)(18), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 111–383, div. A, title VIII, § 824(c), Jan. 7, 2011, 124 Stat. 4269; Pub. L. 112–81, div. A, title VIII, § 815(b), Dec. 31, 2011, 125 Stat. 1492; Pub. L. 113–291, div. A, title X, § 1071(a)(5), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, § 813(a), Nov. 25, 2015, 129 Stat. 891.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Another section 2321 of this title was contained in chapter 138 and was renumbered section 2341 of this title.

AMENDMENTS

2015—Subsec. (f)(2). Pub. L. 114–92 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor (other than technical data for a commercially available off-the-shelf item as defined in section 104 of title 41) for a major system or a subsystem or component thereof on the basis that the major system, subsystem or component was developed exclusively at private expense, the challenge to the use or release restriction shall be sustained unless information provided by the contractor or subcontractor demonstrates that the item was developed exclusively at private expense.''

2014—Subsec. (f)(2). Pub. L. 113–291 substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))''.

2011—Subsec. (d)(2)(A). Pub. L. 112–81, § 815(b)(1)(A), substituted ''A challenge to a use or release restriction asserted by the contractor in accordance with applicable regulations may not be made under paragraph (1) after the end of the six-year period'' for ''Except as provided in subparagraph (C), a challenge to an asserted use or release restriction may not be made under paragraph (1) after the end of the three-year period'' in introductory provisions.

Pub. L. 111–383, § 824(c)(1), substituted ''Except as provided in subparagraph (C), a challenge'' for ''A challenge'' in introductory provisions.

Subsec. (d)(2)(A)(iv). Pub. L. 112–81, § 815(b)(1)(B)–(D), added cl. (iv).

Subsec. (d)(2)(B). Pub. L. 112–81, § 815(b)(2), substituted ''six-year period'' for ''three-year period'' in two places in introductory provisions.

Subsec. (d)(2)(C). Pub. L. 112–81, § 815(b)(3), struck out subpar. (C) which read as follows: ''The limitation in this paragraph shall not apply to a case in which the Secretary finds that reasonable grounds exist to believe that a contractor or subcontractor has erroneously asserted a use or release restriction with regard to technical data described in section 2320(a)(2)(A) of this title.''

Pub. L. 111–383, § 824(c)(2), added subpar. (C).

Subsec. (h). Pub. L. 111–350 substituted ''chapter 71 of title 41'' for ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)''.

2008—Subsec. (f)(2). Pub. L. 110–181 substituted ''(other than technical data for a commercially available off-the-shelf item as defined in section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c)))'' for ''(whether or not under a contract for commercial items)''.

2006—Subsec. (f). Pub. L. 109–364 substituted ''Expense'' for ''Expense for Commercial Items Contracts'' in heading, designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), in'' for ''In'', and added par. (2).

1994—Subsecs. (f) to (j). Pub. L. 103–355 added subsec. (f) and redesignated former subsecs. (f) to (i) as (g) to (j), respectively.

1993—Subsec. (d)(1)(B). Pub. L. 103–35 substituted ''adherence'' for ''adherance''.

1987—Subsec. (a). Pub. L. 100–26, § 7(a)(5)(A)(ii), added subsec. (a) and struck out former subsec. (a) which read as follows: ''A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data.''

Subsec. (b). Pub. L. 100–26, § 7(a)(5)(A)(ii), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any restriction on the right of the United States to release or disclose technical data delivered under a contract to persons outside the Government, or to permit the use of such technical data by such persons. Such review shall be conducted before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later.

''(2)(A) If the Secretary determines, at any time before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later, that a challenge to a restriction is warranted, the Secretary shall provide written notice to the contractor or subcontractor asserting the restriction. Such a determination shall be based on a finding by the Secretary that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time. Such notice shall—

''(i) state the specific grounds for challenging the asserted restriction;

''(ii) require a response within 60 days justifying the current validity of the asserted restriction; and

''(iii) state that evidence of a validation by the Department of Defense of a restriction identical to the asserted restriction within the three-year period preceding the challenge shall serve as justification for the asserted restriction if—

''(I) the validation occurred after a review of the validated restriction under this subsection; and

''(II) the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor) to which such notice is being provided.

''(B) Notwithstanding subparagraph (A), the United States may challenge a restriction on the release, disclosure, or use of technical data delivered under a contract at any time if such technical data—

''(i) is publicly available;

''(ii) has been furnished to the United States without restriction; or

''(iii) has been otherwise made available without restriction.''

Subsec. (c). Pub. L. 100–26, § 7(a)(5)(A)(ii), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 100–26, § 7(a)(5)(A)(ii), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (d)(4)(A). Pub. L. 99–180, § 1231(6)(A), substituted ''subsection'' for ''paragraph''.

Subsec. (e). Pub. L. 100–26, § 7(a)(5)(A)(i), (B), redesignated former subsec. (c) as (e), inserted heading, and substituted ''If a contractor or subcontractor asserting a use or release restriction'' for ''If a contractor or subcontractor asserting a restriction subject to this section''. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 100–26, § 7(a)(5)(A)(i), (C), redesignated former subsec. (d) as (f), inserted heading, and substituted ''subsection (d)(3)'' for ''subsection (b)'' in two places. Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 100–26, §7(a)(5)(A)(i), (D), redesignated former subsec. (e) as (g) and inserted heading.

Subsec. (h). Pub. L. 100–26, §7(a)(5)(A)(i), (E)(i), redesignated former subsec. (f) as (h) and inserted heading.

Subsec. (h)(1). Pub. L. 100–26, §7(a)(5)(E)(ii)–(iv), substituted ''the use or release restriction'' for ''the restriction on the right of the United States to use such technical data'' in introductory provisions, struck out ''on the right of the United States to use the technical data'' after ''the restriction'' in subpar. (A), and substituted ''asserting the restriction'' for '', as appropriate,'' in subpar. (B).

Subsec. (h)(2). Pub. L. 100–26, §7(a)(5)(E)(v), substituted ''the use or release restriction'' for ''the restriction on the right of the United States to use such technical data'' in introductory provisions.

Subsec. (i). Pub. L. 100–180, §1231(6)(B), inserted ''or subcontractor'' in introductory provisions.

Pub. L. 100–26, §7(a)(5)(F), added subsec. (i).

1986—Subsecs. (a), (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended generally subsecs. (a) and (b) identically. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that—

''(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

''(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the United States under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time.

''(b) If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. Such notice shall—

''(1) state the grounds for challenging the asserted restriction; and

''(2) require a response within 60 days justifying the current validity of the asserted restriction.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–26, §12(d)(1), Apr. 21, 1987, 101 Stat. 289, provided that: ''The amendments to section 2321 of title 10, United States Code, made by section 7(a)(5) shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on October 18, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 applicable to contracts for which solicitations are issued after end of 210-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 953(e) of Pub. L. 99–661, set out as a note under section 2320 of this title.

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98–525, set out as a note under section 2319 of this title.

[§ 2322. Repealed. Pub. L. 102–484, div. A, title X, § 1052(25)(A), Oct. 23, 1992, 106 Stat. 2500]

Section, added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 100–26, §7(a)(6), Apr. 21, 1987, 101 Stat. 278; Pub. L. 100–180, div. A, title XII, §1231(7), Dec. 4, 1987, 101 Stat. 1160, limited small business set-asides under the Foreign Military Sales Program and provided that the section expired Jan. 17, 1987.

Another section 2322 of this title was contained in chapter 138 and was renumbered section 2342 of this title.

§ 2323. Contract goal for small disadvantaged businesses and certain institutions of higher education

(a) GOAL.—(1) Except as provided in subsection (d), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration in each fiscal year for the total combined amount obligated for contracts and subcontracts entered into with—

(A) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals, and qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act);

(B) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986;

(C) minority institutions (as defined in section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k));

(D) Hispanic-serving institutions (as defined in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a))); and

(E) Native Hawaiian-serving institutions and Alaska Native-serving institutions (as defined in section 317 of the Higher Education Act of 1965).

(2) The head of the agency shall establish a specific goal within the overall 5 percent goal for the award of prime contracts and subcontracts to historically Black colleges and universities, Hispanic-serving institutions, Native Hawaiian-serving institutions and Alaska Native-serving institutions, and minority institutions in order to increase the participation of such colleges and universities and institutions in the program provided for by this section.

(3) The Federal Acquisition Regulation shall provide procedures or guidelines for contracting officers to set goals which agency prime contractors that are required to submit subcontracting plans under section 8(d)(4)(B) of the Small Business Act (15 U.S.C. 637(d)(4)(B)) in furtherance of the agency's program to meet the 5 percent goal specified in paragraph (1) should meet in awarding subcontracts, including subcontracts to minority-owned media, to entities described in that paragraph.

(b) AMOUNT.—(1) With respect to the Department of Defense, the requirements of subsection

(a) for any fiscal year apply to the combined total of the following amounts:

(A) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for procurement.

(B) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for research, development, test, and evaluation.

(C) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for military construction.

(D) Funds obligated for contracts entered into with the Department of Defense for operation and maintenance.

(2) With respect to the Coast Guard, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the Coast Guard for such fiscal year.

(3) With respect to the National Aeronautics and Space Administration, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the National Aeronautics and Space Administration for such fiscal year.

(c) TYPES OF ASSISTANCE.—(1) To attain the goal specified in subsection (a)(1), the head of an agency shall provide technical assistance to the entities referred to in that subsection and, in the case of historically Black colleges and universities, Hispanic-serving institutions, Native Hawaiian-serving institutions and Alaska Native-serving institutions, and minority institutions, shall also provide infrastructure assistance.

(2) Technical assistance provided under this section shall include information about the program, advice about agency procurement procedures, instruction in preparation of proposals, and other such assistance as the head of the agency considers appropriate. If the resources of the agency are inadequate to provide such assistance, the head of the agency may enter into contracts with minority private sector entities with experience and expertise in the design, development, and delivery of technical assistance services to eligible individuals, business firms and institutions, acquisition agencies, and prime contractors. Agency contracts with such entities shall be awarded annually, based upon, among other things, the number of minority small business concerns, historically Black colleges and universities, and minority institutions that each such entity brings into the program.

(3) Infrastructure assistance provided by the Department of Defense under this section to historically Black colleges and universities, to Hispanic-serving institutions, to Native Hawaiian-serving institutions and Alaska Native-serving institutions, and to minority institutions may include programs to do the following:

(A) Establish and enhance undergraduate, graduate, and doctoral programs in scientific disciplines critical to the national security functions of the Department of Defense.

(B) Make Department of Defense personnel available to advise and assist faculty at such colleges and universities in the performance of defense research and in scientific disciplines critical to the national security functions of the Department of Defense.

(C) Establish partnerships between defense laboratories and historically Black colleges and universities and minority institutions for the purpose of training students in scientific disciplines critical to the national security functions of the Department of Defense.

(D) Award scholarships, fellowships, and the establishment of cooperative work-education programs in scientific disciplines critical to the national security functions of the Department of Defense.

(E) Attract and retain faculty involved in scientific disciplines critical to the national security functions of the Department of Defense.

(F) Equip and renovate laboratories for the performance of defense research.

(G) Expand and equip Reserve Officer Training Corps activities devoted to scientific disciplines critical to the national security functions of the Department of Defense.

(H) Provide other assistance as the Secretary determines appropriate to strengthen scientific disciplines critical to the national security functions of the Department of Defense or the college infrastructure to support the performance of defense research.

(4) The head of the agency shall, to the maximum extent practical, carry out programs under this section at colleges, universities, and institutions that agree to bear a substantial portion of the cost associated with the programs.

(d) APPLICABILITY.—Subsection (a) does not apply to the Department of Defense—

(1) to the extent to which the Secretary of Defense determines that compelling national security considerations require otherwise; and

(2) if the Secretary notifies Congress of such determination and the reasons for such determination.

(e) COMPETITIVE PROCEDURES AND ADVANCE PAYMENTS.—To attain the goal of subsection (a):

(1)(A) The head of the agency shall—

(i) ensure that substantial progress is made in increasing awards of agency contracts to entities described in subsection (a)(1);

(ii) exercise his utmost authority, resourcefulness, and diligence;

(iii) in the case of the Department of Defense, actively monitor and assess the progress of the military departments, Defense Agencies, and prime contractors of the Department of Defense in attaining such goal; and

(iv) in the case of the Coast Guard and the National Aeronautics and Space Administration, actively monitor and assess the progress of the prime contractors of the agency in attaining such goal.

(B) In making the assessment under clauses (iii) and (iv) of subparagraph (A), the head of the agency shall evaluate the extent to which use of the authority provided in paragraphs (2) and (3) and compliance with the requirement in paragraph (4) is effective for facilitating the attainment of the goal.

(2) To the extent practicable and when necessary to facilitate achievement of the 5 per-

cent goal described in subsection (a), the head of an agency shall make advance payments under section 2307 of this title to contractors described in subsection (a). The Federal Acquisition Regulation shall provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.

(3)(A) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency may, except as provided in subparagraph (B), enter into contracts using less than full and open competitive procedures (including awards under section 8(a) of the Small Business Act) and partial set asides for entities described in subsection (a)(1), but shall pay a price not exceeding fair market cost by more than 10 percent in payment per contract to contractors or subcontractors described in subsection (a). The head of an agency shall adjust the percentage specified in the preceding sentence for any industry category if available information clearly indicates that nondisadvantaged small business concerns in such industry category are generally being denied a reasonable opportunity to compete for contracts because of the use of that percentage in the application of this paragraph.

(B)(i) The Secretary of Defense may not exercise the authority under subparagraph (A) to enter into a contract for a price exceeding fair market cost if the regulations implementing that authority are suspended under clause (ii) with respect to that contract.

(ii) At the beginning of each fiscal year, the Secretary shall determine, on the basis of the most recent data, whether the Department of Defense achieved the 5 percent goal described in subsection (a) during the fiscal year to which the data relates. Upon determining that the Department achieved the goal for the fiscal year to which the data relates, the Secretary shall issue a suspension, in writing, of the regulations that implement the authority under subparagraph (A). Such a suspension shall be in effect for the one-year period beginning 30 days after the date on which the suspension is issued and shall apply with respect to contracts awarded pursuant to solicitations issued during that period.

(iii) For purposes of clause (ii), the term ''most recent data'' means data relating to the most recent fiscal year for which data are available.

(4) To the extent practicable, the head of an agency shall maximize the number of minority small business concerns, historically Black colleges and universities, and minority institutions participating in the program.

(5) Each head of an agency shall prescribe regulations which provide for the following:

(A) Procedures or guidance for contracting officers to provide incentives for prime contractors referred to in subsection (a)(3) to increase subcontractor awards to entities described in subsection (a)(1).

(B) A requirement that contracting officers emphasize the award of contracts to entities described in subsection (a)(1) in all industry categories, including those categories in which such entities have not traditionally dominated.

(C) Guidance to agency personnel on the relationship among the following programs:

(i) The program implementing this section.

(ii) The program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(iii) The small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)).

(D) With respect to an agency procurement which is reasonably likely to be set aside for entities described in subsection (a)(1), a requirement that (to the maximum extent practicable) the procurement be designated as such a set-aside before the solicitation for the procurement is issued.

(E) Policies and procedures which, to the maximum extent practicable, will ensure that current levels in the number or dollar value of contracts awarded under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and under the small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)) are maintained and that every effort is made to provide new opportunities for contract awards to eligible entities, in order to meet the goal of subsection (a).

(F) Implementation of this section in a manner which will not alter the procurement process under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(G) A requirement that one factor used in evaluating the performance of a contracting officer be the ability of the officer to increase contract awards to entities described in subsection (a)(1).

(H) Increased technical assistance to entities described in subsection (a)(1).

(f) PENALTIES AND REGULATIONS RELATING TO STATUS.—(1) Whoever for the purpose of securing a contract or subcontract under subsection (a) misrepresents the status of any concern or person as a small business concern owned and controlled by a minority (as described in subsection (a)) or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act), shall be punished by imprisonment for not more than one year, or a fine under title 18, or both.

(2) The Federal Acquisition Regulation shall prohibit awarding a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(*o*)(1)[1] of the Small Business Act (15 U.S.C. 644(*o*)(1)).

(g) INDUSTRY CATEGORIES.—(1) To the maximum extent practicable, the head of the agency shall—

(A) ensure that no particular industry category bears a disproportionate share of the contracts awarded to attain the goal established by subsection (a); and

[1] See References in Text note below.

(B) ensure that contracts awarded to attain the goal established by subsection (a) are made across the broadest possible range of industry categories.

(2) Under procedures prescribed by the head of the agency, a person may request the Secretary to determine whether the use of small disadvantaged business set asides by a contracting activity of the agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity for the purposes of this section. Upon making a determination that a particular industry category is bearing a disproportionate share, the head of the agency shall take appropriate actions to limit the contracting activity's use of set asides in awarding contracts in that particular industry category.

(h) COMPLIANCE WITH SUBCONTRACTING PLAN REQUIREMENTS.—(1) The Federal Acquisition Regulation shall contain regulations to ensure that potential contractors submitting sealed bids or competitive proposals to the agency for procurement contracts to be awarded under the program provided for by this section are complying with applicable subcontracting plan requirements of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(2) The regulations required by paragraph (1) shall ensure that, with respect to a sealed bid or competitive proposal for which the bidder or offeror is required to negotiate or submit a subcontracting plan under section 8(d) of the Small Business Act (15 U.S.C. 637(d)), the subcontracting plan shall be a factor in evaluating the bid or proposal.

(i) ANNUAL REPORT.—(1) Not later than December 15 of each year, the head of the agency shall submit to Congress a report on the progress of the agency toward attaining the goal of subsection (a) during the preceding fiscal year.

(2) The report required under paragraph (1) shall include the following:

(A) A full explanation of any progress toward attaining the goal of subsection (a).

(B) A plan to achieve the goal, if necessary.

(j) DEFINITIONS.—In this section:

(1) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(2) The term ''head of an agency'' means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(k) EFFECTIVE DATE.—(1) This section applies in the Department of Defense to each of fiscal years 1987 through 2009.

(2) This section applies in the Coast Guard and the National Aeronautics and Space Administration in each of fiscal years 1995 through 2009.

(Added and amended Pub. L. 102–484, div. A, title VIII, §§ 801(a)(1), (b)–(f), 802, Oct. 23, 1992, 106 Stat. 2442–2444, 2446; Pub. L. 103–35, title II, § 202(a)(6), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title VIII, § 811(a)–(c), (e), Nov. 30, 1993, 107 Stat. 1702; Pub. L. 103–355, title VII, § 7105, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(8), Feb. 10, 1996, 110 Stat. 672; Pub. L. 105–135, title VI, § 604(a), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 105–261, div. A, title VIII, § 801, Oct. 17, 1998, 112 Stat. 2080; Pub. L. 106–65, div. A, title VIII, § 808, Oct. 5, 1999, 113 Stat. 705; Pub. L. 107–107, div. A, title X, § 1048(a)(17), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VIII, § 816, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 108–136, div. A, title X, § 1031(a)(15), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 109–163, div. A, title VIII, § 842, Jan. 6, 2006, 119 Stat. 3389; Pub. L. 109–364, div. A, title VIII, § 858, Oct. 17, 2006, 120 Stat. 2349; Pub. L. 110–181, div. A, title VIII, § 891, Jan. 28, 2008, 122 Stat. 270; Pub. L. 111–383, div. A, title X, § 1075(b)(31), Jan. 7, 2011, 124 Stat. 4370.)

REFERENCES IN TEXT

Section 3(p) of the Small Business Act, referred to in subsecs. (a)(1)(A) and (f)(1), is classified to section 632(p) of Title 15, Commerce and Trade.

Section 317 of the Higher Education Act of 1965, referred to in subsec. (a)(1)(E), is classified to section 1059d of Title 20, Education.

Section 8(a) of the Small Business Act, referred to in subsec. (e)(3)(A), is classified to section 637(a) of Title 15, Commerce and Trade.

Par. (1) of section 15(*o*) of the Small Business Act, referred to in subsec. (f)(2), was struck out by Pub. L. 112–239, div. A, title XVI, § 1696(b)(3), Jan. 2, 2013, 126 Stat. 2091. See section 657s of Title 15, Commerce and Trade.

CODIFICATION

Section, as added by Pub. L. 102–484, § 801(a)(1), consists of text of Pub. L. 99–661, div. A, title XII, § 1207, Nov. 14, 1986, 100 Stat. 3973, revised by Pub. L. 102–484 by substituting ''each of fiscal years 1987 through 2000'' for ''each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, and 1993'' in subsec. (a)(1), ''of this title'' for ''of title 10, United States Code,'' in subsec. (e)(2), and ''each of fiscal years 1987 through 2000'' for ''each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, and 1993'' in subsec. (h). Section 1207 of Pub. L. 99–661, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102–484, div. A, title VIII, § 801(h)(1), Oct. 23, 1992, 106 Stat. 2445.

PRIOR PROVISIONS

A prior section 2323, added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 99–500, § 101(c) [title X, § 926(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, § 101(c) [title X, § 926(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title IX, formerly title IV, § 926(a)(1), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, related to commercial pricing for spare or repair parts, prior to repeal by Pub. L. 101–510, div. A, title VIII, § 804(a), Nov. 5, 1990, 104 Stat. 1591.

AMENDMENTS

2011—Subsec. (a)(1)(D). Pub. L. 111–383 inserted closing parenthesis before semicolon.

2008—Subsec. (a)(1)(E). Pub. L. 110–181, § 891(1), added subpar. (E).

Subsecs. (a)(2), (c)(1). Pub. L. 110–181, § 891(2), (3), inserted ''Native Hawaiian-serving institutions and Alaska Native-serving institutions,'' after ''Hispanic-serving institutions,''.

Subsec. (c)(3). Pub. L. 110–181, § 891(4), inserted ''to Native Hawaiian-serving institutions and Alaska Native-serving institutions,'' after ''Hispanic-serving institutions,'' in introductory provisions.

2006—Subsec. (a)(1)(D). Pub. L. 109–364, § 858(1), added subpar. (D).

Subsec. (a)(2). Pub. L. 109–364, §858(2), inserted '', Hispanic-serving institutions,'' before ''and minority institutions'' and ''and institutions'' before ''in the program''.

Subsec. (c)(1). Pub. L. 109–364, §858(3), inserted '', Hispanic-serving institutions,'' before ''and minority institutions''.

Subsec. (c)(3). Pub. L. 109–364, §858(4), inserted '', to Hispanic-serving institutions,'' before ''and to minority institutions'' in introductory provisions.

Subsec. (k). Pub. L. 109–163 substituted ''2009'' for ''2006'' in pars. (1) and (2).

2003—Subsec. (i)(3). Pub. L. 108–136 struck out par. (3) which listed certain items to be included in the report required under par. (1).

2002—Subsec. (j)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Subsec. (k). Pub. L. 107–314 substituted ''2006'' for ''2003'' in pars. (1) and (2).

2001—Subsec. (a)(1)(C). Pub. L. 107–107 substituted ''section 365(3)'' for ''section 1046(3)'' and ''20 U.S.C. 1067k'' for ''20 U.S.C. 1135d–5(3)'' and struck out before period at end '', which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)))''.

1999—Subsec. (k). Pub. L. 106–65 substituted ''2003'' for ''2000'' in pars. (1) and (2).

1998—Subsec. (e)(3). Pub. L. 105–261 designated existing provisions as subpar. (A), inserted '', except as provided in subparagraph (B),'' after ''the head of an agency may'' in first sentence, and added subpar. (B).

1997—Subsec. (a)(1)(A). Pub. L. 105–135, §604(a)(1), inserted before semicolon at end '', and qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act)''.

Subsec. (f)(1). Pub. L. 105–135, §604(a)(2), inserted ''or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act)'' after ''(as described in subsection (a))''.

1996—Subsec. (a)(1)(C). Pub. L. 104–106, §4321(b)(8)(A), inserted closing parenthesis after ''1135d–5(3))'' and ''1059c(b)(1))''.

Subsec. (a)(3). Pub. L. 104–106, §4321(b)(8)(B), struck out ''(issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c))'' after ''Acquisition Regulation''.

Subsec. (b). Pub. L. 104–106, §4321(b)(8)(C), inserted ''(1)'' after ''Amount.—''.

Subsec. (i)(3)(D). Pub. L. 104–106, §4321(b)(8)(D), added subpar. (D).

1994—Pub. L. 103–355 amended section generally to extend defense contract goal for small disadvantaged businesses and certain institutions of higher education to Coast Guard and National Aeronautics and Space Administration.

1993—Subsec. (a)(1)(B). Pub. L. 103–160, §811(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''historically Black colleges and universities; and''.

Subsec. (a)(1)(C). Pub. L. 103–160, §811(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''minority institutions (as defined in paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058)), including any nonprofit research institution that was an integral part of a historically Black college or university before November 14, 1986.''

Subsec. (f)(2). Pub. L. 103–160, §811(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense shall prescribe regulations which provide for the following:

''(A) A requirement that a business which represents itself as an entity described in subsection (a)(1) and is seeking a Department of Defense contract maintain its status as an entity at the time of contract award.

''(B) A prohibition on the award of a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(*o*)(1) of the Small Business Act (15 U.S.C. 644(*o*)(1)).''

Subsec. (i). Pub. L. 103–35 amended and made technical amendment to directory language of Pub. L. 102–484, §801(f). See 1992 Amendment note for subsec. (h) below.

Subsec. (i)(3)(D). Pub. L. 103–160, §811(e), added subpar. (D).

1992—Subsec. (a)(3). Pub. L. 102–484, §801(b), added par. (3).

Subsec. (e). Pub. L. 102–484, §801(c)(1), substituted ''subsection (a):'' for ''subsection (a)—'' in introductory provisions.

Subsec. (e)(1). Pub. L. 102–484, §801(c)(2), added par. (1) and struck out former par. (1) which read as follows: ''The Secretary of Defense shall exercise his utmost authority, resourcefulness, and diligence.''

Subsec. (e)(2). Pub. L. 102–484, §801(c)(3), inserted at end ''The Secretary shall prescribe regulations that provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.''

Subsec. (e)(3). Pub. L. 102–484, §801(c)(4), inserted ''and partial set asides for entities described in subsection (a)(1)'' after ''Act''.

Subsec. (e)(5). Pub. L. 102–484, §801(c)(5), added par. (5).

Subsec. (f). Pub. L. 102–484, §801(d), substituted ''Penalties and Regulations Relating to Status'' for ''Penalties for Misrepresentation'' in heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (g). Pub. L. 102–484, §801(e)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 102–484, §802(2), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 102–484, §801(f), as amended by Pub. L. 103–35, substituted ''Report'' for ''Reports'' in heading, struck out ''July 15 of each year, the Secretary of Defense shall submit to Congress a report on the progress toward meeting the goal of subsection (a) during the current fiscal year. (2) Not later than'' after ''(1) Not later than'', struck out ''final'' after ''Congress a'', and substituted ''Secretary toward attaining'' for ''Secretary with'' in former par. (2), redesignated par. (3) as (2) and substituted ''report required under paragraph (1) shall'' for ''reports described in paragraphs (1) and (2) shall each'', redesignated par. (4) as (3) and substituted ''report required under paragraph (1)'' for ''reports required under paragraph (2)'', and struck out par. (5) which read as follows: ''The first report required by this subsection shall be submitted between May 1 and May 30, 1987.''

Pub. L. 102–484, §801(e)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 102–484, §802(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 102–484, §801(e)(1), redesignated subsec. (h) as (i).

Subsec. (j). Pub. L. 102–484, §802(1), redesignated subsec. (i) as (j).

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.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135 set out as a note under section 631 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, § 801(f), Oct. 23, 1992, 106 Stat. 2444, provided that the amendment made by that section is effective Oct. 1, 1993.

REGULATIONS

Pub. L. 103–160, div. A, title VIII, § 811(d), Nov. 30, 1993, 107 Stat. 1702, provided that:

''(1) The Secretary of Defense shall propose amendments to the Department of Defense Supplement to the Federal Acquisition Regulation that address the matters described in subsection (g) and subsection (h)(2) of section 2323 of title 10, United States Code.

''(2) Not later than 15 days after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall publish such proposed amendments in accordance with section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707]. The Secretary shall provide a period of at least 60 days for public comment on the proposed amendments.

''(3) The Secretary shall publish the final regulations not later than 120 days after the date of the enactment of this Act.''

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.

§ 2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education

(a) REGULATIONS.—Subject to subsections (b) and (c), in any case in which a subcontracting goal is specified in a Department of Defense contract in the implementation of section 2323 of this title and section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for—

(1) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if such work is performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or

(2) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if the performance of such contract or subcontract is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE WORK.—(1) Work performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the work are Indians; or

(B) the contractor or subcontractor has an agreement with the tribal government having jurisdiction over such Indian lands that provides goals for training and development of the Indian workforce and Indian management.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—The amount of the credit given toward the attainment of any subcontracting goal under subsection (a) shall be—

(1) in the case of work performed as described in subsection (a)(1), the value of the work performed; and

(2) in the case of a contract or subcontract undertaken to be performed by a joint venture as described in subsection (a)(2), an amount equal to the amount of the contract or subcontract multiplied by the percentage of the tribe's or tribally owned corporation's ownership interest in the joint venture.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''Indian lands'' has the meaning given that term by section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4)).

(2) The term ''Indian'' has the meaning given that term by section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).

(3) The term ''Indian tribe'' has the meaning given that term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(4) The term ''tribally owned corporation'' means a corporation owned entirely by an Indian tribe.

(Added Pub. L. 102–484, div. A, title VIII, § 801(g)(1), Oct. 23, 1992, 106 Stat. 2445; amended Pub. L. 104–201, div. A, title X, § 1074(a)(13), Sept. 23, 1996, 110 Stat. 2659.)

CODIFICATION

Section, as added by Pub. L. 102–484, consists of text of Pub. L. 101–189, div. A, title VIII, § 832, Nov. 29, 1989, 103 Stat. 1508, revised by Pub. L. 102–484 by substituting ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)'' in subsec. (a). Section 832 of Pub. L. 101–189, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102–484, div. A, title VIII, § 801(h)(5), Oct. 23, 1992, 106 Stat. 2445.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201, which directed amendment of subsec. (a) by substituting ''section 2323 of this title'' for ''section 1207 of the National Defense

Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)'', could not be executed because the language ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)'' did not appear. See Codification note above.

§ 2324. Allowable costs under defense contracts

(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an agency shall require that a covered contract provide that if the contractor submits to the agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or applicable agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the head of the agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the head of the agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) If the head of the agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the head of the agency shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of the head of an agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 7103 of title 41; and

(2) is appealable in the manner provided in section 7104(a) of title 41.

(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The following costs are not allowable under a covered contract:

(A) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(C) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(D) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable provisions of the Federal Acquisition Regulation.

(E) Costs of membership in any social, dining, or country club or organization.

(F) Costs of alcoholic beverages.

(G) Contributions or donations, regardless of the recipient.

(H) Costs of advertising designed to promote the contractor or its products.

(I) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(K) Costs incurred in making any payment (commonly known as a ''golden parachute payment'') which is—

(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(M) Costs of severance pay paid by the contractor to foreign nationals employed by the

contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

(N) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

(O) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in subsection (k).

(P)[1] Costs of compensation of any contractor employee for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds $625,000 adjusted annually for the U.S. Bureau of Labor Statistics Employment Cost Index for total compensation for private industry workers, by occupational and industry group not seasonally adjusted, except that the Secretary of Defense may establish exceptions for positions in the science, technology, engineering, mathematics, medical, and cybersecurity fields and other fields requiring unique areas of expertise upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities.

(P)[1] Costs of compensation of contractor and subcontractor employees for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds $487,000 per year, adjusted annually to reflect the change in the Employment Cost Index for all workers, as calculated by the Bureau of Labor Statistics, except that the head of an executive agency may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.

(Q) Costs incurred by a contractor in connection with a congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in subsection (k)(2).

(2)(A) The Secretary of Defense may provide in a military banking contract that the provisions of paragraphs (1)(M) and (1)(N) shall not apply to costs incurred under the contract by the contractor for payment of mandated foreign national severance pay. The Secretary may include such a provision in a military banking contract only if the Secretary determines, with respect to that contract, that the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals.

(B) In subparagraph (A):

(i) The term ''military banking contract'' means a contract between the Secretary and a financial institution under which the financial institution operates a military banking facility outside the United States for use by members of the armed forces stationed or deployed outside the United States and other authorized personnel.

(ii) The term ''mandated foreign national severance pay'' means severance pay paid by a contractor to a foreign national employee the payment of which by the contractor is required in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract.

(C) Subparagraph (A) does not apply to a contract with a financial institution that is owned or controlled by citizens or nationals of a foreign country, as determined by the Secretary of Defense. Such a determination shall be made in accordance with the criteria set out in paragraph (1) of section 4(g) of the Buy American Act (as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988) and the policy guidance referred to in paragraph (2)(A) of that section.

(3)(A) Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, the head of an agency awarding a covered contract (other than a contract to which paragraph (2) applies) may waive the application of the provisions of paragraphs (1)(M) and (1)(N) to that contract if the head of the agency determines that—

(i) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for members of the armed forces stationed or deployed outside the United States;

(ii) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

(iii) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(B) The head of an agency shall include in the solicitation for a covered contract a statement indicating—

(i) that a waiver has been granted under subparagraph (A) for the contract; or

(ii) whether the head of the agency will consider granting such a waiver, and, if the agen-

[1] So in original. Two subpars. (P) have been enacted.

cy head will consider granting a waiver, the criteria to be used in granting the waiver.

(C) The head of an agency shall make the final determination regarding whether to grant a waiver under subparagraph (A) with respect to a covered contract before award of the contract.

(4) The provisions of the Federal Acquisition Regulation implementing this section may establish appropriate definitions, exclusions, limitations, and qualifications.

(f) REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(A) Air shows.

(B) Membership in civic, community, and professional organizations.

(C) Recruitment.

(D) Employee morale and welfare.

(E) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(F) Community relations.

(G) Dining facilities.

(H) Professional and consulting services, including legal services.

(I) Compensation.

(J) Selling and marketing.

(K) Travel.

(L) Public relations.

(M) Hotel and meal expenses.

(N) Expense of corporate aircraft.

(O) Company-furnished automobiles.

(P) Advertising.

(Q) Conventions.

(2) The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until he has obtained—

(A) adequate documentation with respect to such costs; and

(B) the opinion of the contract auditor on the allowability of such costs.

(3) The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, the contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(4) The Federal Acquisition Regulation shall require that all categories of costs designated in the report of the contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(g) APPLICABILITY OF REGULATIONS TO SUBCONTRACTORS.—The regulations referred to in subsections (e) and (f)(1) shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of such regulations to all subcontractors of the covered contract.

(h) CONTRACTOR CERTIFICATION REQUIRED.—(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed in the Federal Acquisition Regulation.

(2) The head of the agency or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the head of the agency or the Secretary—

(A) determines in such case that it would be in the interest of the United States to waive such certification; and

(B) states in writing the reasons for that determination and makes such determination available to the public.

(i) PENALTIES FOR SUBMISSION OF COST KNOWN AS NOT ALLOWABLE.—The submission to an agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18 and section 3729 of title 31.

(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—In a proceeding before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States, by a State, or by a contractor employee submitting a complaint under section 2409 of this title are not allowable as reimbursable costs under a covered contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation, and (B) results in a disposition described in paragraph (2).

(2) A disposition referred to in paragraph (1)(B) is any of the following:

(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in paragraph (1).

(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty or an order to take corrective action under section 2409 of this title by reason of the violation or failure referred to in paragraph (1).

(D) A final decision—

(i) to debar or suspend the contractor;

(ii) to rescind or void the contract; or

(iii) to terminate the contract for default;

by reason of the violation or failure referred to in paragraph (1).

(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the head of the agency or Secretary of the military department concerned that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head or Secretary determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of (A) a specific term or condition of the contract, or (B) specific written instructions of the agency or military department.

(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

(6) In this subsection:

(A) The term ''proceeding'' includes an investigation.

(B) The term ''costs'', with respect to a proceeding—

(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and

(ii) includes—

(I) administrative and clerical expenses;

(II) the cost of legal services, including legal services performed by an employee of the contractor;

(III) the cost of the services of accountants and consultants retained by the contractor; and

(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

(C) The term ''penalty'' does not include restitution, reimbursement, or compensatory damages.

(*l*) DEFINITIONS.—In this section:

(1)(A) The term ''covered contract'' means a contract for an amount in excess of $500,000 that is entered into by the head of an agency, except that such term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial items.

(B) Effective on October 1 of each year that is divisible by five, the amount set forth in subparagraph (A) shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

(2) The term ''head of the agency'' or ''agency head'' does not include the Secretary of a military department.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(4) The term ''compensation'', for a year, means the total amount of wages, salary, bonuses and deferred compensation for the year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the year.

[(5) Repealed. Pub. L. 112–81, div. A, title VIII, § 803(b), Dec. 31, 2011, 125 Stat. 1485.]

(6) The term ''fiscal year'' means a fiscal year established by a contractor for accounting purposes.

(Added Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682; amended Pub. L. 99–190, § 101(b) [title VIII, § 8112(a)], Dec. 19, 1985, 99 Stat. 1185, 1223; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VIII, § 805(a), Dec. 4, 1987, 101 Stat. 1126; Pub. L. 100–370, § 1(f)(2)(A), (3)(A), July 19, 1988, 102 Stat. 846; Pub. L. 100–456, div. A, title III, § 322(a), title VIII, §§ 826(a), 832(a), Sept. 29, 1988, 102 Stat. 1952, 2022, 2023; Pub. L. 100–463, title VIII, § 8105(a), Oct. 1, 1988, 102 Stat. 2270–36; Pub. L. 100–526, title I, § 106(a)(2), Oct. 24, 1988, 102 Stat. 2625; Pub. L. 100–700, § 8(b), Nov. 19, 1988, 102 Stat. 4636; Pub. L. 101–189, div. A, title III, § 311(a)(1), title VIII, § 853(a)(1), (b)(3), Nov. 29, 1989, 103 Stat. 1411, 1518; Pub. L. 101–510, div. A, title XIII, § 1301(10), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. A, title III, § 346(a), Dec. 5, 1991, 105 Stat. 1346; Pub. L. 102–484, div. A, title VIII, § 818(a), title X, § 1052(26), title XIII, § 1352(b), Oct. 23, 1992, 106 Stat. 2457, 2500, 2559; Pub. L. 103–355, title II, § 2101(a)–(d), Oct. 13, 1994, 108 Stat. 3306–3308; Pub. L. 104–106, div. D, title XLIII, § 4321(a)(5), (b)(9), Feb. 10, 1996, 110 Stat. 671, 672;

Pub. L. 105–85, div. A, title VIII, § 808(a), Nov. 18, 1997, 111 Stat. 1836; Pub. L. 105–261, div. A, title VIII, § 804(a), Oct. 17, 1998, 112 Stat. 2083; Pub. L. 111–350, § 5(b)(19), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 112–81, div. A, title VIII, § 803(a), (b), Dec. 31, 2011, 125 Stat. 1485; Pub. L. 112–239, div. A, title VIII, § 827(g), Jan. 2, 2013, 126 Stat. 1836; Pub. L. 113–66, div. A, title VIII, § 811(a), Dec. 26, 2013, 127 Stat. 806; Pub. L. 113–67, div. A, title VII, § 702(a)(2), Dec. 26, 2013, 127 Stat. 1189; Pub. L. 113–291, div. A, title VIII, § 857, Dec. 19, 2014, 128 Stat. 3460.)

HISTORICAL AND REVISION NOTES

Subsection (e)(1)(L) is based on section 2399 of this title as enacted by Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293.

Section 1(f)(2) of the bill would transfer the provisions of existing 10 U.S.C. 2399 to a new subparagraph (L) of 10 U.S.C. 2324(e)(1). The existing section 2399 prohibits the use of appropriated funds to reimburse a defense contractor for insurance against the contractor's costs of correcting defects in the contractor's materials or workmanship. The transfer would add the provision to the list of contractor costs which are not allowable as expenses which may be paid by the Department of Defense under a contract. This allowable cost limitation applies only to contracts for more than $100,000 other than fixed price contracts without cost incentives (see 10 U.S.C. 2324(k)). The committee determined that it is appropriate to treat the subject matter of section 2399 in the same manner as other provisions relating to allowable costs of defense contractors and notes that section 2324, providing a more comprehensive treatment of allowable costs, was enacted after section 2399. The committee recognizes that contracts for amounts less than $100,000 and fixed price contracts without cost incentives are covered by the existing section 2399 and would not be covered by the provision as transferred. The committee determined that in practice the existing section 2399 would not have significant applicability to such contracts and that the transfer is appropriate as part of this bill.

Subsection (j) is based on Pub. L. 99–145, title IX, § 933, Nov. 8, 1985, 99 Stat. 700.

REFERENCES IN TEXT

Section 4 of the Buy American Act (as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988), referred to in subsec. (e)(2)(C), was section 4 of act Mar. 3, 1933, ch. 212, title III, as added Pub. L. 100–418, title VII, § 7002(2), Aug. 23, 1988, 102 Stat. 1545. Section 4, which was classified to section 10b–1 of former Title 41, Public Contracts, was omitted from the Code in view of section 7004 of Pub. L. 100–418 which provided that the amendment by Pub. L. 100–418 which enacted section 4 ceased to be effective on Apr. 30, 1996. Section 4 was subsequently repealed by Pub. L. 111–350, § 7(b), Jan. 4, 2011, 124 Stat. 3855, which Act enacted Title 41, Public Contracts.

CODIFICATION

Another section 2324 of this title was contained in chapter 138 and was renumbered section 2344 of this title.

AMENDMENTS

2014—Subsec. (e)(1)(Q). Pub. L. 113–291 added subpar. (Q).

2013—Subsec. (e)(1)(P). Pub. L. 113–66 and Pub. L. 113–67 amended subpar. (P) generally. Prior to amendment, subpar. (P) read as follows: ''Costs of compensation of any contractor employee for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds the benchmark compensation amount determined applicable for the fiscal year by the Administrator for Federal Procurement Policy under section 1127 of title 41, except that the Secretary of Defense may establish one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities.'' See Effective Date of 2013 Amendment notes below.

Subsec. (k)(1). Pub. L. 112–239, § 827(g)(1), substituted ''commenced by the United States, by a State, or by a contractor employee submitting a complaint under section 2409 of this title'' for ''commenced by the United States or a State''.

Subsec. (k)(2)(C). Pub. L. 112–239, § 827(g)(2), substituted ''the imposition of a monetary penalty or an order to take corrective action under section 2409 of this title'' for ''the imposition of a monetary penalty''.

2011—Subsec. (d)(1). Pub. L. 111–350, § 5(b)(19)(A), substituted ''section 7103 of title 41'' for ''section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)''.

Subsec. (d)(2). Pub. L. 111–350, § 5(b)(19)(B), substituted ''section 7104(a) of title 41'' for ''section 7 of such Act (41 U.S.C. 606)''.

Subsec. (e)(1)(P). Pub. L. 112–81, § 803(a), substituted ''any contractor employee'' for ''senior executives of contractors'' and inserted'', except that the Secretary of Defense may establish one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities'' before period at end.

Pub. L. 111–350, § 5(b)(19)(C), substituted ''section 1127 of title 41'' for ''section 39 of the Office of Federal Procurement Policy Act (41 U.S.C. 435)''.

Subsec. (e)(2)(C). Pub. L. 111–350, § 5(b)(19)(D), substituted ''(as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988)'' for ''(41 U.S.C. 10b–1)''.

Subsec. (*l*)(5). Pub. L. 112–81, § 803(b), struck out par. (5) which read as follows: ''The term 'senior executives', with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.''

1998—Subsec. (*l*)(5). Pub. L. 105–261 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The term 'senior executive', with respect to a contractor, means—

''(A) the chief executive officer of the contractor or any individual acting in a similar capacity for the contractor;

''(B) the four most highly compensated employees in management positions of the contractor other than the chief executive officer; and

''(C) in the case of a contractor that has components which report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such component.''

1997—Subsec. (e)(1)(P). Pub. L. 105–85, § 808(a)(1), added subpar. (P).

Subsec. (*l*)(4) to (6). Pub. L. 105–85, § 808(a)(2), added pars. (4) to (6).

1996—Subsec. (e)(2)(C). Pub. L. 104–106, § 4321(b)(9)(A), struck out ''awarding the contract'' after ''Secretary of Defense'' and substituted ''the Buy American Act (41 U.S.C. 10b–1)'' for ''title III of the Act of March 3, 1933 (41 U.S.C. 10b–1) (commonly referred to as the Buy American Act)''.

Subsec. (f)(2) to (4). Pub. L. 104–106, § 4321(a)(5), made technical correction to directory language of Pub. L. 103–355, § 2101(a)(6)(B)(ii). See 1994 Amendment notes below.

Subsec. (h)(2). Pub. L. 104–106, § 4321(b)(9)(B), inserted ''the head of the agency or'' after ''in the case of any contract if''.

1994—Subsec. (a). Pub. L. 103–355, § 2101(a), inserted heading and substituted ''head of an agency'' for ''Secretary of Defense'', ''agency'' for ''Department of Defense'', and ''applicable agency supplement'' for ''the Department of Defense Supplement''.

Subsec. (b). Pub. L. 103–355, § 2101(a)(2)(A), inserted heading.

Subsec. (b)(1). Pub. L. 103–355, §2101(a)(2)(C), substituted ''head of the agency'' for ''Secretary'' in two places in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 103–355, §2101(a)(2)(B), substituted ''provisions in the Federal Acquisition Regulation'' for ''regulations issued by the Secretary''.

Subsec. (b)(2). Pub. L. 103–355, §2101(a)(2)(C), substituted ''head of the agency'' for ''Secretary'' in two places.

Subsec. (c). Pub. L. 103–355, §2101(a)(3), inserted heading and substituted ''The Federal Acquisition Regulation shall provide'' for ''The Secretary shall prescribe regulations providing''.

Subsec. (d). Pub. L. 103–355, §2101(a)(4), inserted heading and substituted ''the head of an agency'' for ''the Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 103–355, §2101(a)(5)(A), inserted heading.

Subsec. (e)(1)(B). Pub. L. 103–355, §2101(b), substituted '', a State legislature, or a legislative body of a political subdivision of a State'' for ''or a State legislature''.

Subsec. (e)(1)(D). Pub. L. 103–355, §2101(a)(5)(B), substituted ''provisions of the Federal Acquisition Regulation'' for ''regulations of the Secretary of Defense''.

Subsec. (e)(1)(M). Pub. L. 103–355, §2101(a)(5)(C), substituted ''the Federal Acquisition Regulation'' for ''regulations prescribed by the Secretary of Defense''.

Subsec. (e)(2)(A). Pub. L. 103–355, §2101(a)(5)(D), substituted ''the Secretary of Defense may provide'' for ''the Secretary may provide''.

Subsec. (e)(2)(C). Pub. L. 103–355, §2101(a)(5)(E), substituted ''Secretary of Defense'' for ''head of the agency''.

Subsec. (e)(3)(A). Pub. L. 103–355, §2101(a)(5)(F), substituted ''the Federal Acquisition Regulation'' for ''regulations prescribed by the Secretary''.

Subsec. (e)(4). Pub. L. 103–355, §2101(a)(5)(G), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Secretary shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications.''

Subsec. (f)(1). Pub. L. 103–355, §2101(a)(6)(A), inserted heading and substituted ''(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions'' for ''(1) The Secretary shall prescribe proposed regulations to amend those provisions of the Department of Defense Supplement to the Federal Acquisition Regulation dealing with the allowability of contractor costs. The amendments'' and ''The regulations'' for ''These regulations''.

Subsec. (f)(1)(Q). Pub. L. 103–355, §2101(c), added subpar. (Q).

Subsec. (f)(2). Pub. L. 103–355, §2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, §4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Subsec. (f)(2)(B). Pub. L. 103–355, §2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (f)(3). Pub. L. 103–355, §2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, §4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Pub. L. 103–355, §2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (f)(4). Pub. L. 103–355, §2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, §4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Pub. L. 103–355, §2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (g). Pub. L. 103–355, §2101(a)(7), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The regulations of the Secretary required to be prescribed under subsections (e) and (f)(1) shall require, to the maximum extent practicable, that such regulations apply to all subcontractors of a covered contract.''

Subsec. (h). Pub. L. 103–355, §2101(a)(8), inserted heading and substituted ''in the Federal Acquisition Regulation'' for ''by the Secretary'' in par. (1) and ''head of the agency'' for ''Secretary of Defense'' in introductory provisions of par. (2).

Subsec. (i). Pub. L. 103–355, §2101(a)(9), inserted heading and substituted ''The submission to an agency'' for ''The submission to the Department of Defense''.

Subsec. (j). Pub. L. 103–355, §2101(a)(10), inserted heading and substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (k). Pub. L. 103–355, §2101(a)(11)(A), inserted heading.

Subsec. (k)(2)(D). Pub. L. 103–355, §2101(a)(11)(B), struck out ''by the Department of Defense'' after ''decision'' in introductory provisions.

Subsec. (k)(4). Pub. L. 103–355, §2101(a)(11)(C), inserted ''or Secretary of the military department concerned'' after ''head of the agency'', ''or Secretary'' after ''agency head'', and ''or military department'' before period at end and substituted ''in accordance with the Federal Acquisition Regulation'' for ''under regulations prescribed by such agency head''.

Subsec. (*l*). Pub. L. 103–355, §2101(d), added subsec. (*l*) and struck out former subsec. (*l*) which related to periodic evaluation by Comptroller General of implementation of this section by Secretary of Defense.

Subsec. (m). Pub. L. 103–355, §2101(d), struck out subsec. (m) which read as follows: ''In this section, the term 'covered contract' means a contract for an amount more than $100,000 entered into by the Department of Defense other than a fixed-price contract without cost incentives.''

1992—Subsec. (a). Pub. L. 102–484, §818(a)(1)(A), redesignated subsec. (a)(1) as entire subsection. Former subsec. (a)(2) redesignated subsec. (b)(1).

Subsec. (b)(1). Pub. L. 102–484, §818(a)(1)(B), redesignated subsec. (a)(2) as subsec. (b)(1), in introductory provisions struck out ''by clear and convincing evidence'' after ''Secretary determines'' and substituted ''expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs'' for ''unallowable under paragraph (1)'', and in subpar. (A), substituted ''cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted'' for ''costs''. Former subsec. (b) redesignated subsec. (b)(2).

Subsec. (b)(2). Pub. L. 102–484, §818(a)(2), redesignated subsec. (b) as subsec. (b)(2), struck out '', in addition to the penalty assessed under subsection (a),'' after ''against the contractor'', and substituted ''the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted'' for ''the amount of such cost''.

Subsec. (c). Pub. L. 102–484, §818(a)(5), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–484, §818(a)(3), (4), redesignated subsec. (c) as (d) and struck out former subsec. (d) which read as follows: ''If any penalty is assessed under subsection (a) or (b) with respect to a proposal for settlement of indirect costs, the Secretary may assess an additional penalty of not more than $10,000 per proposal.''

Subsec. (e)(3), (4). Pub. L. 102–484, §1352(b), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f)(5). Pub. L. 102–484, §1052(26)(A), struck out par. (5) which read as follows: ''The regulations shall provide that costs to promote the export of products of the United States defense industry, including costs of exhibiting or demonstrating products, shall be allowable to the extent that such costs—

''(A) are allocable, reasonable, and not otherwise unallowable;

''(B) with respect to the activities of the business segment to which such costs are being allocated, are determined by the Secretary of Defense to be likely to result in future cost advantages to the United States; and

''(C) with respect to a business segment which allocates to Department of Defense contracts $2,500,000 or more of such costs in any fiscal year of such business segment, are not in excess of the amount equal to 110 percent of such costs incurred by such business segment in the previous fiscal year.''

Subsec. (*l*)(2). Pub. L. 102–484, §1052(26)(B)(i), substituted ''paragraph (3)'' for ''subsection (e)(2)(C)''.

Subsec. (*l*)(3). Pub. L. 102–484, §1052(26)(B)(ii), added par. (3).

1991—Subsec. (e)(2), (3). Pub. L. 102–190 added par. (2) and redesignated former par. (2) as (3).

1990—Subsec. (e)(2). Pub. L. 101–510 struck out ''(A)'' before ''The Secretary'' and struck out subpars. (B) and (C) which read as follows:

''(B) The Secretary shall submit to the committees named in subparagraph (C) any proposed regulations that would make substantive changes to regulations prescribed under the second sentence of subparagraph (A) before the publication of such proposed regulations in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

''(C) The committees named in this subparagraph are—

''(i) the Committees on Armed Services and on Government Operations of the House of Representatives; and

''(ii) the Committees on Armed Services and on Governmental Affairs of the Senate.''

1989—Subsec. (e)(1)(N), (O). Pub. L. 101–189, §311(a)(1), added subpar. (N) and redesignated former subpar. (N) as (O).

Subsec. (k)(5)(B)(i). Pub. L. 101–189, §853(b)(3), substituted ''the Federal Acquisition Regulation'' for ''the single Government-wide procurement regulation issued pursuant to section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A))''.

Subsec. (k)(6). Pub. L. 101–189, §853(a)(1)(A), designated par. (2) of subsec. (*l*), set out first, as subsec. (k)(6) and substituted ''In this subsection:'' for ''In subsection (k):'' in introductory provisions.

Subsec. (*l*). Pub. L. 101–189, §853(a)(1)(A), (C), restored the text of subsec. (k) as in effect prior to being struck out by Pub. L. 100–700, §8(b)(2) (see 1988 Amendment note below), designated such text as subsec. (*l*), and struck out former subsec. (*l*)(1), set out first, which defined ''covered contract''. Former subsec. (*l*)(2), set out first, was redesignated subsec. (k)(6). Former subsec. (*l*), set out second, was redesignated (m).

Subsec. (m). Pub. L. 101–189, §853(a)(1)(B), redesignated subsec. (*l*), set out second, as (m).

1988—Subsec. (e)(1)(L). Pub. L. 100–370, §1(f)(2)(A), added subpar. (L).

Subsec. (e)(1)(M). Pub. L. 100–456, §322(a), added subpar. (M).

Subsec. (e)(1)(N). Pub. L. 100–700, §8(b)(1)(A), which directed amendment of subsec. (e) by striking out subpar. (N) and inserting in lieu thereof a new subpar. (N), was executed to subsec. (e)(1)(N) of this section as the probable intent of Congress. Former subpar. (N) read as follows: ''Except as provided in paragraph (2), costs incurred in connection with any civil, criminal, or administrative action brought by the United States that results in a determination that a contractor has violated or failed to comply with any Federal law or regulation if the action results in any of the following:

''(i) In the case of a criminal action, a conviction (including a conviction pursuant to a plea of nolo contendere).

''(ii) In the case of a civil or administrative action, (I) a determination by the Secretary of Defense that the violation or failure to comply was knowing or willful, and (II) the imposition of a monetary penalty.

''(iii) A final decision by an appropriate official of the Department of Defense to debar or suspend the contractor or to rescind, void, or terminate a contract awarded to such contractor if such decision is based on a determination by the Secretary of Defense that the violation or failure to comply was knowing or willful.''

Pub. L. 100–456, §832(a)(1), added subpar. (N).

Subsec. (e)(2), (3). Pub. L. 100–700, §8(b)(1)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''If a civil, criminal, or administrative action referred to in paragraph (1)(N) is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the contractor's costs that are otherwise not allowable under paragraph (1)(N) may be allowed to the extent provided in such agreement.''

Pub. L. 100–456, §832(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(5). Pub. L. 100–463, §8105(a), and Pub. L. 100–456, §826(a), amended section identically, temporarily adding par. (5). Pub. L. 100–526 provided that Pub. L. 100–463, §8105, and amendment made by that section shall cease to be effective. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (j). Pub. L. 100–370, §1(f)(3)(A)(ii), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 100–700, §8(b)(2), added subsec. (k), and struck out former subsec. (k), the text of which was restored and redesignated subsec. (*l*) by Pub. L. 101–189, §853(a)(1)(C). See 1989 Amendment note above.

Pub. L. 100–370, §1(f)(3)(A)(i), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 100–700, §8(b)(2), added subsec. (*l*) defining terms ''covered contract'', ''proceeding'', ''costs'', and ''penalty''.

Pub. L. 100–370, §1(f)(3)(A)(i), redesignated subsec. (k) as (*l*).

1987—Subsec. (e)(1)(K). Pub. L. 100–180 added subpar. (K).

Subsec. (k). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1985—Subsec. (e)(2). Pub. L. 99–190, §101(b) [§8112(a)(1)], designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (h)(2). Pub. L. 99–190, §101(b) [§8112(a)(2)], inserted '', in an exceptional case,'' in provisions preceding subpar. (A).

Subsecs. (j), (k). Pub. L. 99–190, §101(b) [§8112(a)(3)], added subsec. (j) and redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–67, div. A, title VII, §702(c), Dec. 26, 2013, 127 Stat. 1189, provided that: ''This section [amending this section and section 4304 of Title 41, Public Contracts, repealing section 1127 of Title 41, and enacting provisions set out as a note under section 4304 of Title 41] and the amendments made by this section shall apply only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after the date of the enactment of this Act [Dec. 26, 2013].''

Pub. L. 113–66, div. A, title VIII, §811(d), Dec. 26, 2013, 127 Stat. 806, provided that: ''The amendments made by this section [amending this section and section 4304 of Title 41, Public Contracts, and repealing section 1127 of Title 41] shall apply with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after the date of the enactment of this Act [Dec. 26, 2013].''

Pub. L. 112–239, div. A, title VIII, §827(i), Jan. 2, 2013, 126 Stat. 1836, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 2409 of this title] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 2, 2013], and shall apply to—

''(A) all contracts awarded on or after such date;

''(B) all task orders entered on or after such date pursuant to contracts awarded before, on, or after such date; and

''(C) all contracts awarded before such date that are modified to include a contract clause providing for the applicability of such amendments.

''(2) REVISION OF SUPPLEMENTS TO THE FAR.—Not later than 180 days after the date of the enactment of this Act, the Department of Defense Supplement to the Federal Acquisition Regulation and the National Aeronautics and Space Administration Supplement to the Federal Acquisition Regulation shall each be revised to implement the requirements arising under the amendments made by this section.

''(3) INCLUSION OF CONTRACT CLAUSE IN CONTRACTS AWARDED BEFORE EFFECTIVE DATE.—At the time of any

major modification to a contract that was awarded before the date that is 180 days after the date of the enactment of this Act, the head of the contracting agency shall make best efforts to include in the contract a contract clause providing for the applicability of the amendments made by this section to the contract.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title VIII, §803(c), Dec. 31, 2011, 125 Stat. 1485, provided that: ''The amendments made by this section [amending this section]—

''(1) shall be implemented in the Federal Acquisition Regulation within 180 days after the date of the enactment of this Act [Dec. 31, 2011]; and

''(2) shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VIII, §804(d), Oct. 17, 1998, 112 Stat. 2083, provided that: ''The amendments made by this section [amending this section, sections 256 and 435 of Title 41, Public Contracts, and provisions set out as a note under section 435 of Title 41] shall apply with respect to costs of compensation of senior executives incurred after January 1, 1999, under covered contracts (as defined in section 2324(*l*) of title 10, United States Code, and section 306(*l*) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C.256(*l*))[)] [now 41 U.S.C. 4301(2), 4302] entered into before, on, or after the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, §808(e), Nov. 18, 1997, 111 Stat. 1838, provided that: ''The amendments made by this section [see Tables for classification] shall—

''(1) take effect on the date that is 90 days after the date of the enactment of this Act [Nov. 18, 1997]; and

''(2) apply with respect to costs of compensation incurred after January 1, 1998, under covered contracts entered into before, on, or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIII, §4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

For effective date and applicability of amendment by section 4321(b)(9) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Pub. L. 102–484, div. A, title VIII, §818(b), Oct. 23, 1992, 106 Stat. 2458, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply, as provided in regulations prescribed by the Secretary of Defense, with respect to proposals for settlement of indirect costs for which the Federal Government has not formally initiated an audit before that date.''

Pub. L. 102–484, div. A, title XIII, §1352(c), Oct. 23, 1992, 106 Stat. 2559, provided that: ''The amendments made by subsection (b) [amending this section] apply to covered contracts (as defined in section 2324 of title 10, United States Code) that are in effect or are entered into on or after October 1, 1991, for costs incurred on or after October 1, 1991.''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title III, §346(b), Dec. 5, 1991, 105 Stat. 1347, provided that: ''The amendments made by subsection (a) [amending this section] shall not apply with respect to a foreign national whose employment under a military banking contract (defined in section 2324(e)(2)(B) of title 10, United States Code, as added by subsection (a)) was terminated before the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title III, §311(a)(2), Nov. 29, 1989, 103 Stat. 1411, provided that: ''Subparagraph (N) of such subsection [10 U.S.C. 2324(e)(1)(N)], as added by paragraph (1), shall not apply with respect to the termination of the employment of a foreign national employed under any covered contract (as defined in subsection (*l*) of such section [10 U.S.C. 2324(*l*)]) if such termination is the result of the closing of, or the curtailment of activities at, a United States military facility in a foreign country pursuant to an agreement entered into with the government of that country before the date of the enactment of this Act [Nov. 29, 1989].''

Pub. L. 101–189, div. A, title III, §853(a)(3), Nov. 29, 1989, 103 Stat. 1518, provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as of November 19, 1988.''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Pub. L. 100–700, §8(e), Nov. 19, 1988, 102 Stat. 4638, provided that: ''The amendments made by subsections (a) and (b) [enacting section 256 of Title 41, Public Contracts, and amending this section] shall take effect with respect to contracts awarded after the date of the enactment of this Act [Nov. 19, 1988].''

Pub. L. 100–463, title VIII, §8105(d), Oct. 1, 1988, 102 Stat. 2270–37, provided that subsec. (f)(5) of this section, as enacted by section 8105(a) of Pub. L. 100–463, would cease to be effective three years after Oct. 1, 1988. Section 106(a)(2) of Pub. L. 100–526 provided that section 8105 of Pub. L. 100–463 ''and the amendment made by that section shall cease to be effective''.

Pub. L. 100–456, div. A, title III, §322(b), Sept. 29, 1988, 102 Stat. 1953, provided that: ''Subparagraph (M) of section 2324(e)(1) of title 10, United States Code, as added by subsection (a), shall apply with respect to any contract entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Sept. 29, 1988].''

Pub. L. 100–456, div. A, title VIII, §826(d), Sept. 29, 1988, 102 Stat. 2023, as amended by Pub. L. 100–526, title I, §106(a)(1)(B), Oct. 24, 1988, 102 Stat. 2625, provided that: ''Section 2324(f)(5) of title 10, United States Code (as added by subsection (a)), shall cease to be effective on September 30, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VIII, §805(b), Dec. 4, 1987, 101 Stat. 1126, provided that: ''Subparagraph (K) of section 2324(e)(1) of title 10, United States Code, as added by subsection (a), shall apply to any contract entered into after the end of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE

Pub. L. 99–145, title IX, §911(c), Nov. 8, 1985, 99 Stat. 685, provided that: ''Section 2324 of title 10, United States Code, as added by subsection (a), shall apply only to contracts for which solicitations are issued on or after the date on which such regulations are prescribed.''

REGULATIONS

Pub. L. 103–355, title II, §2101(e), Oct. 13, 1994, 108 Stat. 3309, provided that: ''The regulations of the Secretary

of Defense implementing section 2324 of title 10, United States Code, shall remain in effect until the Federal Acquisition Regulation is revised to implement the amendments made by this section [amending this section].''

Pub. L. 100–700, § 8(d), Nov. 19, 1988, 102 Stat. 4638, provided that: ''The regulations necessary for the implementation of section 306(e) of the Federal Property and Administrative Services Act of 1949 [now 41 U.S.C. 4304] (as added by subsection (a)) and section 2324(k)(5) of title 10, United States Code (as added by subsection (b))—

''(1) shall be prescribed not later than 120 days after the date of the enactment of this Act [Nov. 19, 1988]; and

''(2) shall apply to contracts entered into more than 30 days after the date on which such regulations are issued.''

Pub. L. 100–463, title VIII, § 8105(b), (c), Oct. 1, 1988, 102 Stat. 2270–37, provided for the promulgation of regulations and the preparation of a report in connection with the operation of subsec. (f)(5), as enacted by section 8105(a) of Pub. L. 100–463. Section 106(a)(2) of Pub. L. 100–526 provided that section 8105 of Pub. L. 100–463 ''and the amendment made by that section shall cease to be effective''.

Pub. L. 100–456, div. A, title VIII, § 826(b), Sept. 29, 1988, 102 Stat. 2022, provided that: ''The Secretary of Defense shall prescribe final regulations under paragraph (5) of section 2324(f) of title 10, United States Code (as added by subsection (a)), not later than 90 days after the date of the enactment of this Act [Sept. 29, 1988]. Such regulations shall apply with respect to costs referred to in such paragraph that are incurred by a Department of Defense contractor (or a subcontractor of such a contractor) on or after the first day of the contractor's (or subcontractor's) first fiscal year that begins on or after the date on which such final regulations are prescribed.''

Pub. L. 100–456, div. A, title VIII, § 832(b), Sept. 29, 1988, 102 Stat. 2024, related to regulations for the implementation of subsec. (e)(1)(N) of this section, prior to repeal by Pub. L. 100–700, § 8(c), Nov. 19, 1988, 102 Stat. 4638.

Pub. L. 99–190, 101(b) [title VIII, § 8112(b), (c)], Dec. 19, 1985, 99 Stat. 1185, 1223, required the regulations required under section 911(b) of Pub. L. 99–145, set out below, to be submitted to Congress before the publication of such regulations in accordance with former 41 U.S.C. 418b (now 41 U.S.C. 1707) and directed the Comptroller General, within 180 days of publication of the regulations, to submit to Congress a report on the Comptroller General's initial evaluation under subsection (j)(1) of this section.

Pub. L. 99–145, title IX, § 911(b), Nov. 8, 1985, 99 Stat. 685, provided that:

''(1) Not later than 150 days after the date of the enactment of this Act [Nov. 8, 1985], the Secretary of Defense shall prescribe the regulations required by subsections (e) and (f) of section 2324 of title 10, United States Code, as added by subsection (a). Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707].

''(2) The Secretary shall review such regulations at least once every five years. The results of each such review shall be made public.''

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.

Report and Regulations on Excessive Pass-Through Charges

Pub. L. 109–364, div. A, title VIII, § 852, Oct. 17, 2006, 120 Stat. 2340, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(3)(B), Dec. 19, 2014, 128 Stat. 3506, provided that:

''(a) Comptroller General Report on Excessive Pass-Through Charges.—

''(1) In general.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Comptroller General shall issue a report on pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of the Department of Defense.

''(2) Matters covered.—The report issued under this subsection—

''(A) shall assess the extent to which the Department of Defense has paid excessive pass-through charges to contractors who provided little or no value to the performance of the contract;

''(B) shall assess the extent to which the Department has been particularly vulnerable to excessive pass-through charges on any specific category of contracts or by any specific category of contractors (including any category of small business); and

''(C) shall determine the extent to which any prohibition on excessive pass-through charges would be inconsistent with existing commercial practices for any specific category of contracts or have an unjustified adverse effect on any specific category of contractors (including any category of small business).

''(b) Regulations Required.—

''(1) In general.—Not later than May 1, 2007, the Secretary of Defense shall prescribe regulations to ensure that pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of the Department of Defense are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor.

''(2) Scope of regulations.—The regulations prescribed under this subsection—

''(A) shall not apply to any firm, fixed-price contract or subcontract (or task or delivery order) that is—

''(i) awarded on the basis of adequate price competition; or

''(ii) for the acquisition of a commercial item, as defined in section 103 of title 41, United States Code; and

''(B) may include such additional exceptions as the Secretary determines to be necessary in the interest of the national defense.

''(3) Definition.—In this section, the term 'excessive pass-through charge', with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower-tier contractor or subcontractor (other than charges for the direct costs of managing lower-tier contracts and subcontracts and overhead and profit based on such direct costs).

''(4) Report.—Not later than one year after the date of the enactment of this Act [Oct. 17, 2006], 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 the steps taken to implement the requirements of this subsection, including—

''(A) any standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;

''(B) any procedures established for preventing excessive pass-through charges; and

''(C) any exceptions determined by the Secretary to be necessary in the interest of the national defense.

''(5) EFFECTIVE DATE.—The regulations prescribed under this subsection shall apply to contracts awarded for or on behalf of the Department of Defense on or after May 1, 2007.''

CONSTRUCTION

Pub. L. 112–239, div. A, title VIII, § 827(h), Jan. 2, 2013, 126 Stat. 1836, provided that: ''Nothing in this section, or the amendments made by this section [amending this section and section 2409 of this title and enacting provisions set out as a note under this section], shall be construed to provide any rights to disclose classified information not otherwise provided by law.''

PAYMENT OF RESTRUCTURING COSTS UNDER DEFENSE CONTRACTS

Pub. L. 103–337, div. A, title VIII, § 818, Oct. 5, 1994, 108 Stat. 2821, as amended by Pub. L. 105–85, div. A, title VIII, § 804(d), Nov. 18, 1997, 111 Stat. 1834, provided that:

''[(a) Repealed. Pub. L. 105–85, div. A, title VIII, § 804(d), Nov. 18, 1997, 111 Stat. 1834.]

''(b) REQUIREMENT FOR REGULATIONS.—Not later than January 1, 1995, the Secretary of Defense shall prescribe regulations on the allowability of restructuring costs associated with business combinations under defense contracts.

''(c) MATTERS TO BE INCLUDED.—At a minimum, the regulations shall—

''(1) include a definition of the term 'restructuring costs'; and

''(2) address the issue of contract novations under such contracts.

''(d) CONSULTATION.—In developing the regulations, the Secretary of Defense shall consult with the Administrator for Federal Procurement Policy.

''(e) REPORT.—Not later than November 13 in each of the years 1995, 1996, and 1997, the Secretary of Defense shall submit to Congress a report on the following:

''(1) A description of the procedures being followed within the Department of Defense for evaluating projected costs and savings under a defense contract resulting from a restructuring of a defense contractor associated with a business combination.

''(2) A list of all defense contractors for which restructuring costs have been allowed by the Department, along with the identities of the firms which those contractors have acquired or with which those contractors have combined since July 21, 1993, that qualify the contractors for such restructuring reimbursement.

''(3) The Department's experience with business combinations for which the Department has agreed to allow restructuring costs since July 21, 1993, including the following:

''(A) The estimated amount of costs associated with each restructuring that have been or will be treated as allowable costs under defense contracts, including the type and amounts of costs that would not have arisen absent the business combination.

''(B) The estimated amount of savings associated with each restructuring that are expected to be achieved on defense contracts.

''(C) The types of documentation relied on to establish that savings associated with each restructuring will exceed costs associated with the restructuring.

''(D) Actual experience on whether savings associated with each restructuring are exceeding costs associated with the restructuring.

''(E) Identification of any programmatic or budgetary disruption in the Department of Defense resulting from contractor restructuring.

''(f) DEFINITION.—In this section, the term 'business combination' includes a merger or acquisition.

''(g) COMPTROLLER GENERAL REPORTS.—(1) Not later than March 1, 1995, the Comptroller General shall submit to Congress a report on the adequacy of the regulations prescribed under subsection (b) with respect to—

''(A) whether such regulations are consistent with the purposes of this section, other applicable law, and the Federal Acquisition Regulation; and

''(B) whether such regulations establish policies, procedures, and standards to ensure that restructuring costs are paid only when in the best interests of the United States.

''(2) The Comptroller General shall report periodically to Congress on the implementation of the policy of the Department of Defense regarding defense industry restructuring.''

REIMBURSEMENT OF INDIRECT COSTS OF INSTITUTIONS OF HIGHER EDUCATION UNDER DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 103–160, div. A, title VIII, § 841, Nov. 30, 1993, 107 Stat. 1719, as amended by Pub. L. 105–244, title I, § 102(a)(2)(C), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not by regulation place a limitation on the amount that the Department of Defense may reimburse an institution of higher education for allowable indirect costs incurred by the institution for work performed for the Department of Defense under a Department of Defense contract unless that same limitation is applied uniformly to all other organizations performing similar work for the Department of Defense under Department of Defense contracts.

''(b) WAIVER.—The Secretary of Defense may waive the application of the prohibition in subsection (a) in the case of a particular institution of higher education if the governing body of the institution requests the waiver in order to simplify the overall management by that institution of cost reimbursements by the Department of Defense for contracts awarded by the Department to the institution.

''(c) DEFINITIONS.—In this section:

''(1) The term 'allowable indirect costs' means costs that are generally considered allowable as indirect costs under regulations that establish the cost reimbursement principles applicable to an institution of higher education for purposes of Department of Defense contracts.

''(2) The term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].''

ASSESSMENT OF REGULATIONS RELATING TO ALLOWABILITY OF COSTS TO PROMOTE EXPORT OF DEFENSE PRODUCTS; REPORT TO CONGRESS

Pub. L. 100–456, div. A, title VIII, § 826(c), Sept. 29, 1988, 102 Stat. 2022, as amended by Pub. L. 100–526, title I, § 106(a)(1)(A), Oct. 24, 1988, 102 Stat. 2625, directed Comptroller General of United States and Inspector General of Department of Defense, not later than 2 years after Sept. 29, 1988, to submit to Congress a report including an assessment of whether the regulations required by subsec. (f)(5) of this section provide the appropriate incentives to stimulate exports by the United States defense industry and provide cost savings to the United States and whether such regulations provide appropriate criteria to ensure that costs allowed are reasonably likely to provide future cost savings to the United States.

AIR TRAVEL EXPENSES OF DEFENSE CONTRACTOR PERSONNEL

Pub. L. 100–456, div. A, title VIII, § 833, Sept. 29, 1988, 102 Stat. 2024, as amended by Pub. L. 101–189, div. A, title VIII, § 853(a)(2), Nov. 29, 1989, 103 Stat. 1518, directed the Administrator of General Services to enter into negotiations with commercial air carriers for agreements that would permit personnel of contractors who were traveling solely in the performance of covered contracts to be transported by such carriers at the same discount rates as such carriers charged for travel by Federal Government employees traveling at Government expense, directed the Secretary of Defense, not later than 120 days after the first such agreement would go into effect, to prescribe regulations that would provide that costs in excess of the rates established under the agreement were not allowable if the

rate had been available and travel could have reasonably been performed under the conditions required by the air carrier to qualify for such rate, and provided that section 833 of Pub. L. 100–456 would cease to be effective three years after Sept. 29, 1988.

BURDEN OF PROOF IN GOVERNMENT CONTRACT DISPUTE RESOLUTION

Pub. L. 99–145, title IX, § 933, Nov. 8, 1985, 99 Stat. 700, which provided that in proceeding before the Armed Services Board of Contract Appeals, United States Claims Court, or any other Federal court in which reasonableness of indirect costs for which a contractor seeks reimbursement from Department of Defense is in issue, the burden of proof is upon the contractor to establish that such costs are reasonable, was repealed and restated in subsec. (j) of this section by Pub. L. 100–370, § 1(f)(3)(A)(ii), (B), July 19, 1988, 102 Stat. 846.

§ 2325. Restructuring costs

(a) LIMITATION ON PAYMENT OF RESTRUCTURING COSTS.—(1) The Secretary of Defense may not pay, under section 2324 of this title, a defense contractor for restructuring costs associated with a business combination of the contractor that occurs after November 18, 1997, unless the Secretary determines in writing either—

(A) that the amount of projected savings for the Department of Defense associated with the restructuring will be at least twice the amount of the costs allowed; or

(B) that the amount of projected savings for the Department of Defense associated with the restructuring will exceed the amount of the costs allowed and that the business combination will result in the preservation of a critical capability that otherwise might be lost to the Department.

(2) The Secretary may not delegate the authority to make a determination under paragraph (1), with respect to a business combination, to an official of the Department of Defense—

(A) below the level of an Assistant Secretary of Defense for cases in which the amount of restructuring costs is expected to exceed $25,000,000 over a 5-year period; or

(B) below the level of the Director of the Defense Contract Management Agency for all other cases.

(b) DEFINITION.—In this section, the term ''business combination'' includes a merger or acquisition.

(Added Pub. L. 105–85, div. A, title VIII, § 804(a)(1), Nov. 18, 1997, 111 Stat. 1832; amended Pub. L. 106–65, div. A, title X, § 1066(a)(19), Oct. 5, 1999, 113 Stat. 771; Pub. L. 108–375, div. A, title VIII, § 819, Oct. 28, 2004, 118 Stat. 2016; Pub. L. 112–239, div. A, title X, § 1076(g)(2), Jan. 2, 2013, 126 Stat. 1955.)

PRIOR PROVISIONS

A prior section 2325, added Pub. L. 99–500, § 101(c) [title X, § 907(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–137, and Pub. L. 99–591, § 101(c) [title X, § 907(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, § 907(a)(1), Nov. 14, 1986, 100 Stat. 3917, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(5), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title VIII, § 810, Nov. 5, 1990, 104 Stat. 1595; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, directed Secretary of Defense to ensure that requirements of Department of Defense with respect to procurement of supplies be stated in terms of functions to be performed, performance required, or essential physical characteristics, and related to preference for nondevelopmental items in procurement of supplies, prior to repeal by Pub. L. 103–355, title VIII, § 8104(b)(1), Oct. 13, 1994, 108 Stat. 3391. See sections 2376 and 2377 of this title.

Another prior section 2325 was renumbered section 2345 of this title.

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–239 redesignated subsec. (c) as (b) and struck out former subsec. (b) which required reports relating to business combinations occurring on or after August 15, 1994.

2004—Subsec. (a)(2). Pub. L. 108–375 substituted ''paragraph (1), with respect to a business combination, to an official of the Department of Defense—'' for ''paragraph (1) to an official of the Department of Defense below the level of an Assistant Secretary of Defense.'' and added subpars. (A) and (B).

1999—Subsec. (a)(1). Pub. L. 106–65 inserted ''that occurs after November 18, 1997,'' after ''of the contractor'' in introductory provisions.

EFFECTIVE DATE

Pub. L. 105–85, div. A, title VIII, § 804(c), Nov. 18, 1997, 111 Stat. 1834, provided that: ''Section 2325(a) of title 10, United States Code, as added by subsection (a), shall apply with respect to business combinations that occur after the date of the enactment of this Act [Nov. 18, 1997].''

GAO REPORTS

Pub. L. 105–85, div. A, title VIII, § 804(b), Nov. 18, 1997, 111 Stat. 1832, directed the Comptroller General, not later than Apr. 1, 1998, to identify major market areas affected by business combinations of defense contractors since Jan. 1, 1990, and develop a methodology for determining the savings from business combinations of defense contractors on the prices paid on particular defense contracts, and to submit to committees of Congress a report describing the changes in numbers of businesses competing for major defense contracts since Jan. 1, 1990; and directed the Comptroller General, not later than Dec. 1, 1998, to submit to committees of Congress a report containing updated information on restructuring costs of business combinations paid by the Department of Defense pursuant to certifications under Pub. L. 103–337, § 818 (set out as a note under section 2324 of this title), savings realized by the Department of Defense as a result of the business combinations for which the payment of restructuring costs was so certified, and an assessment of the savings on the prices paid on a meaningful sample of defense contracts.

§ 2326. Undefinitized contractual actions: restrictions

(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(b) LIMITATIONS ON OBLIGATION OF FUNDS.—(1) A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) If a contractor submits a qualifying proposal (as defined in subsection (g)) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if that head of an agency determines that the waiver is necessary in order to support any of the following operations:

(A) A contingency operation.

(B) A humanitarian or peacekeeping operation.

(5) This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(e) ALLOWABLE PROFIT.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(f) APPLICABILITY.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) DEFINITIONS.—In this section:

(1) The term ''undefinitized contractual action'' means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does not include contractual actions with respect to the following:

(A) Foreign military sales.

(B) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.

(C) Special access programs.

(D) Congressionally mandated long-lead procurement contracts.

(2) The term ''qualifying proposal'' means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

(Added Pub. L. 99–500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–140, and Pub. L. 99–591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–140; Pub. L. 99–661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101–189, div. A, title XVI, §1622(c)(6), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 102–25, title VII, §701(d)(5), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, §1505, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 105–85, div. A, title VIII, §803(a), Nov. 18, 1997, 111 Stat. 1831.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2326 was renumbered section 2346 of this title.

AMENDMENTS

1997—Subsec. (b)(4). Pub. L. 105–85 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.''

1994—Subsec. (b). Pub. L. 103–355, §1505(a)(1), struck out ''and expenditure'' after ''obligation'' in heading.

Subsec. (b)(1)(B). Pub. L. 103–355, §1505(a)(2), struck out ''or expended'' after ''obligated''.

Subsec. (b)(2). Pub. L. 103–355, §1505(a)(3), substituted ''obligate'' for ''expend''.

Subsec. (b)(3). Pub. L. 103–355, §1505(a)(4), substituted ''obligated'' for ''expended'' and ''obligate'' for ''expend''.

Subsec. (b)(4), (5). Pub. L. 103–355, §1505(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (g)(1)(B). Pub. L. 103–355, §1505(c), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

1991—Subsec. (g)(1)(B). Pub. L. 102–25 substituted ''in an amount not in excess of the amount of the small purchase threshold'' for ''of less than $25,000''.

1989—Subsec. (g)(1)(D). Pub. L. 101–189 substituted ''Congressionally mandated'' for ''Congressionally-mandated''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 908(d)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–142, Pub. L. 99–591, § 101(c) [title X, § 908(d)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–142, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(2), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2326 of title 10, United States Code (as added by subsection (d)(1)), applies to undefinitized contractual actions that are entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

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.

REVISION OF DEFENSE SUPPLEMENT RELATING TO PAYMENT OF COSTS PRIOR TO DEFINITIZATION

Pub. L. 111–84, div. A, title VIII, § 812, Oct. 28, 2009, 123 Stat. 2406, provided that:

''(a) REVISION REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall revise the Defense Supplement to the Federal Acquisition Regulation to ensure that any limitations described in subsection (b) are applicable to all categories of undefinitized contractual actions (including undefinitized task orders and delivery orders).

''(b) LIMITATIONS.—The limitations referred to in subsection (a) are any limitations on the reimbursement of costs and the payment of profits or fees with respect to costs incurred before the definitization of an undefinitized contractual action of the Department of Defense, including—

''(1) such limitations as described in part 52.216-26 of the Federal Acquisition Regulation; and

''(2) any such limitations implementing the requirements of section 809 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2326 note).''

IMPLEMENTATION AND ENFORCEMENT OF REQUIREMENTS APPLICABLE TO UNDEFINITIZED CONTRACTUAL ACTIONS

Pub. L. 110–181, div. A, title VIII, § 809, Jan. 28, 2008, 122 Stat. 216, provided that:

''(a) GUIDANCE AND INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance, with detailed implementation instructions, for the Department of Defense to ensure the implementation and enforcement of requirements applicable to undefinitized contractual actions.

''(b) ELEMENTS.—The guidance and instructions issued pursuant to subsection (a) shall address, at a minimum—

''(1) the circumstances in which it is, and is not, appropriate for Department of Defense officials to use undefinitized contractual actions;

''(2) approval requirements (including thresholds) for the use of undefinitized contractual actions;

''(3) procedures for ensuring that timelines for the definitization of undefinitized contractual actions are met;

''(4) procedures for ensuring compliance with regulatory limitations on the obligation of funds pursuant to undefinitized contractual actions;

''(5) procedures for ensuring compliance with regulatory limitations on profit or fee with respect to costs incurred before the definitization of an undefinitized contractual action; and

''(6) reporting requirements for undefinitized contractual actions that fail to meet required timelines for definitization or fail to comply with regulatory limitations on the obligation of funds or on profit or fee.

''(c) REPORTS.—

''(1) REPORT ON GUIDANCE AND INSTRUCTIONS.—Not later than 210 days after the date of the enactment of this Act [Jan. 28, 2008], 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 setting forth the guidance and instructions issued pursuant to subsection (a).

''(2) GAO REPORT.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on the extent to which the guidance and instructions issued pursuant to subsection (a) have resulted in improvements to—

''(A) the level of insight that senior Department of Defense officials have into the use of undefinitized contractual actions;

''(B) the appropriate use of undefinitized contractual actions;

''(C) the timely definitization of undefinitized contractual actions; and

''(D) the negotiation of appropriate profits and fees for undefinitized contractual actions.''

LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS; OVERSIGHT BY INSPECTOR GENERAL; WAIVER AUTHORITY

Pub. L. 99–500, § 101(c) [title X, § 908(a)–(c), (e)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–139, 1783–140, 1783–142, Pub. L. 99–591, § 101(c) [title X, § 908(a)–(c), (e)], Oct. 18, 1986, 100 Stat. 3341–82, 3341–139, 3341–140, 3341–142, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(a)–(c), (e), Nov. 14, 1986, 100 Stat. 3918, 3919, 3921, renumbered title IX and amended by Pub. L. 100–26, §§ 3(5), 5(2), Apr. 21, 1987, 101 Stat. 273, 274; Pub. L. 104–106, div. D, title XLIII, § 4322(b)(2), Feb. 10, 1996, 110 Stat. 677, provided that:

''(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—(1) On the last day of each six-month period described in paragraph (4), the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretary of each military department shall determine—

''(A) the total amount of funds obligated for contractual actions during the six-month period;

''(B) the total amount of funds obligated during the six-month period for undefinitized contractual actions; and

''(C) the total amount of funds obligated during the six-month period for undefinitized contractual actions that are not definitized on or before the last day of such period.

''(2) On the last day of each six-month period described in paragraph (4), the amount of funds obligated for undefinitized contractual actions entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the six-month period that are not definitized on or before such day may not exceed 10 percent of the amount of funds obligated for all contractual actions entered into by the Secretary during the six-month period.

''(3) If on the last day of a six-month period described in paragraph (4) the total amount of funds obligated for

undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the six-month period exceeds the limit established in paragraph (2), the Secretary—

''(A) shall, not later than the end of the 45-day period beginning on the first day following the six-month period, submit to the defense committees an unclassified report concerning—

''(i) the amount of funds obligated for contractual actions under the jurisdiction of the Secretary that were entered into during the six-month period with respect to which the report is submitted; and

''(ii) the amount of such funds obligated for undefinitized contractual actions; and

''(B) except with respect to the six-month period described in paragraph (4)(A), may not enter into any additional undefinitized contractual actions until the date on which the Secretary certifies to Congress that such limit is not exceeded by the cumulative amount of funds obligated for undefinitized contractual actions under the jurisdiction of the Secretary that are not definitized on or before such date and were entered into—

''(i) during the six-month period for which such limit was exceeded; or

''(ii) after the end of such six-month period.

''(4) This subsection applies to the following six-month periods:

''(A) The period beginning on October 1, 1986, and ending on March 31, 1987.

''(B) The period beginning on April 1, 1987, and ending on September 30, 1987.

''(C) The period beginning on October 1, 1987, and ending on March 31, 1988.

''(D) The period beginning on April 1, 1988, and ending on September 30, 1988.

''(E) The period beginning on October 1, 1988, and ending on March 31, 1989.

''(b) OVERSIGHT BY INSPECTOR GENERAL.—The Inspector General of the Department of Defense shall—

''(1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and

''(2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

''(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the application of subsections (a) and (b) for urgent and compelling considerations relating to national security or public safety if the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives of such waiver before the end of the 30-day period beginning on the date that the waiver is made.

''(e) DEFINITION.—For purposes of this section, the term 'undefinitized contractual action' has the meaning given such term in section 2326(g) of title 10, United States Code (as added by subsection (d)(1)).''

§ 2327. Contracts: consideration of national security objectives

(a) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT.—The head of an agency shall require a firm or a subsidiary of a firm that submits a bid or proposal in response to a solicitation issued by the Department of Defense to disclose in that bid or proposal any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) that is owned or controlled (whether directly or indirectly) by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A))[1] has repeatedly provided support for acts of international terrorism.

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A))[1] has repeatedly provided support for acts of international terrorism.

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary if in the best interests of the Government.

(B) The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records shall include the following:

(i) The identity of the foreign government concerned.

(ii) The nature of the contract.

(iii) The extent of ownership or control of the firm or subsidiary concerned (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government concerned or the agency or instrumentality of such foreign government.

(iv) The reasons for entering into the contract.

(2) Upon the request of the head of an agency, the Secretary of Defense shall determine whether entering into a contract with a firm or subsidiary described in subsection (b) is inconsistent with the national security objectives of the United States. In making such a determination, the Secretary of Defense shall consider the following:

(A) The relationship of the United States with the foreign government concerned.

(B) The obligations of the United States under international agreements.

(C) The extent of the ownership or control of the firm or subsidiary (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government or an agent or instrumentality of the foreign government.

(D) Whether payments made, or information made available, to the firm or subsidiary under the contract could be used for purposes hostile to the interests of the United States.

(d) LIST OF FIRMS SUBJECT TO PROHIBITION.—(1) The Secretary of Defense shall develop and maintain a list of all firms and subsidiaries of

[1] See References in Text note below.

firms that the Secretary has identified as being subject to the prohibition in subsection (b).

(2)(A) A person may request the Secretary to include on the list maintained under paragraph (1) any firm or subsidiary of a firm that the person believes to be owned or controlled by a foreign government described in subsection (b)(2). Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do exist, the Secretary shall include the firm or subsidiary on the list.

(B) A firm or subsidiary of a firm included on the list may request the Secretary to remove such firm or subsidiary from the list on the basis that it has been erroneously included on the list or its ownership circumstances have significantly changed. Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do not exist, the Secretary shall remove the firm or subsidiary from the list.

(C) The Secretary shall establish procedures to carry out this paragraph.

(3) The head of an agency shall prohibit each firm or subsidiary of a firm awarded a contract by the agency from entering into a subcontract under that contract in an amount in excess of $25,000 with a firm or subsidiary included on the list maintained under paragraph (1) unless there is a compelling reason to do so. In the case of any subcontract requiring consent by the head of an agency, the head of the agency shall not consent to the award of the subcontract to a firm or subsidiary included on such list unless there is a compelling reason for such approval.

(e) DISTRIBUTION OF LIST.—The Administrator of General Services shall ensure that the list developed and maintained under subsection (d) is made available to Federal agencies and the public in the same manner and to the same extent as the list of suspended and debarred contractors compiled pursuant to subpart 9.4 of the Federal Acquisition Regulation.

(f) APPLICABILITY.—(1) This section does not apply to a contract for an amount less than $100,000.

(2) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of State, shall prescribe regulations to carry out this section. Such regulations shall include a definition of the term ''significant interest''.

(Added Pub. L. 99–500, §101(c) [title X, §951(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–164, and Pub. L. 99–591, §101(c) [title X, §951(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–164; Pub. L. 99–661, div. A, title IX, formerly title IV, §951(a)(1), Nov. 14, 1986, 100 Stat. 3944, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title XII, §1231(8), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–224, §5(b)(2), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 105–85, div. A, title VIII, §843, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 108–136, div. A, title X, §1031(a)(16), Nov. 24, 2003, 117 Stat. 1597.)

REFERENCES IN TEXT

Section 6(j)(1)(A) of the Export Administration Act of 1979, referred to in subsecs. (a) and (b)(2), was classified to section 2405(j)(1)(A) of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as section 4605(j)(1)(A) of Title 50.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2327 was renumbered section 2347 of this title.

AMENDMENTS

2003—Subsec. (c)(1)(A). Pub. L. 108–136, §1031(a)(16)(A), substituted ''if in the best interests of the Government'' for ''after the date on which such head of an agency submits to Congress a report on the contract''.

Subsec. (c)(1)(B). Pub. L. 108–136, §1031(a)(16)(B), substituted ''The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records'' for ''A report under subparagraph (A)''.

Subsec. (c)(1)(C). Pub. L. 108–136, §1031(a)(16)(C), struck out subpar. (C) which read as follows: ''After the head of an agency submits a report to Congress under subparagraph (A) with respect to a firm or a subsidiary, such head of an agency is not required to submit a report before entering into any subsequent contract with such firm or subsidiary unless the information required to be included in such report under subparagraph (B) has materially changed since the submission of the previous report.''

1997—Subsecs. (d) to (g). Pub. L. 105–85 added subsecs. (d) and (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

1987—Subsecs. (a), (b)(2). Pub. L. 100–224 substituted ''50 U.S.C. App.'' for ''50 U.S.C.'' in parenthetical after ''Export Administration Act of 1979''.

Subsec. (d)(1). Pub. L. 100–180 inserted par. (1) designation.

EFFECTIVE DATE

Pub. L. 99–500, §101(c) [title X, §951(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–165, Pub. L. 99–591, §101(c) [title X, §951(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–165, and Pub. L. 99–661, div. A, title IX, formerly title IV, §951(c), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2327 of title 10, United States Code (as added by subsection (a)(1)), shall apply to contracts entered into by the Secretary of Defense after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

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.

REPORTS BY DEFENSE CONTRACTORS OF DEALINGS WITH TERRORIST COUNTRIES

Pub. L. 103–160, div. A, title VIII, §843, Nov. 30, 1993, 107 Stat. 1720, as amended by Pub. L. 103–355, title VIII, §8105(j), Oct. 13, 1994, 108 Stat. 3393, directed the Secretary of Defense to require any person with whom the Secretary proposed to enter into a contract for the provision of goods or services in an amount in excess of $5,000,000, to report to the Secretary each commercial

transaction which that person had conducted with the government of any terrorist country during the preceding three years and during the course of the contract, required the Secretary to prescribe regulations and to submit an annual report to Congress setting forth those commercial transactions with terrorist countries that had been included in the reports made during the preceding fiscal year, and provided that section 843 of Pub. L. 103–160 would expire on Sept. 30, 1996.

§ 2328. Release of technical data under Freedom of Information Act: recovery of costs

(a) IN GENERAL.—(1) The Secretary of Defense shall, if required to release technical data under section 552 of title 5 (relating to the Freedom of Information Act), release such technical data to the person requesting the release if the person pays all reasonable costs attributable to search, duplication, and review.

(2) The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

(b) CREDITING OF RECEIPTS.—An amount received under this section—

(1) shall be retained by the Department of Defense or the element of the Department of Defense receiving the amount; and

(2) shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs incurred in complying with requests for technical data were paid.

(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in an amount greater than the costs that would be required for such a release of information under section 552 of title 5 if—

(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States (except that the Secretary may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, to be refunded upon submission of an offer by the citizen or corporation);

(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

(3) the Secretary determines, in accordance with section 552(a)(4)(A)(iii) of title 5, that such a waiver is in the interests of the United States.

(Added Pub. L. 99–500, § 101(c) [title X, § 954(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, § 101(c) [title X, § 954(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, § 954(a)(1), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(a)(7)(A), (B)(i), Apr. 21, 1987, 101 Stat. 278.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2328 was renumbered section 2348 of this title.

AMENDMENTS

1987—Pub. L. 100–26, § 7(a)(7)(B)(i), substituted ''Release of technical data under Freedom of Information Act: recovery of costs'' for ''Release of technical data'' in section catchline.

Subsec. (a)(1). Pub. L. 100–26, § 7(a)(7)(A)(i)(I), substituted ''such technical data to the person requesting the'' for ''technical data to a person requesting such a''.

Pub. L. 100–26, § 7(a)(7)(A)(i)(II), substituted ''search, duplication, and review'' for ''search and duplication''.

Subsec. (b). Pub. L. 100–26, § 7(a)(7)(A)(ii), substituted ''Crediting of receipts'' for ''Disposition of costs'' in heading.

Subsec. (c)(3). Pub. L. 100–26, § 7(a)(7)(A)(iii), substituted ''section 552(a)(4)(A)(iii)'' for ''section 552(a)(4)(A)''.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–26, § 12(d)(2), Apr. 21, 1987, 101 Stat. 289, provided that: ''The amendment to section 2328 of such title made by section 7(a)(7)(A)(i)(II) shall take effect on the same date and in the same manner as provided in section 1804(b) of Public Law 99–570 [set out as an Effective Date of 1986 Amendment note under section 552 of Title 5, Government Organization and Employees] for the amendment made by section 1803 of that Public Law to section 552a of title 5, United States Code [probably means amendment by section 1803 of Pub. L. 99–570 to section 552(a) of Title 5].''

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 954(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, Pub. L. 99–591, § 101(c) [title X, § 954(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 954(b), Nov. 14, 1986, 100 Stat. 3953, renumbered title IX by Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by this section [enacting this section] shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

[§ 2329. Repealed. Pub. L. 103–355, title I, § 1506(a), Oct. 13, 1994, 108 Stat. 3298]

Section, added Pub. L. 100–180, div. A, title VIII, § 810(a)(1), Dec. 4, 1987, 101 Stat. 1130; amended Pub. L. 100–456, div. A, title XII, § 1233(j), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to contract terms and conditions for production special tooling and production special test equipment.

§ 2330. Procurement of contract services: management structure

(a) REQUIREMENT FOR MANAGEMENT STRUCTURE.—The Secretary of Defense shall establish and implement a management structure for the procurement of contract services for the Department of Defense. The management structure shall provide, at a minimum, for the following:

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall—

(A) develop and maintain (in consultation with the service acquisition executives) policies, procedures, and best practices guidelines addressing the procurement of contract services, including policies, procedures, and best practices guidelines for—

(i) acquisition planning;
(ii) solicitation and contract award;
(iii) requirements development and management;
(iv) contract tracking and oversight;
(v) performance evaluation; and
(vi) risk management;

(B) work with the service acquisition executives and other appropriate officials of the Department of Defense—
(i) to identify the critical skills and competencies needed to carry out the procurement of contract services on behalf of the Department of Defense;
(ii) to develop a comprehensive strategy for recruiting, training, and deploying employees to meet the requirements for such skills and competencies; and
(iii) to ensure that the military departments and Defense Agencies have staff and administrative support that are adequate to effectively perform their duties under this section;

(C) establish contract services acquisition categories, based on dollar thresholds, for the purpose of establishing the level of review, decision authority, and applicable procedures in such categories; and
(D) oversee the implementation of the requirements of this section and the policies, procedures, and best practices guidelines established pursuant to subparagraph (A).

(2) The service acquisition executive of each military department shall be the senior official responsible for the management of acquisition of contract services for or on behalf of the military department.
(3) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be the senior official responsible for the management of acquisition of contract services for or on behalf of the Defense Agencies and other components of the Department of Defense outside the military departments.

(b) DUTIES AND RESPONSIBILITIES OF SENIOR OFFICIALS RESPONSIBLE FOR THE MANAGEMENT OF ACQUISITION OF CONTRACT SERVICES.—(1) Except as provided in paragraph (2), the senior officials responsible for the management of acquisition of contract services shall assign responsibility for the review and approval of procurements in each contract services acquisition category established under subsection (a)(1)(C) to specific Department of Defense officials, subject to the direction, supervision, and oversight of such senior officials.
(2) With respect to the acquisition of contract services by a component or command of the Department of Defense the primary mission of which is the acquisition of products and services, such acquisition shall be conducted in accordance with policies, procedures, and best practices guidelines developed and maintained by the Under Secretary of Defense for Acquisition, Technology, and Logistics pursuant to subsection (a)(1), subject to oversight by the senior officials referred to in paragraph (1).
(3) In carrying out paragraph (1), each senior official responsible for the management of acquisition of contract services shall—

(A) implement the requirements of this section and the policies, procedures, and best practices guidelines developed by the Under Secretary of Defense for Acquisition, Technology, and Logistics pursuant to subsection (a)(1)(A);
(B) authorize the procurement of contract services through contracts entered into by agencies outside the Department of Defense in appropriate circumstances, in accordance with the requirements of section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (10 U.S.C. 2304 note), section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (31 U.S.C. 1535 note), and the regulations implementing such sections;
(C) dedicate full-time commodity managers to coordinate the procurement of key categories of services;
(D) ensure that contract services are procured by means of procurement actions that are in the best interests of the Department of Defense and are entered into and managed in compliance with applicable laws, regulations, directives, and requirements;
(E) ensure that competitive procedures and performance-based contracting are used to the maximum extent practicable for the procurement of contract services; and
(F) monitor data collection under section 2330a of this title, and periodically conduct spending analyses, to ensure that funds expended for the procurement of contract services are being expended in the most rational and economical manner practicable.

(c) DEFINITIONS.—In this section:
(1) The term ''procurement action'' includes the following actions:
(A) Entry into a contract or any other form of agreement.
(B) Issuance of a task order, delivery order, or military interdepartmental purchase request.

(2) The term ''contract services'' includes all services acquired from private sector entities by or for the Department of Defense, including services in support of contingency operations. The term does not include services relating to research and development or military construction.

(Added Pub. L. 107–107, div. A, title VIII, §801(b)(1), Dec. 28, 2001, 115 Stat. 1174; amended Pub. L. 107–314, div. A, title X, §1062(a)(8), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 109–163, div. A, title VIII, §812(a)(1), Jan. 6, 2006, 119 Stat. 3376; Pub. L. 112–239, div. A, title VIII, §845(d), Jan. 2, 2013, 126 Stat. 1848.)

REFERENCES IN TEXT

Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, referred to in subsec. (b)(3)(B), is section 854 of div. A of Pub. L. 108–375, which is set out as a note under section 2304 of this title.

Section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, referred to in subsec. (b)(3)(B), is section 814 of div. A of Pub. L. 105–261, which was formerly set out as a note under section 1535 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 2330, added Pub. L. 100–456, div. A, title VIII, §801(a)(1), Sept. 29, 1988, 102 Stat. 2007; amended Pub. L. 101–510, div. A, title XIV, §1484(h)(2), Nov. 5, 1990, 104 Stat. 1717; Pub. L. 102–190, div. A, title VIII, §802(d), Dec. 5, 1991, 105 Stat. 1414, related to integrated financing policy, prior to repeal by Pub. L. 102–484, div. D, title XLII, §4271(a)(1), Oct. 23, 1992, 106 Stat. 2695.

Another prior section 2330 was renumbered section 2349 of this title.

AMENDMENTS

2013—Subsec. (c)(2). Pub. L. 112–239 substituted ''including services in support of contingency operations. The term does not include services relating to research and development or military construction.'' for ''other than services relating to research and development or military construction.''

2006—Pub. L. 109–163 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to requirement for management structure, contracting responsibilities of designated officials, and definitions.

2002—Subsec. (c). Pub. L. 107–314 inserted comma after ''a task order''.

EXAMINATION AND GUIDANCE RELATING TO OVERSIGHT AND APPROVAL OF SERVICES CONTRACTS

Pub. L. 114–92, div. A, title VIII, §882, Nov. 25, 2015, 129 Stat. 942, provided that: ''Not later than March 1, 2016, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall—

''(1) complete an examination of the decision authority related to acquisition of services; and

''(2) develop and issue guidance to improve capabilities and processes related to requirements development and source selection for, and oversight and management of, services contracts.''

IMPLEMENTATION OF RECOMMENDATIONS OF DEFENSE SCIENCE BOARD TASK FORCE ON IMPROVEMENTS TO SERVICE CONTRACTING

Pub. L. 112–81, div. A, title VIII, §807, Dec. 31, 2011, 125 Stat. 1488, provided that:

''(a) PLAN FOR IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall, acting pursuant to the Under Secretary's responsibility under section 2330 of title 10, United States Code, develop a plan for implementing the recommendations of the Defense Science Board Task Force on Improvements to Service Contracting.

''(b) ELEMENTS.—The plan developed pursuant to subsection (a) shall include, to the extent determined appropriate by the Under Secretary for Acquisition, Technology, and Logistics, the following:

''(1) Meaningful incentives to services contractors for high performance at low cost, consistent with the objectives of the Better Buying Power Initiative established by the Under Secretary.

''(2) Improved means of communication between the Government and the services contracting industry in the process of developing requirements for services contracts.

''(3) Clear guidance for defense acquisition personnel on the use of appropriate contract types for particular categories of services contracts.

''(4) Formal certification and training requirements for services acquisition personnel, consistent with the requirements of sections 1723 and 1724 of title 10, United States Code.

''(5) Appropriate emphasis on the recruiting and training of services acquisition personnel, consistent with the strategic workforce plan developed pursuant to section 115b of title 10, United States Code, and the funds available through the Department of Defense Acquisition Workforce Development Fund established pursuant to section 1705 of title 10, United States Code.

''(6) Policies and guidance on career development for services acquisition personnel, consistent with the requirements of sections 1722a and 1722b of title 10, United States Code.

''(7) Actions to ensure that the military departments dedicate portfolio-specific commodity managers to coordinate the procurement of key categories of contract services, as required by section 2330(b)(3)(C) of title 10, United States Code.

''(8) Actions to ensure that the Department of Defense conducts realistic exercises and training that account for services contracting during contingency operations, as required by section 2333(e) of title 10, United States Code.

''(c) COMPTROLLER GENERAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 31, 2011], the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the following:

''(1) The actions taken by the Under Secretary of Defense for Acquisition, Technology, and Logistics to carry out the requirements of this section.

''(2) The actions taken by the Under Secretary to carry out the requirements of section 2330 of title 10, United States Code.

''(3) The actions taken by the military departments to carry out the requirements of section 2330 of title 10, United States Code.

''(4) The extent to which the actions described in paragraphs (1), (2), and (3) have resulted in the improved acquisition and management of contract services.''

REQUIREMENTS FOR THE ACQUISITION OF SERVICES

Pub. L. 111–383, div. A, title VIII, §863(a)–(h), Jan. 7, 2011, 124 Stat. 4293, 4294, as amended by Pub. L. 112–81, div. A, title IX, §933(c), Dec. 31, 2011, 125 Stat. 1544; Pub. L. 112–239, div. A, title X, §1076(a)(18), Jan. 2, 2013, 126 Stat. 1949, provided that:

''(a) ESTABLISHMENT OF REQUIREMENTS PROCESSES FOR THE ACQUISITION OF SERVICES.—The Secretary of Defense shall ensure that the military departments and Defense Agencies each establish a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services.

''(b) OPERATIONAL REQUIREMENTS.—With regard to requirements for the acquisition of services in support of combatant commands and military operations, the Secretary shall ensure—

''(1) that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps implement and bear chief responsibility for carrying out, within the Armed Force concerned, the process established pursuant to subsection (a) for such Armed Force; and

''(2) that commanders of unified combatant commands and other officers identified or designated as joint qualified officers have an opportunity to participate in the process of each military department to provide input on joint requirements for the acquisition of services.

''(c) SUPPORTING REQUIREMENTS.—With regard to requirements for the acquisition of services not covered by subsection (b), the Secretary shall ensure that the secretaries of the military departments and the heads of the Defense Agencies implement and bear chief responsibility for carrying out, within the military department or Defense Agency concerned, the process established pursuant to subsection (a) for such military department or Defense Agency.

''(d) IMPLEMENTATION PLANS REQUIRED.—The Secretary shall ensure that an implementation plan is developed for each process established pursuant to subsection (a) that addresses, at a minimum, the following:

''(1) The organization of such process.

''(2) The level of command responsibility required for identifying, assessing, reviewing, and validating requirements for the acquisition of services in accordance with the requirements of this section and the categories established under section 2330(a)(1)(C) of title 10, United States Code.

''(3) The composition of positions necessary to operate such process.

''(4) The training required for personnel engaged in such process.

''(5) The relationship between doctrine and such process.

''(6) Methods of obtaining input on joint requirements for the acquisition of services.

''(7) Procedures for coordinating with the acquisition process.

''(8) Considerations relating to opportunities for strategic sourcing.

''(9) Considerations relating to total force management policies and procedures established under section 129a of title 10, United States Code.

''(e) MATTERS REQUIRED IN IMPLEMENTATION PLAN.—Each plan required under subsection (d) shall provide for initial implementation of a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services not later than one year after the date of the enactment of this Act [Jan. 7, 2011] and shall provide for full implementation of such process at the earliest date practicable.

''(f) CONSISTENCY WITH JOINT GUIDANCE.—Whenever, at any time, guidance is issued by the Chairman of the Joint Chiefs of Staff relating to requirements for the acquisition of services in support of combatant commands and military operations, each process established pursuant to subsection (a) shall be revised in accordance with such joint guidance.

''(g) DEFINITION.—The term 'requirements for the acquisition of services' means objectives to be achieved through acquisitions primarily involving the procurement of services.

''(h) REVIEW OF SUPPORTING REQUIREMENTS TO IDENTIFY SAVINGS.—The secretaries of the military departments and the heads of the Defense Agencies shall review and validate each requirement described in subsection (c) with an anticipated cost in excess of $10,000,000 with the objective of identifying unneeded or low priority requirements that can be reduced or eliminated, with the savings transferred to higher priority objectives. Savings identified and transferred to higher priority objectives through review and revalidation under this subsection shall count toward the savings objectives established in the June 4, 2010, guidance of the Secretary of Defense on improved operational efficiencies and the annual reduction in funding for service support contractors required by the August 16, 2010, guidance of the Secretary of Defense on efficiency initiatives. As provided by the Secretary, cost avoidance shall not count toward these objectives.''

PROCUREMENT OF COMMERCIAL SERVICES

Pub. L. 110–181, div. A, title VIII, §805, Jan. 28, 2008, 122 Stat. 212, as amended by Pub. L. 110–417, [div. A], title X, §1061(b)(4), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 113–291, div. A, title X, §1071(b)(2)(A), Dec. 19, 2014, 128 Stat. 3506, provided that:

''(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall modify the regulations of the Department of Defense for the procurement of commercial services for or on behalf of the Department of Defense.

''(b) APPLICABILITY OF COMMERCIAL PROCEDURES.—

''(1) SERVICES OF A TYPE SOLD IN MARKETPLACE.—The regulations modified pursuant to subsection (a) shall ensure that services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial items for purposes of section 2306a of title 10, United States Code (relating to truth in negotiations), only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services.

''(2) INFORMATION SUBMITTED.—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit—

''(A) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

''(B) if the contracting officer determines that the information described in subparagraph (A) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

''(c) TIME-AND-MATERIALS CONTRACTS.—

''(1) COMMERCIAL ITEM ACQUISITIONS.—The regulations modified pursuant to subsection (a) shall ensure that procedures applicable to time-and-materials contracts and labor-hour contracts for commercial item acquisitions may be used only for the following:

''(A) Services procured for support of a commercial item, as described in section 103(5) of title 41, United States Code.

''(B) Emergency repair services.

''(C) Any other commercial services only to the extent that the head of the agency concerned approves a determination in writing by the contracting officer that—

''(i) the services to be acquired are commercial services as defined in section 103(6) of title 41, United States Code;

''(ii) if the services to be acquired are subject to subsection (b), the offeror of the services has submitted sufficient information in accordance with that subsection;

''(iii) such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

''(iv) the use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

''(2) NON-COMMERCIAL ITEM ACQUISITIONS.—Nothing in this subsection shall be construed to preclude the use of procedures applicable to time-and-materials contracts and labor-hour contracts for non-commercial item acquisitions for the acquisition of any category of services.''

INDEPENDENT MANAGEMENT REVIEWS OF CONTRACTS FOR SERVICES

Pub. L. 110–181, div. A, title VIII, §808, Jan. 28, 2008, 122 Stat. 215, as amended by Pub. L. 111–383, div. A, title X, §1075(f)(3), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) GUIDANCE AND INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent management reviews of contracts for services. The independent management review guidance and instructions issued pursuant to this subsection shall be designed to evaluate, at a minimum—

''(1) contract performance in terms of cost, schedule, and requirements;

''(2) the use of contracting mechanisms, including the use of competition, the contract structure and type, the definition of contract requirements, cost or pricing methods, the award and negotiation of task orders, and management and oversight mechanisms;

''(3) the contractor's use, management, and oversight of subcontractors;

''(4) the staffing of contract management and oversight functions; and

''(5) the extent of any pass-throughs, and excessive pass-through charges (as defined in section 852 of the

John Warner National Defense Authorization Act for Fiscal Year 2007 [Pub. L. 109–364, 10 U.S.C. 2324 note]), by the contractor.

''(b) ADDITIONAL SUBJECT OF REVIEW.—In addition to the matters required by subsection (a), the guidance and instructions issued pursuant to subsection (a) shall provide for procedures for the periodic review of contracts under which one contractor provides oversight for services performed by other contractors. In particular, the procedures shall be designed to evaluate, at a minimum—

''(1) the extent of the agency's reliance on the contractor to perform acquisition functions closely associated with inherently governmental functions as defined in section 2383(b)(3) of title 10, United States Code; and

''(2) the financial interest of any prime contractor performing acquisition functions described in paragraph (1) in any contract or subcontract with regard to which the contractor provided advice or recommendations to the agency.

''(c) ELEMENTS.—The guidance and instructions issued pursuant to subsection (a) shall address, at a minimum—

''(1) the contracts subject to independent management reviews, including any applicable thresholds and exceptions;

''(2) the frequency with which independent management reviews shall be conducted;

''(3) the composition of teams designated to perform independent management reviews;

''(4) any phase-in requirements needed to ensure that qualified staff are available to perform independent management reviews;

''(5) procedures for tracking the implementation of recommendations made by independent management review teams; and

''(6) procedures for developing and disseminating lessons learned from independent management reviews.

''(d) REPORTS.—

''(1) REPORT ON GUIDANCE AND INSTRUCTION.—Not later than 270 days after the date of the enactment of this Act [Jan. 28, 2008], 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 setting forth the guidance and instructions issued pursuant to subsection (a).

''(2) GAO REPORT ON IMPLEMENTATION.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on the implementation of the guidance and instructions issued pursuant to subsection (a).''

ESTABLISHMENT AND IMPLEMENTATION OF MANAGEMENT STRUCTURE

Pub. L. 107–107, div. A, title VIII, §801(b)(2), Dec. 28, 2001, 115 Stat. 1176, directed the Secretary of Defense to establish and implement the management structure required under this section and the Under Secretary of Defense for Acquisition, Technology, and Logistics to issue guidance for officials in such management structure not later than 180 days after Dec. 28, 2001.

PHASED IMPLEMENTATION; REPORT

Pub. L. 109–163, div. A, title VIII, §812(b), (c), Jan. 6, 2006, 119 Stat. 3378, 3379, provided that:

''(b) PHASED IMPLEMENTATION.—The requirements of section 2330 of title 10, United States Code (as added by subsection (a)), shall be implemented as follows:

''(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall—

''(A) establish an initial set of contract services acquisition categories, based on dollar thresholds, by not later than June 1, 2006; and

''(B) issue an initial set of policies, procedures, and best practices guidelines in accordance with section 2330(a)(1)(A) by not later than October 1, 2006.

''(2) The contract services acquisition categories established by the Under Secretary shall include—

''(A) one or more categories for acquisitions with an estimated value of $250,000,000 or more;

''(B) one or more categories for acquisitions with an estimated value of at least $10,000,000 but less than $250,000,000; and

''(C) one or more categories for acquisitions with an estimated value greater than the simplified acquisition threshold but less than $10,000,000.

''(3) The senior officials responsible for the management of acquisition of contract services shall assign responsibility to specific individuals in the Department of Defense for the review and approval of procurements in the contract services acquisition categories established by the Under Secretary, as follows:

''(A) Not later than October 1, 2006, for all categories established pursuant to paragraph (2)(A).

''(B) Not later than October 1, 2007, for all categories established pursuant to paragraph (2)(B).

''(C) Not later than October 1, 2009, for all categories established pursuant to paragraph (2)(C).

''(c) REPORT.—Not later than one year after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a final report on the implementation of section 2330 of title 10, United States Code, as added by this section.''

PROCUREMENT PROGRAM REVIEW STRUCTURE; COMPTROLLER GENERAL REVIEW

Pub. L. 107–107, div. A, title VIII, §801(d)–(f), Dec. 28, 2001, 115 Stat. 1177, as amended by Pub. L. 113–291, div. A, title X, §1071(b)(8), Dec. 19, 2014, 128 Stat. 3507, provided that:

''(d) REQUIREMENT FOR PROGRAM REVIEW STRUCTURE.—(1) Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of Defense shall issue and implement a policy that applies to the procurement of services by the Department of Defense a program review structure that is similar to the one developed for and applied to the procurement of weapon systems by the Department of Defense.

''(2) The program review structure for the procurement of services shall, at a minimum, include the following:

''(A) Standards for determining which procurements should be subject to review by either the senior procurement executive of a military department or the senior procurement executive of the Department of Defense under such section, including criteria based on dollar thresholds, program criticality, or other appropriate measures.

''(B) Appropriate key decision points at which those reviews should take place.

''(C) A description of the specific matters that should be reviewed.

''(e) COMPTROLLER GENERAL REVIEW.—Not later than 90 days after the date on which the Secretary issues the policy required by subsection (d) and the Under Secretary of Defense for Acquisition, Technology, and Logistics issues the guidance required by subsection (b)(2) [set out as a note above], the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives an assessment of the compliance with the requirements of this section [enacting this section and section 2330a of this title, amending sections 133 and 2331 of this title, and enacting provisions set out as a note under this section] and the amendments made by this section.

''(f) DEFINITIONS.—In this section:

''(1) The term 'senior procurement executive' means the official designated as the senior procurement executive under section 1702(c) of title 41, United States Code.

''(2) The term 'performance-based', with respect to a contract or a task order means that the contract or

task order, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.''

PERFORMANCE GOALS FOR PROCUREMENTS OF SERVICES

Pub. L. 107–107, div. A, title VIII, §802, Dec. 28, 2001, 115 Stat. 1178, as amended by Pub. L. 107–314, div. A, title VIII, §805, Dec. 2, 2002, 116 Stat. 2605, provided that:

''(a) GOALS.—(1) It shall be an objective of the Department of Defense to achieve efficiencies in procurements of services pursuant to multiple award contracts through the use of—

''(A) performance-based services contracting;

''(B) appropriate competition for task orders under services contracts;

''(C) program review, spending analyses, and improved management of services contracts.

''(2) In furtherance of such objective, the Department of Defense shall have the following goals:

''(A) To increase, as a percentage of all of the individual purchases of services made by or for the Department of Defense under multiple award contracts for a fiscal year (calculated on the basis of dollar value), the volume of the individual purchases of services that are made on a competitive basis and involve receipt of more than one offer from qualified contractors to a percentage as follows:

''(i) For fiscal year 2003, a percentage not less than 40 percent.

''(ii) For fiscal year 2004, a percentage not less than 50 percent.

''(iii) For fiscal year 2011, a percentage not less than 75 percent.

''(B) To increase, as a percentage of all of the individual purchases of services made by or for the Department of Defense under multiple award contracts for a fiscal year (calculated on the basis of dollar value), the use of performance-based purchasing specifying firm fixed prices for the specific tasks to be performed to a percentage as follows:

''(i) For fiscal year 2003, a percentage not less than 25 percent.

''(ii) For fiscal year 2004, a percentage not less than 35 percent.

''(iii) For fiscal year 2005, a percentage not less than 50 percent.

''(iv) For fiscal year 2011, a percentage not less than 70 percent.

''(3) The Secretary of Defense may adjust any percentage goal established in paragraph (2) if the Secretary determines in writing that such a goal is too high and cannot reasonably be achieved. In the event that the Secretary chooses to adjust such a goal, the Secretary shall—

''(A) establish a percentage goal that the Secretary determines would create an appropriate incentive for Department of Defense components to use competitive procedures or performance-based services contracting, as the case may be; and

''(B) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing an explanation of the reasons for the Secretary's determination and a statement of the new goal that the Secretary has established.

''(b) ANNUAL REPORT.—Not later than March 1, 2002, and annually thereafter through March 1, 2011, 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 the progress made toward meeting the objective and goals established in subsection (a). Each report shall include, at a minimum, the following information:

''(1) A summary of the steps taken or planned to be taken in the fiscal year of the report to improve the management of procurements of services.

''(2) A summary of the steps planned to be taken in the following fiscal year to improve the management of procurements of services.

''(3) An estimate of the amount that will be expended by the Department of Defense for procurements of services in the fiscal year of the report.

''(4) An estimate of the amount that will be expended by the Department of Defense for procurements of services in the following fiscal year.

''(5) Regarding the individual purchases of services that were made by or for the Department of Defense under multiple award contracts in the fiscal year preceding the fiscal year in which the report is required to be submitted, information (determined using the data collection system established under section 2330a of title 10, United States Code) as follows:

''(A) The percentage (calculated on the basis of dollar value) of such purchases that are purchases that were made on a competitive basis and involved receipt of more than one offer from qualified contractors.

''(B) The percentage (calculated on the basis of dollar value) of such purchases that are performance-based purchases specifying firm fixed prices for the specific tasks to be performed.

''(c) DEFINITIONS.—(1) In this section, the terms 'individual purchase' and 'multiple award contract' have the meanings given such terms in section 803(c) of this Act [10 U.S.C. 2304 note].

''(2) For the purposes of this section, an individual purchase of services is made on a competitive basis only if it is made pursuant to procedures described in paragraphs (2), (3), and (4) of section 803(b) of this Act [10 U.S.C. 2304 note].''

§ 2330a. Procurement of services: tracking of purchases

(a) DATA COLLECTION REQUIRED.—The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.

(b) DATA TO BE COLLECTED.—The data required to be collected under subsection (a) includes the following:

(1) The services purchased.

(2) The total dollar amount of the purchase.

(3) The form of contracting action used to make the purchase.

(4) Whether the purchase was made through—

(A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;

(B) any other performance-based contract, performance-based task order, or performance-based arrangement; or

(C) any contract, task order, or other arrangement that is not performance based.

(5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.

(6) The extent of competition provided in making the purchase and whether there was more than one offer.

(7) Whether the purchase was made from—

(A) a small business concern;

(B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or

(C) a small business concern owned and controlled by women.

(c) INVENTORY.—(1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall submit to Congress an annual inventory of the activities performed during the preceding fiscal year pursuant to contracts for services (and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract) for or on behalf of the Department of Defense. The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:

(A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—

(i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees;

(ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and

(iii) the conduct and completion of the annual review required under subsection (e)(1).

(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for developing guidance on other data elements and implementing procedures for requirements relating to acquisition.

(2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:

(A) The functions and missions performed by the contractor.

(B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.

(C) The funding source for the contract under which the function is performed by appropriation and operating agency.

(D) The fiscal year for which the activity first appeared on an inventory under this section.

(E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).

(F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.

(G) A summary of the data required to be collected for the activity under subsection (a).

(3) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.

(d) PUBLIC AVAILABILITY OF INVENTORIES.—Not later than 30 days after the date on which an inventory under subsection (c) is required to be submitted to Congress, the Secretary shall—

(1) make the inventory available to the public; and

(2) publish in the Federal Register a notice that the inventory is available to the public.

(e) REVIEW AND PLANNING REQUIREMENTS.—Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall—

(1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible;

(2) ensure that—

(A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements;

(B) the activities on the list do not include any inherently governmental functions; and

(C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and

(3) identify activities that should be considered for conversion—

(A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or

(B) to an acquisition approach that would be more advantageous to the Department of Defense.

(f) DEVELOPMENT OF PLAN AND ENFORCEMENT AND APPROVAL MECHANISMS.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—

(1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;

(2) ensure the inventory is used to inform strategic workforce planning;

(3) facilitate use of the inventory for compliance with section 235 of this title; and

(4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.

(g) INSPECTOR GENERAL REPORT.—Not later than May 1 of each year, beginning with 2014 and ending with 2016, the Inspector General of the Department of Defense shall submit to the congressional defense committees a report containing the Inspector General's assessment of—

(1) the efforts by the Department of Defense to compile the inventory pursuant to subsection (c); and

(2) the reviews conducted under subsection (e), including the actions taken to resolve the

findings of the reviews in accordance with section 2463 of this title.

(h) COMPTROLLER GENERAL REPORT.—Not later than September 30 of each year, beginning with 2014 and ending with 2016, the Comptroller General of the United States shall submit to the congressional defense committees a report containing the Comptroller General's assessment of the efforts by the Department of Defense to implement subsections (e) and (f).

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.

(j) DEFINITIONS.—In this section:

(1) The term ''performance-based'', with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

(2) The definitions set forth in section 2225(f) of this title for the terms ''simplified acquisition threshold'', ''small business concern'', ''small business concern owned and controlled by socially and economically disadvantaged individuals'', and ''small business concern owned and controlled by women'' shall apply.

(3) FUNCTION CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL FUNCTIONS.—The term ''function closely associated with inherently governmental functions'' has the meaning given that term in section 2383(b)(3) of this title.

(4) INHERENTLY GOVERNMENTAL FUNCTIONS.—The term ''inherently governmental functions'' has the meaning given that term in section 2383(b)(2) of this title.

(5) PERSONAL SERVICES CONTRACT.—The term ''personal services contract'' means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.

(Added Pub. L. 107–107, div. A, title VIII, §801(c), Dec. 28, 2001, 115 Stat. 1176; amended Pub. L. 110–181, div. A, title VIII, §807(a), Jan. 28, 2008, 122 Stat. 213; Pub. L. 111–84, div. A, title VIII, §803(b), Oct. 28, 2009, 123 Stat. 2402; Pub. L. 111–383, div. A, title III, §321, Jan. 7, 2011, 124 Stat. 4183; Pub. L. 112–81, div. A, title IX, §936, Dec. 31, 2011, 125 Stat. 1545; Pub. L. 113–66, div. A, title IX, §951(a), Dec. 26, 2013, 127 Stat. 839.)

AMENDMENTS

2013—Subsecs. (g) to (j). Pub. L. 113–66 added subsecs. (g) and (h) and redesignated former subsecs. (g) and (h) as (i) and (j), respectively.

2011—Subsec. (c). Pub. L. 111–383, §321(2) to (4), substituted ''The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:'' for ''The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:'' in par. (1), added new subpars. (A) and (B) to par. (1), inserted par. (2) designation and introductory provisions before former subpars. (A) to (G) of par. (1) thereby making them part of par. (2), added subpar. (E), and struck out former subpar. (E) which read as follows: ''The number of full-time contractor employees (or its equivalent) paid for the performance of the activity.''

Subsec. (c)(1). Pub. L. 112–81, §936(a)(1), inserted ''(and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract)'' after ''pursuant to contracts for services'' in introductory provisions.

Subsec. (c)(1)(A)(ii), (iii). Pub. L. 112–81, §936(a)(2), added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: ''the calculation of contractor manpower equivalents in a manner that is comparable to the calculation of full-time equivalents for use in inventories of functions performed by Department of Defense employees.''

Subsec. (c)(1)(B). Pub. L. 112–81, §936(a)(3), inserted ''for requirements relating to acquisition'' before period at end.

Subsec. (c)(2), (3). Pub. L. 111–383, §321(1), redesignated par. (2) as (3).

Subsec. (e)(2) to (4). Pub. L. 112–81, §936(b), inserted ''and'' at end of par. (2), substituted period for ''; and'' at end of par. (3), and struck out par. (4) which read as follows: ''develop a plan, including an enforcement mechanism and approval process, to provide for appropriate consideration of the conversion of activities identified under paragraph (3) within a reasonable period of time.''

Subsec. (f) to (h). Pub. L. 112–81, §936(c), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2009—Subsec. (e)(4). Pub. L. 111–84 inserted '', including an enforcement mechanism and approval process,'' after ''plan''.

2008—Subsecs. (c) to (g). Pub. L. 110–181, §807(a)(1), (2), added subsecs. (c) to (f), redesignated former subsec. (d) as (g), and struck out heading and text of former subsec. (c). Former text read as follows: ''To the maximum extent practicable, a single data collection system shall be used to collect data under this section and information under section 2225 of this title.''

Subsec. (g)(3) to (5). Pub. L. 110–181, §807(a)(3), added pars. (3) to (5).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, §807(b), Jan. 28, 2008, 122 Stat. 215, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act [Jan. 28, 2008].

''(2) The first inventory required by section 2330a(c) of title 10, United States Code, as added by subsection (a), shall be submitted not later than the end of the third quarter of fiscal year 2008.''

DEVELOPMENT OF GUIDANCE ON PERSONAL SERVICES CONTRACTS

Pub. L. 110–417, [div. A], title VIII, §831, Oct. 14, 2008, 122 Stat. 4534, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall develop guidance related to personal services contracts to—

''(1) require a clear distinction between employees of the Department of Defense and employees of Department of Defense contractors;

''(2) provide appropriate safeguards with respect to when, where, and to what extent the Secretary may enter into a contract for the procurement of personal services; and

''(3) assess and take steps to mitigate the risk that, as implemented and administered, non-personal services contracts may become personal services contracts.

''(b) DEFINITION OF PERSONAL SERVICES CONTRACT.—In this section, the term 'personal services contract' has the meaning given that term in section 2330a(g)(5) [now 2330a(h)(5)] of title 10, United States Code.''

§ 2331. Procurement of services: contracts for professional and technical services

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

(b) CONTENT OF REGULATIONS.—With respect to contracts to acquire services on the basis of the number of hours of services provided, the regulations described in subsection (a) shall—

(1) include standards and approval procedures to minimize the use of such contracts;

(2) establish criteria to ensure that proposals for contracts for technical and professional services are evaluated on a basis which does not encourage contractors to propose uncompensated overtime;

(3) ensure appropriate emphasis on technical and quality factors in the source selection process;

(4) require identification of any hours in excess of 40-hour weeks included in a proposal;

(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and

(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.

(Added Pub. L. 101–510, div. A, title VIII, § 834(a)(1), Nov. 5, 1990, 104 Stat. 1613; amended Pub. L. 102–25, title VII, § 701(a), Apr. 6, 1991, 105 Stat. 113; Pub. L. 103–355, title I, § 1004(c), Oct. 13, 1994, 108 Stat. 3253; Pub. L. 107–107, div. A, title VIII, § 801(g)(1), Dec. 28, 2001, 115 Stat. 1177.)

PRIOR PROVISIONS

A prior section 2331 was renumbered section 2350 of this title.

AMENDMENTS

2001—Pub. L. 107–107 substituted ''Procurement of services: contracts'' for ''Contracts'' in section catchline.

1994—Subsec. (c). Pub. L. 103–355 struck out text and heading of subsec. (c). Text read as follows:

''(1) The Secretary of Defense may waive the limitation in section 2304(j)(4) of this title on the total value of task orders for specific contracting activities to the extent the Secretary considers the use of master agreements necessary in order to further the policy set forth in subsection (a).

''(2) During any fiscal year, such a waiver may not increase the total value of task orders under master agreements of a contracting activity by more than 20 percent of the value of all contracts for advisory and assistance services awarded by that contracting activity during fiscal year 1989.

''(3) Such a waiver shall not become effective until 60 days after the Secretary of Defense has published notice thereof in the Federal Register.''

1991—Subsec. (c)(1). Pub. L. 102–25 struck out ''on a case-by-case basis'' after ''value of task orders'', substituted ''considers the use of master agreements necessary'' for ''considers necessary the use of master agreements'', and struck out ''of this section'' before period at end.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

REGULATIONS

Pub. L. 101–510, div. A, title VIII, § 834(b), Nov. 5, 1990, 104 Stat. 1614, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall publish for public comment new regulations to carry out the requirements in this section [enacting this section]. The Secretary shall promulgate final regulations to carry out such requirements not later than 270 days after the date of the enactment of this Act.''

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Repeal of subsec. (c) of this section by Pub. L. 103–355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

§ 2332. Share-in-savings contracts

(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines in writing prior to award of the contract that—

(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is estab-

lished that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

(B) Amounts retained by the agency under this subsection shall—

(i) without further appropriation, remain available until expended; and

(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

(A) appropriations available for the performance of the contract;

(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

(3)(A) Subject to subparagraph (B), the head of an agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

(i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—

(I) 25 percent of the estimated costs of a cancellation or termination; or

(II) $5,000,000.

(ii) Unfunded contingent liability in excess of $1,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all agencies to which this chapter applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

(c) DEFINITIONS.—In this section:

(1) The term ''contractor'' means a private entity that enters into a contract with an agency.

(2) The term ''savings'' means—

(A) monetary savings to an agency; or

(B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

(3) The term ''share-in-savings contract'' means a contract under which—

(A) a contractor provides solutions for—

(i) improving the agency's mission-related or administrative processes; or

(ii) accelerating the achievement of agency missions; and

(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

(ii) acceleration of achievement of agency missions.

(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2005.

(Added Pub. L. 107–347, title II, §210(a)(1), Dec. 17, 2002, 116 Stat. 2932.)

EFFECTIVE DATE

Section effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as a note under section 3601 of Title 44, Public Printing and Documents.

§ 2333. Joint policies on requirements definition, contingency program management, and contingency contracting

(a) JOINT POLICY REQUIREMENT.—The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop joint policies for requirements definition, contingency program management, and contingency contracting during combat operations and post-conflict operations.

(b) REQUIREMENTS DEFINITION MATTERS COVERED.—The joint policy for requirements definition required by subsection (a) shall, at a minimum, provide for the following:

(1) The assignment of a senior commissioned officer or civilian member of the senior executive service, with appropriate experience and qualifications related to the definition of requirements to be satisfied through acquisition contracts (such as for delivery of products or services, performance of work, or accomplishment of a project), to act as head of requirements definition and coordination during combat operations, post-conflict operations, and contingency operations, if required, including leading a requirements review board involving all organizations concerned.

(2) An organizational approach to requirements definition and coordination during com-

bat operations, post-conflict operations, and contingency operations that is designed to ensure that requirements are defined in a way that effectively implements United States Government and Department of Defense objectives, policies, and decisions regarding the allocation of resources, coordination of interagency efforts in the theater of operations, and alignment of requirements with the proper use of funds.

(c) CONTINGENCY PROGRAM MANAGEMENT MATTERS COVERED.—The joint policy for contingency program management required by subsection (a) shall, at a minimum, provide for the following:

(1) The assignment of a senior commissioned officer or civilian member of the senior executive service, with appropriate program management experience and qualifications, to act as head of program management during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving multiple United States Government agencies and international organizations, if required.

(2) A preplanned organizational approach to program management during combat operations, post-conflict operations, and contingency operations that is designed to ensure that the Department of Defense is prepared to conduct such program management.

(3) Identification of a deployable cadre of experts, with the appropriate tools and authority, and trained in processes under paragraph (6).

(4) Utilization of the hiring and appointment authorities necessary for the rapid deployment of personnel to ensure the availability of key personnel for sufficient lengths of time to provide for continuing program and project management.

(5) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to program management personnel in—

(A) the use of laws, regulations, policies, and directives related to program management in combat or contingency environments;

(B) the integration of cost, schedule, and performance objectives into practical acquisition strategies aligned with available resources and subject to effective oversight; and

(C) procedures of the Department of Defense related to funding mechanisms and contingency contract management.

(6) Appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation.

(7) Such steps as may be needed to ensure jointness and cross-service coordination in the area of program management during contingency operations.

(d) CONTINGENCY CONTRACTING MATTERS COVERED.—(1) The joint policy for contingency contracting required by subsection (a) shall, at a minimum, provide for the following:

(A) The designation of a senior commissioned officer or civilian member of the senior executive service in each military department with the responsibility for administering the policy.

(B) The assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur.

(C) A sourcing approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving interagency organizations, if required.

(D) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

(i) the use of law, regulations, policies, and directives related to contingency contracting operations;

(ii) the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under section 2304 of this title, sealed bidding, letter contracts, indefinite delivery-indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;

(iii) the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and

(iv) instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process.

(E) Appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation.

(F) Such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting.

(2) To the extent practicable, the joint policy for contingency contracting required by subsection (a) should be taken into account in the development of interagency plans for stabilization and reconstruction operations, consistent with the report submitted by the President under section 1035 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2388) on interagency operating procedures for the planning and conduct of stabilization and reconstruction operations.

(e) TRAINING FOR PERSONNEL OUTSIDE ACQUISITION WORKFORCE.—(1) The joint policy for requirements definition, contingency program

management, and contingency contracting required by subsection (a) shall provide for training of military personnel outside the acquisition workforce (including operational field commanders and officers performing key staff functions for operational field commanders) who are expected to have acquisition responsibility, including oversight duties associated with contracts or contractors, during combat operations, post-conflict operations, and contingency operations.

(2) Training under paragraph (1) shall be sufficient to ensure that the military personnel referred to in that paragraph understand the scope and scale of contractor support they will experience in contingency operations and are prepared for their roles and responsibilities with regard to requirements definition, program management (including contractor oversight), and contingency contracting.

(3) The joint policy shall also provide for the incorporation of contractors and contract operations in mission readiness exercises for operations that will include contracting and contractor support.

(f) DEFINITIONS.—In this section:

(1) CONTINGENCY CONTRACTING PERSONNEL.—The term ''contingency contracting personnel'' means members of the armed forces and civilian employees of the Department of Defense who are members of the defense acquisition workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

(2) CONTINGENCY CONTRACTING.—The term ''contingency contracting'' means all stages of the process of acquiring property or services by the Department of Defense during a contingency operation.

(3) CONTINGENCY OPERATION.—The term ''contingency operation'' has the meaning provided in section 101(a)(13) of this title.

(4) ACQUISITION SUPPORT AGENCIES.—The term ''acquisition support agencies'' means Defense Agencies and Department of Defense Field Activities that carry out and provide support for acquisition-related activities.

(5) CONTINGENCY PROGRAM MANAGEMENT.—The term ''contingency program management'' means the process of planning, organizing, staffing, controlling, and leading the combined efforts of participating civilian and military personnel and organizations for the management of a specific defense acquisition program or programs during combat operations, post-conflict operations, and contingency operations.

(6) REQUIREMENTS DEFINITION.—The term ''requirements definition'' means the process of translating policy objectives and mission needs into specific requirements, the description of which will be the basis for awarding acquisition contracts for projects to be accomplished, work to be performed, or products to be delivered.

(Added Pub. L. 109–364, div. A, title VIII, §854(a)(1), Oct. 17, 2006, 120 Stat. 2343; amended Pub. L. 110–181, div. A, title VIII, §849(a), Jan. 28, 2008, 122 Stat. 245; Pub. L. 111–84, div. A, title X, §1073(a)(23), Oct. 28, 2009, 123 Stat. 2473.)

REFERENCES IN TEXT

Section 1035 of the John Warner National Defense Authorization Act for Fiscal Year 2007, referred to in subsec. (d)(2), is section 1035 of Pub. L. 109–364, div. A, title X, Oct. 17, 2006, 120 Stat. 2388, which is not classified to the Code.

AMENDMENTS

2009—Subsec. (d)(1)(D)(ii). Pub. L. 111–84, §1073(a)(23)(A), substituted ''indefinite delivery-indefinite quantity'' for ''indefinite delivery indefinite quantity''.

Subsec. (d)(2). Pub. L. 111–84, §1073(a)(23)(B), substituted ''the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2388)'' for ''this Act''.

Subsec. (f)(3). Pub. L. 111–84, §1073(a)(23)(C), substituted ''section 101(a)(13)'' for ''section 101(13)''.

2008—Subsecs. (e), (f). Pub. L. 110–181 added subsec. (e) and redesignated former subsec. (e) as (f).

DEADLINE FOR DEVELOPMENT OF JOINT POLICIES

Pub. L. 109–364, div. A, title VIII, §854(b), Oct. 17, 2006, 120 Stat. 2346, provided that: ''The Secretary of Defense shall develop the joint policies required under section 2333 of title 10, United States Code, as added by subsection (a), not later than 18 months after the date of enactment of this Act [Oct. 17, 2006].''

§ 2334. Independent cost estimation and cost analysis

(a) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of Defense provide accurate information and realistic estimates of cost for the acquisition programs of the Department of Defense. In carrying out that responsibility, the Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), the Secretaries of the military departments, and the heads of the Defense Agencies with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program under chapter 144 of this title or a major automated information system program under chapter 144A of this title;

(3) issue guidance relating to the proper selection of confidence levels in cost estimates generally, and specifically, for the proper selection of confidence levels in cost estimates for major defense acquisition programs and major automated information system programs;

(4) issue guidance relating to full consideration of life-cycle management and sustainability costs in major defense acquisition programs and major automated information system programs;

(5) review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major automated information system programs;

(6) conduct independent cost estimates and cost analyses for major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority—

(A) in advance of—

(i) any decision to grant milestone approval pursuant to section 2366a or 2366b of this title;

(ii) any decision to enter into low-rate initial production or full-rate production;

(iii) any certification under section 2433a of this title; and

(iv) any report under section 2445c(f) of this title; and

(B) at any other time considered appropriate by the Director or upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(7) periodically assess and update the cost indexes used by the Department to ensure that such indexes have a sound basis and meet the Department's needs for realistic cost estimation; and

(8) annually review the cost and associated information required to be included, by section 2432(c)(1) of this title, in the Selected Acquisition Reports required by that section.

(b) REVIEW OF COST ESTIMATES, COST ANALYSES, AND RECORDS OF THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation—

(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments and Defense Agencies, and all studies conducted by the military departments and Defense Agencies in connection with such cost estimates and cost analyses, for major defense acquisition programs and major automated information system programs of the military departments and Defense Agencies; and

(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to carry out any duties under this section.

(c) PARTICIPATION, CONCURRENCE, AND APPROVAL IN COST ESTIMATION.—The Director of Cost Assessment and Program Evaluation may—

(1) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate of a military department or Defense Agency for a major defense acquisition program or major automated information system program of the Department of Defense;

(2) comment on deficiencies in the methodology or execution of any cost estimate or cost analysis developed by a military department or Defense Agency for a major defense acquisition program or major automated information system program;

(3) concur in the choice of a cost estimate within the baseline description or any other cost estimate (including the confidence level for any such cost estimate) for use at any event specified in subsection (a)(6); and

(4) participate in the consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program.

(d) DISCLOSURE OF CONFIDENCE LEVELS FOR BASELINE ESTIMATES OF MAJOR DEFENSE ACQUISITION PROGRAMS.—The Director of Cost Assessment and Program Evaluation, and the Secretary of the military department concerned or the head of the Defense Agency concerned (as applicable), shall each—

(1) disclose in accordance with paragraph (3) the confidence level used in establishing a cost estimate for a major defense acquisition program or major automated information system program and the rationale for selecting such confidence level;

(2) ensure that such confidence level provides a high degree of confidence that the program can be completed without the need for significant adjustment to program budgets; and

(3) include the disclosure required by paragraph (1)—

(A) in any decision documentation approving a cost estimate within the baseline description or any other cost estimate for use at any event specified in subsection (a)(6); and

(B) in the next Selected Acquisition Report pursuant to section 2432 of this title in the case of a major defense acquisition program, or the next quarterly report pursuant to section 2445c of this title in the case of a major automated information system program.

(e) ESTIMATES FOR PROGRAM BASELINE AND ANALYSES AND TARGETS FOR CONTRACT NEGOTIATION PURPOSES.—(1) The policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with the requirements of subsection (a) shall provide that cost estimates developed for baseline descriptions and other program purposes conducted pursuant to subsection (a)(6) are not to be used for the purpose of contract negotiations or the obligation of funds.

(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are based on the Government's reasonable expectation of successful contractor performance in accordance with the contractor's proposal and previous experience.

(3) The Program Manager and contracting officer for each major defense acquisition program and major automated information system program shall ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are carried out in accordance with the requirements of paragraph (1) and the policies, procedures, and guidance issued by the Under Secretary of Defense

for Acquisition, Technology, and Logistics under paragraph (2).

(4) Funds that are made available for a major defense acquisition program or major automated information system program in accordance with a cost estimate conducted pursuant to subsection (a)(6), but are excess to a cost analysis or target developed pursuant to paragraph (2), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

(5) Funds described in paragraph (4)—

(A) may be used—

(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to paragraph (2);

(ii) to acquire additional end items in accordance with the requirements of section 2308 of this title; or

(iii) to cover the cost of risk reduction and process improvements; and

(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.

(f) STAFF.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.

(Added Pub. L. 111–23, title I, §101(b)(1), May 22, 2009, 123 Stat. 1706; amended Pub. L. 111–383, div. A, title VIII, §811, Jan. 7, 2011, 124 Stat. 4263; Pub. L. 112–81, div. A, title VIII, §833, Dec. 31, 2011, 125 Stat. 1506; Pub. L. 113–66, div. A, title VIII, §812(c), Dec. 26, 2013, 127 Stat. 808; Pub. L. 114–92, div. A, title VIII, §824(b), title X, §1077(a), Nov. 25, 2015, 129 Stat. 907, 998.)

AMENDMENTS

2015—Subsec. (a)(6)(A)(i). Pub. L. 114–92, §824(b), substituted ''any decision to grant milestone approval pursuant to'' for ''any certification under''.

Subsecs. (f), (g). Pub. L. 114–92, §1077(a), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to annual report on cost assessment activities.

2013—Subsec. (a)(8). Pub. L. 113–66, §812(c)(1), added par. (8).

Subsec. (f)(1). Pub. L. 113–66, §812(c)(2)(A), substituted ''report—'' for ''report, an assessment of—'' in introductory provisions.

Subsec. (f)(1)(A) to (C). Pub. L. 113–66, §812(c)(2)(B), inserted ''an assessment of'' at beginning of subpars. (A) to (C).

Subsec. (f)(1)(D). Pub. L. 113–66, §812(c)(2)(C)–(E), added subpar. (D).

2011—Subsec. (d)(1). Pub. L. 111–383, §811(1)(A), substituted ''paragraph (3)'' for ''paragraph (2)'' and ''and the rationale for selecting such confidence level;'' for '', the rationale for selecting such confidence level, and, if such confidence level is less than 80 percent, the justification for selecting a confidence level of less than 80 percent; and''.

Subsec. (d)(2), (3). Pub. L. 111–383, §811(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 111–383, §811(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 112–81, §833(2)(A), (B), substituted ''shall provide that'' for ''shall provide that—'', struck out subpar. (A) designation before ''cost estimates'', and substituted period at end for ''; and''.

Subsec. (e)(2). Pub. L. 112–81, §833(3), substituted ''The Under Secretary of Defense for Acquisition, Technology, and Logistics shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets'' for ''cost analyses and targets''.

Pub. L. 112–81, §833(2)(C), redesignated par. (1)(B) as (2) and realigned margin. Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 112–81, §833(4), substituted ''issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)'' for ''issued by the Director of Cost Assessment and Program Evaluation''.

Pub. L. 112–81, §833(1), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 112–81, §833(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 112–81, §833(5), substituted ''paragraph (4)'' for ''paragraph (3)'' in introductory provisions.

Pub. L. 112–81, §833(1), redesignated par. (4) as (5).

Subsecs. (f), (g). Pub. L. 111–383, §811(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

§ 2335. Prohibition on collection of political information

(a) PROHIBITION ON REQUIRING SUBMISSION OF POLITICAL INFORMATION.—The head of an agency may not require a contractor to submit political information related to the contractor or a subcontractor at any tier, or any partner, officer, director, or employee of the contractor or subcontractor—

(1) as part of a solicitation, request for bid, request for proposal, or any other form of communication designed to solicit offers in connection with the award of a contract for procurement of property or services; or

(2) during the course of contract performance as part of the process associated with modifying a contract or exercising a contract option.

(b) SCOPE.—The prohibition under this section applies to the procurement of commercial items, the procurement of commercial-off-the-shelf-items, and the non-commercial procurement of supplies, property, services, and manufactured items, irrespective of contract vehicle, including contracts, purchase orders, task or deliver orders under indefinite delivery/indefinite quantity contracts, blanket purchase agreements, and basic ordering agreements.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

(1) waiving, superseding, restricting, or limiting the application of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.)[1] or preventing Federal regulatory or law enforcement agencies from collecting or receiving information authorized by law; or

(2) precluding the Defense Contract Audit Agency from accessing and reviewing certain information, including political information, for the purpose of identifying unallowable costs and administering cost principles established pursuant to section 2324 of this title.

(d) DEFINITIONS.—In this section:

(1) CONTRACTOR.—The term ''contractor'' includes contractors, bidders, and offerors, and

[1] See References in Text note below.

individuals and legal entities who would reasonably be expected to submit offers or bids for Federal Government contracts.

(2) POLITICAL INFORMATION.—The term ''political information'' means information relating to political spending, including any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the contractor, any of its partners, officers, directors or employees, or any of its affiliates or subsidiaries to a candidate or on behalf of a candidate for election for Federal office, to a political committee, to a political party, to a third party entity with the intention or reasonable expectation that it would use the payment to make independent expenditures or electioneering communications, or that is otherwise made with respect to any election for Federal office, party affiliation, and voting history.

(3) OTHER TERMS.—Each of the terms ''contribution'', ''expenditure'', ''independent expenditure'', ''candidate'', ''election'', ''electioneering communication'', and ''Federal office'' has the meaning given that term in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.).[1]

(Added Pub. L. 112–81, div. A, title VIII, § 823(a), Dec. 31, 2011, 125 Stat. 1502; amended Pub. L. 113–291, div. A, title X, § 1071(f)(17), Dec. 19, 2014, 128 Stat. 3511.)

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, referred to in subsecs. (c)(1) and (d)(3), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, which was formerly classified principally to chapter 14 (§ 431 et seq.) of Title 2, The Congress, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 301 (§ 30101 et seq.) of Title 52. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2014—Subsec. (d)(2). Pub. L. 113–291, § 1071(f)(17)(A), redesignated last sentence as par. (3).

Subsec. (d)(3). Pub. L. 113–291, § 1071(f)(17)(B)(ii), (iii), substituted ''that term'' for ''the term'' and ''Federal Election Campaign'' for ''Federal Campaign''.

Pub. L. 113–291, § 1071(f)(17)(B)(i), which directed amendment of par. (3) by inserting ''OTHER TERMS.—'' before ''each of'', was executed by making the insertion before ''Each of'' to reflect the probable intent of Congress.

Pub. L. 113–291, § 1071(f)(17)(A), redesignated last sentence of par. (2) as (3).

[§ 2336. Renumbered § 2679]

§ 2337. Life-cycle management and product support

(a) GUIDANCE ON LIFE-CYCLE MANAGEMENT.—The Secretary of Defense shall issue and maintain comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems. The guidance issued pursuant to this subsection shall—

(1) maximize competition and make the best possible use of available Department of Defense and industry resources at the system, subsystem, and component levels; and

(2) maximize value to the Department of Defense by providing the best possible product support outcomes at the lowest operations and support cost.

(b) PRODUCT SUPPORT MANAGERS.—

(1) REQUIREMENT.—The Secretary of Defense shall require that each major weapon system be supported by a product support manager in accordance with this subsection.

(2) RESPONSIBILITIES.—A product support manager for a major weapon system shall—

(A) develop and implement a comprehensive product support strategy for the weapon system;

(B) use appropriate predictive analysis and modeling tools that can improve material availability and reliability, increase operational availability rates, and reduce operation and sustainment costs;

(C) conduct appropriate cost analyses to validate the product support strategy, including cost-benefit analyses as outlined in Office of Management and Budget Circular A–94;

(D) ensure achievement of desired product support outcomes through development and implementation of appropriate product support arrangements;

(E) adjust performance requirements and resource allocations across product support integrators and product support providers as necessary to optimize implementation of the product support strategy;

(F) periodically review product support arrangements between the product support integrators and product support providers to ensure the arrangements are consistent with the overall product support strategy;

(G) prior to each change in the product support strategy or every five years, whichever occurs first, revalidate any business-case analysis performed in support of the product support strategy;

(H) ensure that the product support strategy maximizes small business participation at the appropriate tiers; and

(I) ensure that product support arrangements for the weapon system describe how such arrangements will ensure efficient procurement, management, and allocation of Government-owned parts inventories in order to prevent unnecessary procurements of such parts.

(c) DEFINITIONS.—In this section:

(1) PRODUCT SUPPORT.—The term ''product support'' means the package of support functions required to field and maintain the readiness and operational capability of major weapon systems, subsystems, and components, including all functions related to weapon system readiness.

(2) PRODUCT SUPPORT ARRANGEMENT.—The term ''product support arrangement'' means a contract, task order, or any type of other contractual arrangement, or any type of agreement or non-contractual arrangement within the Federal Government, for the performance of sustainment or logistics support required for major weapon systems, subsystems, or components. The term includes arrangements for any of the following:

(A) Performance-based logistics.
(B) Sustainment support.
(C) Contractor logistics support.
(D) Life-cycle product support.
(E) Weapon systems product support.

(3) PRODUCT SUPPORT INTEGRATOR.—The term ''product support integrator'' means an entity within the Federal Government or outside the Federal Government charged with integrating all sources of product support, both private and public, defined within the scope of a product support arrangement.

(4) PRODUCT SUPPORT PROVIDER.—The term ''product support provider'' means an entity that provides product support functions. The term includes an entity within the Department of Defense, an entity within the private sector, or a partnership between such entities.

(5) MAJOR WEAPON SYSTEM.—The term ''major weapon system'' means a major system within the meaning of section 2302d(a) of this title.

(Added Pub. L. 112–239, div. A, title VIII, §823(a)(1), Jan. 2, 2013, 126 Stat. 1830; amended Pub. L. 113–66, div. A, title VIII, §823, Dec. 26, 2013, 127 Stat. 809.)

AMENDMENTS

2013—Subsec. (b)(2)(I). Pub. L. 113–66 added subpar. (I).

SIMILAR PROVISIONS

Provisions similar to this section were contained in section 805 of Pub. L. 111–84, which was set out as a note under section 2302 of this title prior to repeal by Pub. L. 112–239, div. A, title VIII, §823(b), Jan. 2, 2013, 126 Stat. 1832.

CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

Subchapter		Sec.
I.	Acquisition and Cross-Servicing Agreements	2341
II.	Other Cooperative Agreements	2350a

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(7), Nov. 5, 1990, 104 Stat. 1718, inserted ''Sec.'' above ''2341''.

1989—Pub. L. 101–189, div. A, title IX, §931(a)(1), Nov. 29, 1989, 103 Stat. 1531, substituted ''COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' for ''ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

1987—Pub. L. 100–26, §7(a)(8), Apr. 21, 1987, 101 Stat. 278, substituted ''ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' for ''NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS'' in chapter heading.

PRIOR PROVISIONS

Chapter 138 was originally comprised of sections 2321 to 2331. Sections 2321 to 2328, 2330, and 2331, were renumbered sections 2341 to 2348, 2349, and 2350, respectively, of this title, by Pub. L. 99–145, title XIII, §1304(a)(1), (3), Nov. 8, 1985, 99 Stat. 741.

Section 2329, added Pub. L. 96–323, §2(a), Aug. 4, 1980, 94 Stat. 1018, required the Secretary of Defense to prescribe regulations to implement this chapter, prior to repeal by Pub. L. 99–145, title XIII, §1304(a)(2), Nov. 8, 1985, 99 Stat. 741.

SUBCHAPTER I—ACQUISITION AND CROSS-SERVICING AGREEMENTS

Sec.
2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States.
2342. Cross-servicing agreements.
2343. Waiver of applicability of certain laws.
2344. Methods of payment for acquisitions and transfers by the United States.
2345. Liquidation of accrued credits and liabilities.
2346. Crediting of receipts.
2347. Limitation on amounts that may be obligated or accrued by the United States.
2348. Inventories of supplies not to be increased.
2349. Overseas Workload Program.
[2349a. Repealed.]
2350. Definitions.

AMENDMENTS

2013—Pub. L. 112–239, div. A, title X, §1076(g)(3), Jan. 2, 2013, 126 Stat. 1955, struck out item 2349a ''Annual report on non-NATO agreements''.

1994—Pub. L. 103–337, div. A, title XIII, §1317(c)(2)(B), (i)(2), Oct. 5, 1994, 108 Stat. 2900, 2902, substituted ''Waiver of applicability of certain laws'' for ''Law applicable to acquisition and cross-servicing agreements'' in item 2343 and added item 2349a.

1993—Pub. L. 103–160, div. A, title XIV, §1431(a)(2), Nov. 30, 1993, 107 Stat. 1833, added item 2349.

1990—Pub. L. 101–510, div. A, title XIII, §1331(3), Nov. 5, 1990, 104 Stat. 1673, struck out item 2349 ''Annual reports''.

1989—Pub. L. 101–189, div. A, title IX, §931(a)(1), Nov. 29, 1989, 103 Stat. 1531, added subchapter heading.

1986—Pub. L. 99–661, div. A, title XI, §1104(g), Nov. 14, 1986, 100 Stat. 3965, substituted ''elements of the armed forces deployed outside the United States'' for ''United States armed forces in Europe'' in item 2341.

1985—Pub. L. 99–145, title XIII, §1304(a)(6), Nov. 8, 1985, 99 Stat. 742, renumbered items 2321 to 2328 as 2341 to 2348, respectively, and items 2330 and 2331 as 2349 and 2350, respectively, and struck out item 2329 ''Regulations''.

§ 2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States

Subject to section 2343 of this title and subject to the availability of appropriations, the Secretary of Defense may—

(1) acquire from the Governments of North Atlantic Treaty Organization countries, from North Atlantic Treaty Organization subsidiary bodies, and from the United Nations Organization or any regional international organization logistic support, supplies, and services for elements of the armed forces deployed outside the United States; and

(2) acquire from any government not a member of the North Atlantic Treaty Organization logistic support, supplies, and services for elements of the armed forces deployed (or to be deployed) outside the United States if that country—

(A) has a defense alliance with the United States;

(B) permits the stationing of members of the armed forces in such country or the homeporting of naval vessels of the United States in such country;

(C) has agreed to preposition materiel of the United States in such country; or

(D) serves as the host country to military exercises which include elements of the

armed forces or permits other military operations by the armed forces in such country.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2321; renumbered § 2341 and amended Pub. L. 99–145, title XIII, § 1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(a), Nov. 14, 1986, 100 Stat. 3963; Pub. L. 102–484, div. A, title XIII, § 1312(a), Oct. 23, 1992, 106 Stat. 2547; Pub. L. 103–337, div. A, title XIII, § 1317(a), Oct. 5, 1994, 108 Stat. 2899; Pub. L. 109–163, div. A, title XII, § 1204, Jan. 6, 2006, 119 Stat. 3456.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–163 struck out ''of which the United States is a member'' before ''logistic support''.

1994—Par. (1). Pub. L. 103–337 substituted a comma for ''and'' after ''countries'' and inserted '', and from the United Nations Organization or any regional international organization of which the United States is a member'' after ''subsidiary bodies''.

1992—Par. (1). Pub. L. 102–484, § 1312(a)(1), substituted ''outside the United States'' for ''in Europe and adjacent waters''.

Par. (2). Pub. L. 102–484, § 1312(a)(2), in introductory provisions, struck out ''in which elements of the armed forces are deployed (or are to be deployed)'' after ''North Atlantic Treaty Organization'' and substituted ''outside the United States'' for ''in such country or in the military region in which such country is located''.

1986—Pub. L. 99–661 substituted ''elements of the armed forces deployed outside the United States'' for ''United States armed forces in Europe'' in section catchline.

Pub. L. 99–661 amended section generally, restating existing provisions into introductory text and par. (1) and adding par. (2).

1985—Pub. L. 99–145 renumbered section 2321 of this title as this section and substituted ''section 2343'' for ''section 2323''.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title XIII, § 1317(j), Oct. 5, 1994, 108 Stat. 2902, provided that: ''The amendments made by this section [enacting section 2349a of this title and amending this section and sections 2342 to 2347 and 2350 of this title] shall apply with regard to any acquisition or transfer of logistic support, supplies, and services under the authority of subchapter I of chapter 138 of title 10, United States Code, that is initiated after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title XIII, § 1312(c), Oct. 23, 1992, 106 Stat. 2548, provided that: ''The amendments made by this section [amending this section and section 2347 of this title] shall take effect on the date of enactment of this Act [Oct. 23, 1992] and shall apply to acquisitions of logistics support, supplies, and services under chapter 138 of title 10, United States Code, that are initiated on or after the date of enactment of this Act.''

SHORT TITLE

Pub. L. 96–323, § 1, Aug. 4, 1980, 94 Stat. 1016, provided: ''That this Act [enacting this chapter] may be cited as the 'North Atlantic Treaty Organization Mutual Support Act of 1979'.''

ACCEPTANCE OF REAL PROPERTY, SERVICES, AND COMMODITIES FROM FOREIGN COUNTRIES BY AGENCIES OF DEPARTMENT OF DEFENSE

Pub. L. 101–165, title IX, § 9008, Nov. 21, 1989, 103 Stat. 1130, which authorized agencies of Department of Defense to accept use of real property from foreign countries for United States in accordance with mutual defense agreements or occupational arrangements and to accept services furnished by foreign countries as reciprocal international courtesies or as services customarily made available without charge and to use same for support of United States forces in such areas without specific appropriation therefor, was repealed and restated in section 2350g of this title by Pub. L. 101–510, div. A, title XIV, § 1451(b)(1), (c), Nov. 5, 1990, 104 Stat. 1692, 1693.

OVERSEAS WORKLOAD PROGRAM

Pub. L. 101–510, div. A, title XIV, § 1465, Nov. 5, 1990, 104 Stat. 1700, as amended by Pub. L. 102–190, div. A, title X, § 1085, Dec. 5, 1991, 105 Stat. 1483; Pub. L. 102–484, div. A, title XIII, § 1353, Oct. 23, 1992, 106 Stat. 2559, which related to eligibility of a firm of any member nation of North Atlantic Treaty Organization (NATO) or of any major non-NATO ally to bid on any contract for maintenance, repair, or overhaul of equipment of the Department of Defense to be awarded under competitive procedures as part of the Overseas Workload Program, was repealed and restated in section 2349 of this title by Pub. L. 103–160, div. A, title XIV, § 1431(a)(1), (b)(1), Nov. 30, 1993, 107 Stat. 1832, 1833. Similar provisions were contained in the following authorization or appropriation acts:

Pub. L. 102–396, title IX, § 9130, Oct. 6, 1992, 106 Stat. 1935, as amended by Pub. L. 103–160, div. A, title XIV, § 1431(b)(2), Nov. 30, 1993, 107 Stat. 1833.

Pub. L. 102–172, title VIII, § 8122, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–511, title VIII, § 8003, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 100–180, div. A, title X, § 1021, Dec. 4, 1987, 101 Stat. 1143.

§ 2342. Cross-servicing agreements

(a)(1) Subject to section 2343 of this title and to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into an agreement described in paragraph (2) with any of the following:

(A) The government of a North Atlantic Treaty Organization country.

(B) A subsidiary body of the North Atlantic Treaty Organization.

(C) The United Nations Organization or any regional international organization.

(D) The government of a country not a member of the North Atlantic Treaty Organization but which is designated by the Secretary of Defense, subject to the limitations prescribed in subsection (b), as a government with which the Secretary may enter into agreements under this section.

(2) An agreement referred to in paragraph (1) is an agreement under which the United States agrees to provide logistic support, supplies, and services to military forces of a country or organization referred to in paragraph (1) in return for the reciprocal provisions of logistic support, supplies, and services by such government or organization to elements of the armed forces.

(b) The Secretary of Defense may not designate a country for an agreement under this section unless—

(1) the Secretary, after consultation with the Secretary of State, determines that the designation of such country for such purpose is in the interest of the national security of the United States; and

(2) in the case of a country which is not a member of the North Atlantic Treaty Organi-

zation, the Secretary submits 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 International Relations of the House of Representatives notice of the intended designation at least 30 days before the date on which such country is designated by the Secretary under subsection (a).

(c) The Secretary of Defense may not use the authority of this subchapter to procure from any foreign government or international organization any goods or services reasonably available from United States commercial sources.

(d) The Secretary shall prescribe regulations to ensure that contracts entered into under this subchapter are free from self-dealing, bribery, and conflict of interests.

(Added Pub. L. 96–323, §2(a), Aug. 4, 1980, 94 Stat. 1016, §2322; renumbered §2342 and amended Pub. L. 99–145, title XIII, §1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, §1104(a), Nov. 14, 1986, 100 Stat. 3963; Pub. L. 100–180, div. A, title XII, §1231(9), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 101–189, div. A, title IX, §931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 101–510, div. A, title XIV, §1451(a), Nov. 5, 1990, 104 Stat. 1692; Pub. L. 103–337, div. A, title XIII, §1317(b), Oct. 5, 1994, 108 Stat. 2900; Pub. L. 104–106, div. A, title XV, §1502(a)(16), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 109–163, div. A, title XII, §1204, Jan. 6, 2006, 119 Stat. 3456.)

AMENDMENTS

2006—Subsec. (a)(1)(C). Pub. L. 109–163 struck out ''of which the United States is a member'' before period at end.

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 inserted ''unless'' after ''section'' in introductory provisions, struck out ''unless'' after ''(1)'' in par. (1), and substituted ''the Secretary submits to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives notice of the intended designation'' for ''notifies the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives'' in par. (2).

1994—Subsec. (a)(1). Pub. L. 103–337, §1317(b)(1), substituted ''with any of the following:'' for ''with—'' in introductory provisions, substituted ''The government'' for ''the government'' and a period for the semicolon in subpar. (A), substituted ''A subsidiary'' for ''a subsidiary'' and ''Organization.'' for ''Organization; or'' in subpar. (B), added subpar. (C), redesignated former subpar. (C) as (D) and substituted ''The government'' for ''the government''.

Subsec. (a)(2). Pub. L. 103–337, §1317(b)(2), substituted ''organization'' for ''subsidiary body'' in two places.

Subsec. (c). Pub. L. 103–337, §1317(b)(3), substituted ''or international organization'' for ''as a routine or normal source''.

1990—Subsec. (a). Pub. L. 101–510 amended subsec. (a) generally, revising and restating former pars. (1) to (3) relating to reciprocal logistical support agreements as pars. (1) and (2).

1989—Subsecs. (c), (d). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1987—Pub. L. 100–180 substituted ''Cross-servicing'' for ''Cross servicing'' in section catchline.

1986—Pub. L. 99–661 amended section generally, restating existing provisions in introductory text and par. (1) of subsec. (a), adding pars. (2) and (3) of subsec. (a), and adding subsecs. (b) to (d).

1985—Pub. L. 99–145 renumbered section 2322 of this title as this section and substituted ''section 2343'' for ''section 2323''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

CROSS SERVICING AGREEMENTS FOR LOAN OF PERSONNEL PROTECTION AND PERSONNEL SURVIVABILITY EQUIPMENT IN COALITION OPERATIONS

Pub. L. 113–291, div. A, title XII, §1207, Dec. 19, 2014, 128 Stat. 3539, provided that:

''(a) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary of State, enter into an arrangement, under an agreement concluded pursuant to section 2342 of title 10, United States Code, under which the United States agrees to loan personnel protection and personnel survivability equipment for the use of such equipment by military forces of a nation participating in the following:

''(1) A coalition operation with the United States as part of a contingency operation.

''(2) A coalition operation with the United States as part of a peacekeeping operation under the Charter of the United Nations or another international agreement.

''(3) Training of such forces in connection with the deployment of such forces to be deployed to an operation described in paragraph (1) or (2).

''(b) LIMITATIONS.—

''(1) LOAN ONLY OF EQUIPMENT FOR WHICH U.S. FORCES HAVE NO UNFULFILLED REQUIREMENTS.—Equipment may be loaned to the military forces of a nation under the authority of this section only upon a determination by the Secretary of Defense that the United States forces in the coalition operation concerned have no unfulfilled requirements for such equipment.

''(2) SCOPE OF USE OF LOANED EQUIPMENT.—Equipment loaned to the military forces of a nation under the authority of this section may be used by those forces only for personnel protection or to aid in the personnel survivability of those forces and only in—

''(A) a coalition operation with the United States described in paragraph (1) or (2) of subsection (a); or

''(B) training described in paragraph (3) of subsection (a).

''(3) DURATION OF USE OF LOANED EQUIPMENT.—Equipment loaned to the military forces of a nation under the authority of this section may be used by the military forces of that nation not longer than the duration of that country's participation in the coalition operation concerned.

''(4) NOTICE AND WAIT ON LOAN OF EQUIPMENT FOR TRAINING.—Equipment may not be loaned under subsection (a) in connection with training described in paragraph (3) of that subsection until 15 days after the date on which the Secretary of Defense submits to the appropriate committees of Congress written notice on the loan of such equipment for such purpose.

''(c) WAIVER OF REIMBURSEMENT IN CASE OF LOSS OF EQUIPMENT IN COMBAT.—

''(1) IN GENERAL.—In the case of equipment loaned under the authority of this section that is damaged or destroyed as a result of combat operations during coalition operations while held by forces to which loaned under this section, the Secretary of Defense may, with respect to such equipment, waive any other requirement under applicable law for—

''(A) reimbursement;

''(B) replacement-in-kind; or

''(C) exchange of supplies or services of an equal value.

''(2) BASIS FOR WAIVER.—Any waiver under this subsection may be made only if the Secretary determines that the waiver is in the national security interest of the United States.

''(3) WAIVER ON A CASE-BY-CASE BASIS.—Any waiver under this subsection may be made only on a case-by-case basis.

''(d) REPORTS TO CONGRESS.—If the authority provided under this section is exercised during a fiscal year, the Secretary of Defense shall, in coordination with the Secretary of State, submit to the appropriate committees of Congress a report on the exercise of such authority by not later than October 30 of the year in which such fiscal year ends. Each report on the exercise of such authority shall specify the recipient country of the equipment loaned, the type of equipment loaned, and the duration of the loan of such equipment.

''(e) DEFINITIONS.—In this section:

''(1) The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

''(2) The term 'personnel protection and personnel survivability equipment' means items enumerated in categories I, II, III, VII, X, XI, and XIII of the United States Munitions List under section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)[)] that the Secretary of Defense designates as available for loan under this section.

''(f) EXPIRATION OF AUTHORITY.—The authority in subsection (a) shall expire on September 30, 2019.''

§ 2343. Waiver of applicability of certain laws

Sections 2207, 2304(a), 2306(a), 2306(b), 2306(e), 2306a, and 2313 of this title and section 6306 of title 41 shall not apply to acquisitions made under the authority of section 2341 of this title or to agreements entered into under section 2342 of this title.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2323; renumbered § 2343 and amended Pub. L. 99–145, title IX, § 961(b), title XIII, § 1304(a)(1), (5), Nov. 8, 1985, 99 Stat. 703, 741; Pub. L. 100–26, § 7(g)(2), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–456, div. A, title XII, § 1233(d), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 102–190, div. A, title X, § 1061(a)(12), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–337, div. A, title XIII, § 1317(c)(1), (2)(A), Oct. 5, 1994, 108 Stat. 2900; Pub. L. 111–350, § 5(b)(20), Jan. 4, 2011, 124 Stat. 3844.)

AMENDMENTS

2011—Pub. L. 111–350 substituted ''section 6306 of title 41'' for ''section 3741 of the Revised Statutes (41 U.S.C. 22)''.

1994—Pub. L. 103–337, § 1317(c)(2)(A), substituted ''Waiver of applicability of certain laws'' for ''Law applicable to acquisition and cross-servicing agreements'' as section catchline.

Pub. L. 103–337, § 1317(c)(1), designated subsec. (b) as entire section and struck out former subsec. (a) which read as follows: ''Except as provided in subsection (b), acquisition of logistic support, supplies, and services under section 2341 of this title and agreements entered into under section 2342 of this title shall be made in accordance with chapter 137 of this title and the provisions of this subchapter.''

1991—Subsec. (b). Pub. L. 102–190 substituted ''this title and'' for ''this title,'' and struck out '', and section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)'' before ''shall not apply''.

1989—Subsec. (a). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1988—Subsec. (b). Pub. L. 100–456 struck out ''section'' before ''2306a''.

1987—Subsec. (b). Pub. L. 100–26 substituted ''section 2306a,'' for ''2306(f),''.

1985—Pub. L. 99–145, § 1304(a)(1), renumbered section 2323 of this title as this section.

Subsec. (a). Pub. L. 99–145, § 1304(a)(5), substituted ''section 2341'' for ''section 2321'' and ''section 2342'' for ''section 2322''.

Subsec. (b). Pub. L. 99–145, § 1304(a)(5), substituted ''section 2341'' for ''section 2321'' and ''section 2342'' for ''section 2322''.

Pub. L. 99–145, § 961(b), substituted ''section 2304(a)'' for ''section 2304(g)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 961(b) of Pub. L. 99–145 effective as if included in enactment of Competition in Contracting Act of 1984, Pub. L. 98–369, div. B, title VII, making amendment applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 961(e) of Pub. L. 99–145, set out as a note under section 2304 of this title.

§ 2344. Methods of payment for acquisitions and transfers by the United States

(a) Logistics support, supplies, and services may be acquired or transferred by the United States under the authority of this subchapter on a reimbursement basis or by replacement-in-kind or exchange of supplies or services of an equal value.

(b)(1) In entering into agreements with the Government of another North Atlantic Treaty Organization country or other foreign country for the acquisition or transfer of logistic support, supplies, and services on a reimbursement basis, the Secretary of Defense shall negotiate for adoption of the following pricing principles for reciprocal application:

(A) The price charged by a supplying country for logistics support, supplies, and services specifically procured by the supplying country from its contractors for a recipient country shall be no less favorable than the price for identical items or services charged by such contractors to the armed forces of the supplying country, taking into account price differentials due to delivery schedules, points of delivery, and other similar considerations.

(B) The price charged a recipient country for supplies furnished by a supplying country from its inventory, and the price charged a recipient country for logistics support and services furnished by the officers, employees, or

governmental agencies of a supplying country, shall be the same as the price charged for identical supplies, support, or services acquired by an armed force of the supplying country from such governmental sources.

(2) To the extent that the Secretary of Defense is unable to obtain mutual acceptance by the other country involved of the reciprocal pricing principles for reimbursable transactions set forth in paragraph (1)—

(A) the United States may not acquire from such country any logistic support, supply, or service not governed by such reciprocal pricing principles unless the United States forces commander acquiring such support, supply, or service determines (after price analysis) that the price thereof is fair and reasonable; and

(B) transfers by the United States to such country under this subchapter of any logistic support, supply, or service that is not governed by such reciprocal pricing principles shall be subject to the pricing provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(3) To the extent that indirect costs (including charges for plant and production equipment), administrative surcharges, and contract administration costs with respect to any North Atlantic Treaty Organization country or other foreign country are not waived by operation of the reciprocal pricing principles of paragraph (1), the Secretary of Defense may, on a reciprocal basis, agree to waive such costs.

(4) The pricing principles set forth in paragraph (2) and the waiver authority provided in paragraph (3) shall also apply to agreements with North Atlantic Treaty Organization subsidiary bodies and the United Nations Organization or any regional international organization under this subchapter.

(c) In acquiring or transferring logistics support, supplies, or services under the authority of this subchapter by exchange of supplies or services, the Secretary of Defense may not agree to or carry out the following:

(1) Transfers in exchange for property the acquisition of which by the Department of Defense is prohibited by law.

(2) Transfers of source, byproduct, or special nuclear materials or any other material, article, data, or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(3) Transfers of chemical munitions.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2324; amended Pub. L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2344, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(b), Nov. 14, 1986, 100 Stat. 3964; Pub. L. 101–189, div. A, title IX, §§ 931(e)(1), 938(a), (b), Nov. 29, 1989, 103 Stat. 1535, 1539; Pub. L. 102–25, title VII, § 701(f)(2), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–337, div. A, title XIII, § 1317(d), Oct. 5, 1994, 108 Stat. 2900; Pub. L. 109–163, div. A, title XII, § 1204, Jan. 6, 2006, 119 Stat. 3456.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (b)(2)(B), 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.

The Atomic Energy Act of 1954, referred to in subsec. (c)(2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (b)(4). Pub. L. 109–163 struck out ''of which the United States is a member'' before ''under this subchapter''.

1994—Subsec. (b)(4). Pub. L. 103–337 inserted ''and the United Nations Organization or any regional international organization of which the United States is a member'' after ''subsidiary bodies''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''subchapter'' for ''chapter'' in introductory provisions.

1989—Subsec. (a). Pub. L. 101–189, §§ 931(e)(1), 938(a), substituted ''equal value'' for ''identical or substantially identical nature'' and ''this subchapter'' for ''this chapter''.

Subsec. (b)(2)(B), (4). Pub. L. 101–189, § 931(e)(1), substituted ''this subchapter'' for ''this chapter''.

Subsec. (c). Pub. L. 101–189, § 938(b), added subsec. (c).

1986—Subsec. (b)(1), (3). Pub. L. 99–661 inserted ''or other foreign country'' after ''country''.

1985—Pub. L. 99–145 renumbered section 2324 of this title as this section.

1981—Subsec. (b)(2)(B). Pub. L. 97–22 substituted ''this chapter'' for ''this Act''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2345. Liquidation of accrued credits and liabilities

(a) Credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under the authority of this subchapter shall be liquidated not less often than once every 12 months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

(b) Payment-in-kind or exchange entitlements accrued as a result of acquisitions and transfers of logistic support, supplies, and services under authority of this subchapter shall be satisfied within 12 months after the date of the delivery of the logistic support, supplies, or services.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2325; renumbered § 2345, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(c), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(e), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''12 months'' for ''three months''.

1989—Subsecs. (a), (b). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

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

1985—Pub. L. 99–145 renumbered section 2325 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2346. Crediting of receipts

Any receipt of the United States as a result of an agreement entered into under this subchapter shall be credited, at the option of the Secretary of Defense, to (1) the appropriation, fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2326; renumbered § 2346, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(f), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''shall be credited, at the option of the Secretary of Defense, to (1) the appropriation, fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made'' for ''shall be credited to applicable appropriations, accounts, and funds of the Department of Defense''.

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1985—Pub. L. 99–145 renumbered section 2326 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2347. Limitation on amounts that may be obligated or accrued by the United States

(a)(1) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with other member countries of the North Atlantic Treaty Organization, subsidiary bodies of the North Atlantic Treaty Organization, or from the United Nations Organization or any regional international organization of which the United States is a member may not exceed $200,000,000 in any fiscal year, and of such amount not more than $50,000,000 in liabilities may be accrued for the acquisition of supplies.

(2) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements, may not exceed $60,000,000 in any fiscal year, and of such amount not more than $20,000,000 in liabilities may be accrued for the acquisition of supplies. The $60,000,000 limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(b)(1) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable credits that the United States may accrue under this subchapter (before the computation of offsetting balances) with other member countries of the North Atlantic Treaty Organization, subsidiary bodies of the North Atlantic Treaty Organization, or from the United Nations Organization or any regional international organization of which the United States is a member may not exceed $150,000,000 in any fiscal year.

(2) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable credits that the United States may accrue under this subchapter (before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements may not exceed $75,000,000 in any fiscal year. Such limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(c) When the armed forces are involved in a contingency operation or in a non-combat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance or in support of peacekeeping operations under chapter VI or VII of the Charter of the United Nations), the restrictions in subsections (a) and (b) are waived for the purposes and duration of that operation.

(d) The amount of any sale, purchase, or exchange of petroleum, oils, or lubricants by the United States under this subchapter in any fiscal year shall be excluded in any computation for the purposes of subsection (a) or (b) of the amount of reimbursable liabilities or reimbursable credits that the United States accrues under this subchapter in that fiscal year.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2327; renumbered § 2347, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(d), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–456, div. A, title X, § 1001, Sept. 29, 1988, 102 Stat. 2037; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 102–484, div. A, title XIII, § 1312(b), Oct. 23, 1992, 106 Stat. 2547; Pub. L. 103–35, title II, § 202(a)(10), May 31, 1993, 107 Stat. 101; Pub. L. 103–337, div. A, title XIII, § 1317(g), Oct. 5, 1994, 108 Stat. 2901; Pub. L. 109–364, div. A, title XII, § 1221(a), Oct. 17, 2006, 120 Stat. 2423.)

AMENDMENTS

2006—Subsec. (a)(1), (2). Pub. L. 109–364, § 1221(a)(1), struck out ''(other than petroleum, oils, and lubricants)'' after ''supplies''.

Subsec. (d). Pub. L. 109–364, § 1221(a)(2), added subsec. (d).

1994—Subsec. (a)(1). Pub. L. 103–337, § 1317(g)(1), substituted ''Organization, subsidiary'' for ''Organization and subsidiary'', inserted '', or from the United Nations Organization or any regional international organization of which the United States is a member'' after ''Treaty Organization'', and substituted ''$200,000,000'' for ''$150,000,000'' and ''$50,000,000'' for ''$25,000,000''.

Subsec. (a)(2). Pub. L. 103–337, § 1317(g)(2), substituted ''$60,000,000'' for ''$10,000,000'' in two places and ''$20,000,000'' for ''$2,500,000''.

Subsec. (b)(1). Pub. L. 103–337, § 1317(g)(3), substituted ''Organization, subsidiary'' for ''Organization and subsidiary'', inserted '', or from the United Nations Organization or any regional international organization of which the United States is a member'' after ''Treaty Organization'', and substituted ''$150,000,000'' for ''$100,000,000''.

Subsec. (b)(2). Pub. L. 103–337, § 1317(g)(4), substituted ''$75,000,000'' for ''$10,000,000''.

Subsec. (c). Pub. L. 103–337, § 1317(g)(5), added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 1312(b)(4)(B). See 1992 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–484, § 1312(b)(1), substituted ''armed forces'' for ''North Atlantic Treaty Organization'' and inserted ''with other member countries of the North Atlantic Treaty Organization and subsidiary bodies of the North Atlantic Treaty Organization'' after ''(before the computation of offsetting balances)''.

Subsec. (a)(2). Pub. L. 102–484, § 1312(b)(2), substituted ''involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with'' for ''in the military region affecting'' and struck out ''the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with such country'' after ''cross-servicing agreements,''.

Subsec. (b)(1). Pub. L. 102–484, § 1312(b)(3), substituted ''armed forces'' for ''North Atlantic Treaty Organization'' and inserted ''with other member countries of the North Atlantic Treaty Organization and subsidiary bodies of the North Atlantic Treaty Organization'' after ''(before the computation of offsetting balances)''.

Subsec. (b)(2). Pub. L. 102–484, § 1312(b)(4)(A), substituted ''involving the armed forces'' for ''in the military region affecting a country referred to in paragraph (1)''.

Pub. L. 102–484, § 1312(b)(4)(B), as amended by Pub. L. 103–35, substituted ''(before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements'' for ''from such country (before computation of offsetting balances)''.

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter'' wherever appearing.

1988—Subsec. (a)(1). Pub. L. 100–456 substituted ''$150,000,000'' for ''$100,000,000''.

1986—Subsec. (a). Pub. L. 99–661, § 1104(d)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 99–661, § 1104(d)(2), designated existing provisions as par. (1) and added par. (2).

1985—Pub. L. 99–145 renumbered section 2327 of this title as this section.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title XII, § 1221(b), Oct. 17, 2006, 120 Stat. 2423, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect beginning with fiscal year 2007.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable to acquisitions of logistics support, supplies, and services under this chapter that are initiated on or after Oct. 23, 1992, see section 1312(c) of Pub. L. 102–484, set out as a note under section 2341 of this title.

§ 2348. Inventories of supplies not to be increased

Inventories of supplies for elements of the armed forces may not be increased for the purpose of transferring supplies under the authority of this subchapter.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2328; amended Pub. L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2348, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(e), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1986—Pub. L. 99–661 struck out ''to military forces of any North Atlantic Treaty Organization country or any North Atlantic Treaty Organization subsidiary body'' after ''chapter''.

1985—Pub. L. 99–145 renumbered section 2328 of this title as this section.

1981—Pub. L. 97–22 substituted ''this chapter'' for ''this Act''.

§ 2349. Overseas Workload Program

(a) IN GENERAL.—A firm of any member nation of the North Atlantic Treaty Organization or of any major non-NATO ally shall be eligible to bid on any contract for the maintenance, repair, or overhaul of equipment of the Department of Defense located outside the United States to be awarded under competitive procedures as part of the program of the Department of Defense known as the Overseas Workload Program.

(b) SITE OF PERFORMANCE.—A contract awarded to a firm described in subsection (a) may be performed in the theater in which the equipment is normally located or in the country in which the firm is located.

(c) EXCEPTIONS.—The Secretary of a military department may restrict the geographic region in which a contract referred to in subsection (a) may be performed if the Secretary determines that performance of the contract outside that specific region—

(1) could adversely affect the military preparedness of the armed forces; or

(2) would violate the terms of an international agreement to which the United States is a party.

(d) DEFINITION.—In this section, the term ''major non-NATO ally'' has the meaning given that term in section 2350a(i)(2) of this title.

(Added Pub. L. 103–160, div. A, title XIV, §1431(a)(1), Nov. 30, 1993, 107 Stat. 1832; amended Pub. L. 108–375, div. A, title X, §1084(d)(18), Oct. 28, 2004, 118 Stat. 2062.)

PRIOR PROVISIONS

A prior section 2349, added Pub. L. 96–323, §2(a), Aug. 4, 1980, 94 Stat. 1018, §2330; renumbered §2349, Pub. L. 99–145, title XIII, §1304(a)(3), Nov. 8, 1985, 99 Stat. 741; Pub. L. 101–189, div. A, title IX, §931(e)(1), Nov. 29, 1989, 103 Stat. 1535, directed Secretary of Defense to submit a report to Congress annually relating to agreements under this chapter, prior to repeal by Pub. L. 101–510, §1301(11).

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title XIV, §1465, Nov. 5, 1990, 104 Stat. 1700, as amended, which was set out as a note under section 2341 of this title, prior to repeal by Pub. L. 103–160, §1431(b)(1). Other prior similar provisions, formerly set out under section 2341 of this title, were contained in the following authorization or appropriation acts:

Pub. L. 102–396, title IX, §9130, Oct. 6, 1992, 106 Stat. 1935, as amended by Pub. L. 103–160, div. A, title XIV, §1431(b)(2), Nov. 30, 1993, 107 Stat. 1833.

Pub. L. 102–172, title VIII, §8122, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–511, title VIII, §8003, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 100–180, div. A, title X, §1021, Dec. 4, 1987, 101 Stat. 1143.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 substituted ''section 2350a(i)(2)'' for ''section 2350a(i)(3)''.

[§ 2349a. Repealed. Pub. L. 112–239, div. A, title X, § 1076(g)(3), Jan. 2, 2013, 126 Stat. 1955]

Section, added Pub. L. 103–337, div. A, title XIII, §1317(i)(1), Oct. 5, 1994, 108 Stat. 2902, required annual report from 1996 to 2000 regarding non-NATO cross-servicing and acquisition actions.

§ 2350. Definitions

In this subchapter:

(1) The term ''logistic support, supplies, and services'' means food, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and port services. Such term includes temporary use of general purpose vehicles and other nonlethal items of military equipment which are not designated as significant military equipment on the United States Munitions List promulgated pursuant to section 38(a)(1) of the Arms Export Control Act.

(2) The term ''North Atlantic Treaty Organization subsidiary bodies'' means—

(A) any organization within the meaning of the term ''subsidiary bodies'' in article I of the multilateral treaty on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff, signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087); and

(B) any international military headquarters or organization to which the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870), applies.

(3) The term ''military region'' means the geographical area of responsibility assigned to the commander of a unified combatant command (excluding Europe and adjacent waters).

(4) The term ''transfer'' means selling (whether for payment in currency, replacement-in-kind, or exchange of supplies or services of equal value), leasing, loaning, or otherwise temporarily providing logistic support, supplies, and services under the terms of a cross-servicing agreement.

(Added Pub. L. 96–323, §2(a), Aug. 4, 1980, 94 Stat. 1019, §2331; renumbered §2350, Pub. L. 99–145, title XIII, §1304(a)(3), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, §1104(f), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title IX, §931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, §1317(h), Oct. 5, 1994, 108 Stat. 2901; Pub. L. 105–85, div. A, title XII, §1222, Nov. 18, 1997, 111 Stat. 1937.)

REFERENCES IN TEXT

Section 38(a)(1) of the Arms Export Control Act, referred to in par. (1), is classified to section 2778(a)(1) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1997—Par. (1). Pub. L. 105–85, in second sentence, substituted ''other nonlethal items of military equipment which are not designated as significant military equipment on the United States Munitions List promulgated'' for ''other items of military equipment not designated as part of the United States Munitions List''.

1994—Par. (1). Pub. L. 103–337, §1317(h)(1), inserted ''(including airlift)'' after ''transportation'', ''calibration services,'' after ''maintenance services,'', and ''Such term includes temporary use of general purpose vehicles and other items of military equipment not designated as part of the United States Munitions List pursuant to section 38(a)(1) of the Arms Export Control Act.'' at end.

Par. (4). Pub. L. 103–337, §1317(h)(2), added par. (4).

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter'' in introductory provisions.

1987—Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1) and (3) and substituted lowercase letter.

1986—Par. (3). Pub. L. 99–661 added par. (3).

1985—Pub. L. 99–145 renumbered section 2331 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

SUBCHAPTER II—OTHER COOPERATIVE AGREEMENTS

Sec.
2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries.
2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment.
2350c. Cooperative military airlift agreements: allied countries.

Sec.
2350d. Cooperative logistic support agreements: NATO countries.
2350e. NATO Airborne Warning and Control System (AWACS) program: authority of Secretary of Defense.
2350f. Procurement of communications support and related supplies and services.
2350g. Authority to accept use of real property, services, and supplies from foreign countries in connection with mutual defense agreements and occupational arrangements.
2350h. Memorandums of agreement: Department of Defense ombudsman for foreign signatories.
2350i. Foreign contributions for cooperative projects.
2350j. Burden sharing contributions by designated countries and regional organizations.
2350k. Relocation within host nation of elements of armed forces overseas.
2350*l*. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations.
2350m. Participation in multinational military centers of excellence.

AMENDMENTS

2008—Pub. L. 110–417, [div. A], title XII, §1232(a)(2), Oct. 14, 2008, 122 Stat. 4639, added item 2350m.

2001—Pub. L. 107–107, div. A, title XII, §§1212(e)(2), 1213(b), Dec. 28, 2001, 115 Stat. 1250, 1251, substituted ''Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries'' for ''Cooperative research and development projects: allied countries'' in item 2350a and added item 2350*l*.

1996—Pub. L. 104–106, div. A, title XIII, §1332(a)(2), Feb. 10, 1996, 110 Stat. 484, added item 2350k.

1993—Pub. L. 103–160, div. A, title XIV, §1402(b), Nov. 30, 1993, 107 Stat. 1826, added item 2350j.

1991—Pub. L. 102–190, div. A, title X, §1047(b), Dec. 5, 1991, 105 Stat. 1468, added item 2350i.

Pub. L. 102–25, title VII, §704(a)(9), Apr. 6, 1991, 105 Stat. 119, made clarifying amendment to directory language of Pub. L. 101–510, div. A, title XIV, §1451(b)(2), Nov. 5, 1990, 104 Stat. 1693. See 1990 Amendment note below.

1990—Pub. L. 101–510, div. A, title XIV, §1452(a)(2), Nov. 5, 1990, 104 Stat. 1694, added item 2350h.

Pub. L. 101–510, div. A, title XIV, §1451(b)(2), Nov. 5, 1990, 104 Stat. 1693, as amended by Pub. L. 102–25, title VII, §704(a)(9), Apr. 6, 1991, 105 Stat. 119, added item 2350g.

§ 2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries

(a) AUTHORITY TO ENGAGE IN COOPERATIVE R&D PROJECTS.—(1) The Secretary of Defense may enter into a memorandum of understanding (or other formal agreement) with one or more countries or organizations referred to in paragraph (2) for the purpose of conducting cooperative research and development projects on defense equipment and munitions.

(2) The countries and organizations with which the Secretary may enter into a memorandum of agreement (or other formal agreement) under paragraph (1) are as follows:

(A) The North Atlantic Treaty Organization.

(B) A NATO organization.

(C) A member nation of the North Atlantic Treaty Organization.

(D) A major non-NATO ally.

(E) Any other friendly foreign country.

(3) If such a memorandum of understanding (or other formal agreement) is with a country referred to in subparagraph (E) of paragraph (2), such memorandum (or agreement) may go into effect only after the Secretary submits to the Committees on Armed Services and on Foreign Relations of the Senate and to the Committees on Armed Services and on International Relations of the House of Representatives a report with respect to the proposed memorandum (or agreement) and a period of 30 days has passed after the report has been submitted.

(b) REQUIREMENT THAT PROJECTS IMPROVE CONVENTIONAL DEFENSE CAPABILITIES.—(1) The Secretary of Defense may not enter into a memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project under this section unless the Secretary determines that the proposed project will improve, through the application of emerging technology, the conventional defense capabilities of the North Atlantic Treaty Organization or the common conventional defense capabilities of the United States and a country or organization referred to in subsection (a)(2).

(2) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Assistant Secretary of Defense for Research and Engineering.

(c) COST SHARING.—Each cooperative research and development project entered into under this section shall require sharing of the costs of the project (including the costs of claims) between the participants on an equitable basis.

(d) RESTRICTIONS ON PROCUREMENT OF EQUIPMENT AND SERVICES.—(1) In order to assure substantial participation on the part of countries and organizations referred to in subsection (a)(2) in cooperative research and development projects, funds made available for such projects may not be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity.

(2) A country or organization referred to in subsection (a)(2) may not use any military or economic assistance grant, loan, or other funds provided by the United States for the purpose of making the contribution of that country or organization to a cooperative research and development program entered into with the United States under this section.

(e) COOPERATIVE OPPORTUNITIES.—(1) In order to ensure that opportunities to conduct cooperative research and development projects are considered at an early point during the formal development review process of the Department of Defense in connection with any planned project of the Department, opportunities for such cooperative research and development shall be addressed in the acquisition strategy for the project.

(2) A cooperative opportunities discussion referred to in paragraph (1) shall consider the following:

(A) Whether or not a project similar to the one under consideration by the Department of Defense is in development or production by any country or organization referred to in subsection (a)(2) or NATO organizations.

(B) If a project similar to the one under consideration by the Department of Defense is in

development or production by one or more countries and organizations referred to in subsection (a)(2), an assessment as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project.

(C) An assessment of the advantages and disadvantages with regard to program timing, developmental and life cycle costs, technology sharing, and Rationalization, Standardization, and Interoperability (RSI) of seeking to structure a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

(D) A recommendation to the milestone decision authority as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

[(f) Repealed. Pub. L. 108–136, div. A, title X, § 1031(a)(17), Nov. 24, 2003, 117 Stat. 1597.]

(g) SIDE-BY-SIDE TESTING.—(1) It is the sense of Congress—

(A) that the Secretary of Defense should test conventional defense equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2) to determine the ability of such equipment, munitions, and technologies to satisfy United States military requirements or to correct operational deficiencies; and

(B) that while the testing of nondevelopmental items and items in the late state of the development process are preferred, the testing of equipment, munitions, and technologies may be conducted to determine procurement alternatives.

(2) The Secretary of Defense may acquire equipment, munitions, and technologies of the type described in paragraph (1) for the purpose of conducting the testing described in that paragraph.

(h) SECRETARY TO ENCOURAGE SIMILAR PROGRAMS.—The Secretary of Defense shall encourage member nations of the North Atlantic Treaty Organization, major non-NATO allies, and other friendly foreign countries to establish programs similar to the one provided for in this section.

(i) DEFINITIONS.—In this section:

(1) The term ''cooperative research and development project'' means a project involving joint participation by the United States and one or more countries and organizations referred to in subsection (a)(2) under a memorandum of understanding (or other formal agreement) to carry out a joint research and development program—

(A) to develop new conventional defense equipment and munitions; or

(B) to modify existing military equipment to meet United States military requirements.

(2) The term ''major non-NATO ally'' means a country (other than a member nation of the North Atlantic Treaty Organization) that is designated as a major non-NATO ally for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(3) The term ''NATO organization'' means any North Atlantic Treaty Organization subsidiary body referred to in section 2350(2) of this title and any other organization of the North Atlantic Treaty Organization.

(Added Pub. L. 101–189, div. A, title IX, § 931(a)(2), Nov. 29, 1989, 103 Stat. 1531; amended Pub. L. 101–510, div. A, title XIII, § 1331(4), Nov. 5, 1990, 104 Stat. 1673; Pub. L. 102–190, div. A, title X, § 1053, Dec. 5, 1991, 105 Stat. 1471; Pub. L. 102–484, div. A, title VIII, § 843(b)(1), Oct. 23, 1992, 106 Stat. 2469; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title XIII, § 1301, Oct. 5, 1994, 108 Stat. 2888; Pub. L. 104–106, div. A, title XV, § 1502(a)(17), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title IX, § 911(a)(1), title X, § 1067(1), Oct. 5, 1999, 113 Stat. 717, 774; Pub. L. 107–107, div. A, title X, § 1048(b)(2), title XII, § 1212(a)–(e)(1), Dec. 28, 2001, 115 Stat. 1225, 1248–1250; Pub. L. 107–314, div. A, title X, §§ 1041(a)(9), 1062(f)(2), Dec. 2, 2002, 116 Stat. 2645, 2651; Pub. L. 108–136, div. A, title X, § 1031(a)(17), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 110–181, div. A, title II, § 237, title XII, § 1251, Jan. 28, 2008, 122 Stat. 48, 401; Pub. L. 111–383, div. A, title IX, § 901(j)(4), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 112–81, div. A, title VIII, § 865, title X, § 1061(14), Dec. 31, 2011, 125 Stat. 1526, 1583; Pub. L. 114–92, div. A, title VIII, § 821(b)(1), Nov. 25, 2015, 129 Stat. 900.)

PRIOR PROVISIONS

Provisions relating to NATO countries were contained in Pub. L. 99–145, title XI, § 1103, Nov. 8, 1985, 99 Stat. 712, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 931(d)(1).

Provisions relating to major non-NATO allies were contained in section 2767a of Title 22, Foreign Relations and Intercourse, prior to repeal by Pub. L. 101–189, § 931(d)(2).

AMENDMENTS

2015—Subsec. (e). Pub. L. 114–92, § 821(b)(1)(A), struck out ''Document'' after ''Cooperative Opportunities'' in heading.

Subsec. (e)(1). Pub. L. 114–92, § 821(b)(1)(B), substituted ''opportunities for such cooperative research and development shall be addressed in the acquisition strategy for the project'' for ''the Under Secretary of Defense for Acquisition, Technology, and Logistics shall prepare a cooperative opportunities document before the first milestone or decision point with respect to that project for review by the Defense Acquisition Board at formal meetings of the Board''.

Subsec. (e)(2). Pub. L. 114–92, § 821(b)(1)(C)(i), substituted ''discussion'' for ''document'' and ''consider'' for ''include'' in introductory provisions.

Subsec. (e)(2)(A). Pub. L. 114–92, § 821(b)(1)(C)(ii), substituted ''Whether'' for ''A statement indicating whether''.

Subsec. (e)(2)(B). Pub. L. 114–92, § 821(b)(1)(C)(iii), struck out ''by the Under Secretary of Defense for Acquisition, Technology, and Logistics'' after ''an assessment'' and ''of the United States under consideration by the Department of Defense'' after ''of the project''.

Subsec. (e)(2)(D). Pub. L. 114–92, § 821(b)(1)(C)(iv), substituted ''A recommendation to the milestone decision authority'' for ''The recommendation of the Under Secretary''.

2011—Subsec. (b)(2). Pub. L. 112–81, § 865, substituted '', the Under Secretary of Defense for Acquisition,

Technology, and Logistics, and the Assistant Secretary of Defense for Research and Engineering'' for ''and to one other official of the Department of Defense''.

Subsec. (g)(3). Pub. L. 112–81, §1061(14), struck out par. (3) which read as follows: ''The Assistant Secretary of Defense for Research and Engineering shall notify the congressional defense committees of the intent to obligate funds made available to carry out this subsection not less than 7 days before such funds are obligated.''

Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

2008—Subsec. (e)(1). Pub. L. 110–181, §1251(1), struck out subpar. (A) designation before ''In order to ensure'', substituted ''a cooperative opportunities document before the first milestone or decision point'' for ''an arms cooperation opportunities document'', and struck out subpar. (B) which read as follows: ''The Under Secretary shall also prepare an arms cooperation opportunities document for review of each new project for which a document known as a Mission Need Statement is prepared.''

Subsec. (e)(2). Pub. L. 110–181, §1251(2), substituted ''A cooperative opportunities document'' for ''An arms cooperation opportunities document'' in introductory provisions.

Subsec. (g)(3). Pub. L. 110–181, §237, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Deputy Director, Defense Research and Engineering (Test and Evaluation) shall notify the Speaker of the House of Representatives and the Committees on Armed Services and on Appropriations of the Senate of the Deputy Director's intent to obligate funds made available to carry out this subsection not less than 30 days before such funds are obligated.''

2003—Subsec. (f). Pub. L. 108–136 struck out subsec. (f) which required that, not later than Mar. 1 of each year, the Under Secretary of Defense for Acquisition, Technology, and Logistics was to submit to the Speaker of the House and the Committees on Armed Services and Appropriations of the Senate a report on cooperative research and development projects under this section, and that, not later than Jan. 1 of each year, the Secretary of Defense was to submit to the Committees on Armed Services and Foreign Relations of the Senate and Committees on Armed Services and International Relations of the House a report specifying the countries eligible to participate in a cooperative project agreement under this section and the criteria used to determine the eligibility of such countries.

2002—Subsec. (g)(1)(A). Pub. L. 107–314, §1062(f)(2), amended directory language of Pub. L. 107–107, §1212(a)(5). See 2001 Amendment note below.

Subsec. (g)(4). Pub. L. 107–314, §1041(a)(9), struck out par. (4) which read as follows: ''The Secretary of Defense shall submit to Congress each year, not later than March 1, a report containing information on—

''(A) the equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2) that were evaluated under this subsection during the previous fiscal year;

''(B) the obligation of any funds under this subsection during the previous fiscal year; and

''(C) the equipment, munitions, and technologies that were tested under this subsection and procured during the previous fiscal year.''

Subsec. (g)(4)(A). Pub. L. 107–314, §1062(f)(2), amended directory language of Pub. L. 107–107, §1212(a)(5). See 2001 Amendment note below.

2001—Pub. L. 107–107, §1212(e)(1), substituted ''Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries'' for ''Cooperative research and development projects: allied countries'' in section catchline.

Subsec. (a)(1). Pub. L. 107–107, §1212(a)(1)(A), (B), designated existing provisions of subsec. (a) as par. (1) and substituted ''countries or organizations referred to in paragraph (2)'' for ''major allies of the United States or NATO organizations''.

Subsec. (a)(2). Pub. L. 107–107, §1212(a)(1)(C), added par. (2).

Subsec. (a)(3). Pub. L. 107–107, §1212(b), added par. (3).

Subsec. (b)(1). Pub. L. 107–107, §1212(a)(2), struck out ''(NATO)'' after ''North Atlantic Treaty Organization'' and substituted ''a country or organization referred to in subsection (a)(2)'' for ''its major non-NATO allies''.

Subsec. (b)(2). Pub. L. 107–107, §1212(c), substituted ''Deputy Secretary of Defense and to one other official of the Department of Defense'' for ''Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (d)(1). Pub. L. 107–107, §1212(a)(3)(A), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''the major allies of the United States''.

Subsec. (d)(2). Pub. L. 107–107, §1212(a)(3)(B), substituted ''country or organization referred to in subsection (a)(2)'' for ''major ally of the United States'' and ''the contribution of that country or organization'' for ''that ally's contribution''.

Subsec. (e)(1)(A). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e)(2)(A). Pub. L. 107–107, §1212(a)(4)(A), substituted ''any country or organization referred to in subsection (a)(2)'' for ''one or more of the major allies of the United States''.

Subsec. (e)(2)(B). Pub. L. 107–107, §§1048(b)(2), 1212(a)(4)(B), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States or NATO organizations'' and ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e)(2)(C). Pub. L. 107–107, §1212(a)(4)(C), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States''.

Subsec. (e)(2)(D). Pub. L. 107–107, §1212(a)(4)(D), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States''.

Subsec. (f)(1). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (f)(2). Pub. L. 107–107, §1212(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense and the Secretary of State, whenever they consider such action to be warranted, shall jointly 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 International Relations of the House of Representatives a report—

''(A) enumerating those countries to be added to or deleted from the existing designation of countries designated as major non-NATO allies for purposes of this section; and

''(B) specifying the criteria used in determining the eligibility of a country to be designated as a major non-NATO ally for purposes of this section.''

Subsec. (g)(1)(A), (4)(A). Pub. L. 107–107, §1212(a)(5), as amended by Pub. L. 107–314, §1062(f)(2), substituted ''countries referred to in subsection (a)(2)'' for ''major allies of the United States and other friendly foreign countries''.

Subsec. (h). Pub. L. 107–107, §1212(a)(6), substituted ''member nations of the North Atlantic Treaty Organization, major non-NATO allies, and other friendly foreign countries'' for ''major allies of the United States''.

Subsec. (i)(1). Pub. L. 107–107, §1212(a)(7)(A), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States or NATO organizations''.

Subsec. (i)(2) to (4). Pub. L. 107–107, §1212(a)(7)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''The term 'major ally of the United States' means—

''(A) a member nation of the North Atlantic Treaty Organization (other than the United States); or

''(B) a major non-NATO ally.''

1999—Subsec. (b)(2). Pub. L. 106–65, § 911(a)(1), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (f)(2). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (f)(2). Pub. L. 104–106 substituted ''submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives'' for ''submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives''.

1994—Subsecs. (a), (e)(2)(A) to (D), (i)(1). Pub. L. 103–337, § 1301(a), inserted ''or NATO organizations'' after ''major allies of the United States''.

Subsec. (i)(4). Pub. L. 103–337, § 1301(b), added par. (4).

1993—Subsecs. (b)(2), (e)(1)(A), (2)(B), (f)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (c). Pub. L. 102–484 inserted ''(including the costs of claims)'' after ''the project''.

1991—Subsec. (g)(1)(A), (4)(A). Pub. L. 102–190 inserted ''and other friendly foreign countries'' after ''major allies of the United States''.

1990—Subsec. (g)(4). Pub. L. 101–510 amended introductory provisions generally, substituting ''submit to Congress each year, not later than March 1, a report containing'' for ''include in the annual report to Congress required by section 2457(d) of this title''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title X, § 1062(f), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(f)(2) is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.

TERMINATION DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, § 843(c), Oct. 23, 1992, 106 Stat. 2469, as amended by Pub. L. 103–35, title II, § 202(a)(7), May 31, 1993, 107 Stat. 101, provided that, effective Oct. 23, 1994, subsections (a) and (b) of section 843 of Pub. L. 102–484 (amending sections 2350a and 2350d of this title and section 2767 of Title 22, Foreign Relations and Intercourse) were to cease to be in effect, and section 27(c) of the Arms Export Control Act (22 U.S.C. 2767(c)) and sections 2350a(c) and 2350d(c) of this title were to read as if such subsections had not been enacted, prior to repeal by Pub. L. 103–337, div. A, title XIII, § 1318, Oct. 5, 1994, 108 Stat. 2902.

ADMINISTRATION OF THE AMERICAN, BRITISH, CANADIAN, AND AUSTRALIAN ARMIES' PROGRAM

Pub. L. 112–239, div. A, title XII, § 1274, Jan. 2, 2013, 126 Stat. 2026, provided that:

''(a) AUTHORITY.—As part of the participation by the United States in the land-force program known as the American, British, Canadian, and Australian Armies' Program (in this section referred to as the 'Program'), the Secretary of Defense may, with the concurrence of the Secretary of State, enter into agreements with the other participating countries in accordance with this section, and the Program shall be managed pursuant to a joint agreement among the participating countries.

''(b) PARTICIPATING COUNTRIES.—In addition to the United States, the countries participating in the Program are the following:

''(1) Australia.

''(2) Canada.

''(3) New Zealand.

''(4) The United Kingdom.

''(c) CONTRIBUTIONS BY PARTICIPANTS.—

''(1) IN GENERAL.—An agreement under subsection (a) shall provide that each participating country shall contribute to the Program—

''(A) its equitable share of the full cost for the Program, including the full cost of overhead and administrative costs related to the Program; and

''(B) any amount allocated to it in accordance with the agreement for the cost for monetary claims asserted against any participating country as a result of participation in the Program.

''(2) ADDITIONAL AUTHORIZED CONTRIBUTION.—Such an agreement shall also provide that each participating country (including the United States) may provide its contribution for its equitable share under the agreement in funds, in personal property, or in services required for the Program (or in any combination thereof).

''(3) FUNDING FOR UNITED STATES CONTRIBUTION.—Any contribution by the United States to the Program that is provided in funds shall be made from funds available to the Department of Defense for operation and maintenance.

''(4) TREATMENT OF CONTRIBUTIONS RECEIVED FROM OTHER COUNTRIES.—Any contribution received by the United States from another participating country to meet that country's share of the costs of the Program shall be credited to appropriations available to the Department of Defense, as determined by the Secretary of Defense. The amount of a contribution credited to an appropriation account in connection with the Program shall be available only for payment of the share of the Program expenses allocated to the participating country making the contribution. Amounts so credited shall be available for the following purposes:

''(A) Payments to contractors and other suppliers (including the Department of Defense and participating countries acting as suppliers) for necessary goods and services of the Program.

''(B) Payments for any damages and costs resulting from the performance or cancellation of any contract or other obligation in support of the Program.

''(C) Payments for any monetary claim against a participating country as a result of the participation of that country in the Program.

''(D) Payments or reimbursements of other Program expenses, including overhead and administrative costs for any administrative office for the Program.

''(E) Refunds to other participating countries.

''(5) COSTS OF OPERATION OF OFFICES ESTABLISHED FOR PROGRAM.—Costs for the operation of any office established to carry out the Program shall be borne jointly by the participating countries as provided for in an agreement referred to in subsection (a).

''(d) AUTHORITY TO CONTRACT FOR PROGRAM ACTIVITIES.—As part of the participation by the United States in the Program, the Secretary of Defense may enter into contracts or incur other obligations on behalf of the other participating countries for activities under the Program. Any payment for such a contract or other obligation under this subsection may be paid only from contributions credited to an appropriation under subsection (c)(4).

''(e) DISPOSAL OF PROPERTY.—As part of the participation by the United States in the Program, the Secretary of Defense may, with respect to any property that is jointly acquired by the countries participating in the Program, agree to the disposal of the property without regard to any law of the United States that is otherwise applicable to the disposal of property owned

by the United States. Such disposal may include the transfer of the interest of the United States in the property to one or more of the other participating countries or the sale of the property. Reimbursement for the value of the property disposed of (including the value of the interest of the United States in the property) shall be made in accordance with an agreement under subsection (a).

''(f) REPORTS.—Not later than 60 days before the expiration date of any agreement under subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the activities, costs, and accomplishments of the Program during the five-year period ending on the date of such report.

''(g) SUNSET.—Any agreement entered into by the United States with another country under subsection (a), and United States participation in the joint agreement described in that subsection, shall expire not later than five years after the date of the enactment of this Act [Jan. 2, 2013].''

§ 2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment

(a)(1) If the President delegates to the Secretary of Defense the authority to carry out section 27(d) of the Arms Export Control Act (22 U.S.C. 2767(d)), relating to cooperative projects (as defined in such section), the Secretary may utilize his authority under this title in carrying out contracts or obligations incurred under such section.

(2) Except as provided in subsection (c), chapter 137 of this title shall apply to such contracts (referred to in paragraph (1)) entered into by the Secretary of Defense. Except to the extent waived under subsection (c) or some other provision of law, all other provisions of law relating to procurement, if otherwise applicable, shall apply to such contracts entered into by the Secretary of Defense.

(b) When contracting or incurring obligations under section 27(d) of the Arms Export Control Act for cooperative projects, the Secretary of Defense may require subcontracts to be awarded to particular subcontractors in furtherance of the cooperative project.

(c)(1) Subject to paragraph (2), when entering into contracts or incurring obligations under section 27(d) of the Arms Export Control Act outside the United States, the Secretary of Defense may waive with respect to any such contract or subcontract the application of any provision of law, other than a provision of the Arms Export Control Act or section 2304 of this title, that specifically prescribes—

(A) procedures to be followed in the formation of contracts;

(B) terms and conditions to be included in contracts;

(C) requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(D) requirements regulating the performance of contracts.

(2) A waiver may not be made under paragraph (1) unless the Secretary determines that the waiver is necessary to ensure that the cooperative project will significantly further standardization, rationalization, and interoperability.

(3) The authority of the Secretary to make waivers under this subsection may be delegated only to the Deputy Secretary of Defense or the Acquisition Executive designated for the Office of the Secretary of Defense.

(d)(1) The Secretary of Defense shall notify the Congress each time he requires that a prime contract be awarded to a particular prime contractor or that a subcontract be awarded to a particular subcontractor to comply with a cooperative agreement. The Secretary shall include in each such notice the reason for exercising his authority to designate a particular contractor or subcontractor, as the case may be.

(2) The Secretary shall also notify the Congress each time he exercises a waiver under subsection (c) and shall include in such notice the particular provision or provisions of law that were waived.

(3) A report under this subsection shall be required only to the extent that the information required by this subsection has not been provided in a report made by the President under section 27(e) of the Arms Export Control Act (22 U.S.C. 2767(e)).

(e)(1) In carrying out a cooperative project under section 27 of the Arms Export Control Act, the Secretary of Defense may agree that a participant (other than the United States) or a NATO organization may make a contract for requirements of the United States under the project if the Secretary determines that such a contract will significantly further standardization, rationalization, and interoperability. Except to the extent waived under this section or under any other provision of law, the Secretary shall ensure that such contract will be made on a competitive basis and that United States sources will not be precluded from competing under the contract.

(2) If a participant (other than the United States) in such a cooperative project or a NATO organization makes a contract on behalf of such project to meet the requirements of the United States, the contract may permit the contracting party to follow its own procedures relating to contracting.

(f) In carrying out a cooperative project, the Secretary of Defense may also agree to the disposal of property that is jointly acquired by the members of the project without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement.

(g) Nothing in this section shall be construed as authorizing the Secretary of Defense—

(1) to waive any of the financial management responsibilities administered by the Secretary of the Treasury; or

(2) to waive the cargo preference laws of the United States, including section 2631 of this title and section 55305 of title 46.

(Added Pub. L. 99–145, title XI, §1102(b)(1), Nov. 8, 1985, 99 Stat. 710, §2407; amended Pub. L.

99–661, div. A, title XI, §1103(b)(1), (2)(A), title XIII, §1343(a)(15), Nov. 14, 1986, 100 Stat. 3963, 3993; renumbered §2350b and amended Pub. L. 101–189, div. A, title IX, §931(b)(1), (e)(3), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 104–106, div. A, title XIII, §1335, div. D, title XLIII, §4321(b)(10), Feb. 10, 1996, 110 Stat. 484, 672; Pub. L. 108–375, div. A, title X, §1084(d)(19), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–304, §17(a)(3), Oct. 6, 2006, 120 Stat. 1706.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c)(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

2006—Subsec. (g)(2). Pub. L. 109–304 substituted ''section 55305 of title 46'' for ''section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))''.

2004—Subsec. (g). Pub. L. 108–375, §1084(d)(19)(A), inserted ''the Secretary of Defense'' after ''authorizing'' in introductory provisions.

Subsec. (g)(1). Pub. L. 108–375, §1084(d)(19)(B), struck out ''the Secretary of Defense'' before ''to waive''.

1996—Subsec. (c)(1). Pub. L. 104–106, §4321(b)(10)(A), inserted ''prescribes'' after ''specifically'' in introductory provisions and struck out ''prescribe'' before ''procedures'' in subpar. (A), before ''terms'' in subpar. (B), and before ''requirements'' in subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 104–106, §4321(b)(10)(B), struck out ''to'' after ''subcontract''.

Subsec. (e)(1). Pub. L. 104–106, §1335(1), inserted ''or a NATO organization'' after ''United States)''.

Subsec. (e)(2). Pub. L. 104–106, §1335(2), substituted ''such a cooperative project or a NATO organization'' for ''a cooperative project''.

1989—Pub. L. 101–189 renumbered section 2407 of this title as this section and substituted ''Cooperative projects under Arms Export Control Act: acquisition of defense equipment'' for ''Acquisition of defense equipment under cooperative projects'' as section catchline.

1986—Pub. L. 99–661, §1103(b)(2)(A), struck out ''North Atlantic Treaty Organization'' before ''cooperative projects'' in section catchline.

Subsec. (a)(1). Pub. L. 99–661, §1103(b)(1)(A), struck out ''North Atlantic Treaty Organization (NATO)'' before ''cooperative projects''.

Subsec. (c)(2). Pub. L. 99–661, §1103(b)(1)(B), struck out ''NATO'' after ''will significantly further''.

Subsec. (e). Pub. L. 99–661, §1103(b)(1)(C), struck out ''NATO'' after ''will significantly further'' in par. (1) and after ''United States) in a'' in par. (2).

Subsec. (g)(2). Pub. L. 99–661, §1343(a)(15), substituted ''section 2631 of this title and section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))'' for ''the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b))''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(10) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

§ 2350c. Cooperative military airlift agreements: allied countries

(a) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into cooperative military airlift agreements with the government of any allied country for the transportation of the personnel and cargo of the military forces of that country on aircraft operated by or for the military forces of the United States in return for the reciprocal transportation of the personnel and cargo of the military forces of the United States on aircraft operated by or for the military forces of that allied country. Any such agreement shall include the following terms:

(1) The rate of reimbursement for transportation provided shall be the same for each party and shall be not less than the rate charged to military forces of the United States, as determined by the Secretary of Defense under section 2208(h) of this title.

(2) Credits and liabilities accrued as a result of providing or receiving transportation shall be liquidated as agreed upon by the parties. Liquidation shall be either by direct payment to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.

(3) During peacetime, the only military airlift capacity that may be used to provide transportation is that capacity that (A) is not needed to meet the transportation requirements of the military forces of the country providing the transportation, and (B) was not created solely to accommodate the requirements of the military forces of the country receiving the transportation.

(4) Defense articles purchased by an allied country from the United States under the Arms Export Control Act (22 U.S.C. 2751 et seq.) or from a commercial source under the export controls of the Arms Export Control Act may not be transported (for the purpose of delivery incident to the purchase of the defense articles) to the purchasing allied country on aircraft operated by or for the military forces of the United States except at a rate of reimbursement that is equal to the full cost of transportation of the defense articles, as required by section 21(a)(3) of the Arms Export Control Act (22 U.S.C. 2761(a)(3)).

(b) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into nonreciprocal military airlift agreements with North Atlantic Treaty Organization subsidiary bodies for the transportation of the personnel and cargo of such subsidiary bodies on aircraft operated by or for the military forces of the United States. Any such agreement shall be subject to such terms as the Secretary of Defense considers appropriate.

(c) Any amount received by the United States as a result of an agreement entered into under this section shall be credited to applicable appropriations, accounts, and funds of the Department of Defense.

(d) In this section:

(1) The term ''allied country'' means any of the following:

(A) A country that is a member of the North Atlantic Treaty Organization.

(B) Australia, New Zealand, Japan, and the Republic of Korea.

(C) Any other country designated as an allied country for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term ''North Atlantic Treaty Organization subsidiary bodies'' has the meaning given to it by section 2350 of this title.

(Added Pub. L. 97–252, title XI, §1125(a), Sept. 8, 1982, 96 Stat. 757, §2213; amended Pub. L. 99–145, title XIII, §1304(b), Nov. 8, 1985, 99 Stat. 742; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; renumbered §2350c and amended Pub. L. 101–189, div. A, title IX, §931(b)(2), (e)(4), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 102–484, div. A, title XIII, §1311, Oct. 23, 1992, 106 Stat. 2547; Pub. L. 106–398, §1 [[div. A], title XII, §1222], Oct. 30, 2000, 114 Stat. 1654, 1654A–328.)

REFERENCES IN TEXT

The Arms Export Control Act (22 U.S.C. 2751 et seq.), referred to in subsec. (a)(4), 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

2000—Subsecs. (d), (e). Pub. L. 106–398 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''Notwithstanding subchapter I, the Secretary of Defense may enter into military airlift agreements with allied countries only under the authority of this section.''

1992—Subsec. (a)(2). Pub. L. 102–484, §1311(a), substituted ''as agreed upon by the parties. Liquidation shall be either by direct payment to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.'' for ''not less often than once every 3 months by direct payment to the country that has provided the greater amount of transportation.''

Subsec. (e)(1)(B). Pub. L. 102–484, §1311(b), substituted '', New Zealand, Japan, and the Republic of Korea'' for ''or New Zealand''.

1989—Pub. L. 101–189 renumbered section 2213 of this title as this section and inserted '': allied countries'' after ''airlift agreements'' in section catchline.

Subsec. (d). Pub. L. 101–189, §931(b)(2), substituted ''subchapter I'' for ''chapter 138 of this title''.

1987—Subsec. (e). Pub. L. 100–26 inserted ''The term'' after each par. designation and substituted ''allied'' for ''Allied'' in par. (1).

1985—Subsec. (e)(2). Pub. L. 99–145 substituted ''section 2350'' for ''section 2331''.

DEPARTMENT OF DEFENSE PARTICIPATION IN EUROPEAN PROGRAM ON MULTILATERAL EXCHANGE OF AIR TRANSPORTATION AND AIR REFUELING SERVICES

Pub. L. 112–239, div. A, title XII, §1276, Jan. 2, 2013, 126 Stat. 2029, provided that:

''(a) PARTICIPATION AUTHORIZED.—

''(1) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of the United States in the Air Transport, Air-to-Air Refueling and other Exchanges of Services program (in this section referred to as the 'ATARES program') of the Movement Coordination Centre Europe.

''(2) SCOPE OF PARTICIPATION.—Participation in the ATARES program under paragraph (1) shall be limited to the reciprocal exchange or transfer of air transportation and air refueling services on a reimbursable basis or by replacement-in-kind or the exchange of air transportation or air refueling services of an equal value.

''(3) LIMITATIONS.—The United States' balance of executed flight hours, whether as credits or debits, in participation in the ATARES program under paragraph (1) may not exceed 500 hours. The United States' balance of executed flight hours for air refueling in the ATARES program under paragraph (1) may not exceed 200 hours.

''(b) WRITTEN ARRANGEMENT OR AGREEMENT.—

''(1) ARRANGEMENT OR AGREEMENT REQUIRED.—The participation of the United States in the ATARES program under subsection (a) shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and the Movement Coordination Centre Europe.

''(2) FUNDING ARRANGEMENTS.—If Department of Defense facilities, equipment, or funds are used to support the ATARES program, the written arrangement or agreement under paragraph (1) shall specify the details of any equitable cost sharing or other funding arrangement.

''(3) OTHER ELEMENTS.—Any written arrangement or agreement entered into under paragraph (1) shall require that any accrued credits and liabilities resulting from an unequal exchange or transfer of air transportation or air refueling services shall be liquidated, not less than once every five years, through the ATARES program.

''(c) IMPLEMENTATION.—In carrying out any written arrangement or agreement entered into under subsection (b), the Secretary of Defense may—

''(1) pay the United States' equitable share of the operating expenses of the Movement Coordination Centre Europe and the ATARES consortium from funds available to the Department of Defense for operation and maintenance; and

''(2) assign members of the Armed Forces or Department of Defense civilian personnel, from among members and personnel within billets authorized for the United States European Command, to duty at the Movement Coordination Centre Europe as necessary to fulfill the United States' obligations under that arrangement or agreement.

''(d) CREDITING OF RECEIPTS.—Any amount received by the United States in carrying out a written arrangement or agreement entered into under subsection (b) shall be credited, as elected by the Secretary of Defense, to the following:

''(1) The appropriation, fund, or account used in incurring the obligation for which such amount is received.

''(2) An appropriation, fund, or account currently available for the purposes for which such obligation was made.

''(e) ANNUAL SECRETARY OF DEFENSE REPORTS.—Not later than 30 days after the end of each fiscal year in which the authority provided by this section is in effect, 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 United States participation in the ATARES program during such fiscal year. Each report shall include the following:

''(1) The United States balance of executed flight hours at the end of the fiscal year covered by such report.

''(2) The types of services exchanged or transferred during the fiscal year covered by such report.

''(3) A description of any United States costs under the written arrangement or agreement under subsection (b)(1) in connection with the use of Department of Defense facilities, equipment, or funds to support the ATARES program under that subsection as provided by subsection (b)(2).

''(4) A description of the United States' equitable share of the operating expenses of the Movement Coordination Centre Europe and the ATARES consortium paid under subsection (c)(1).

''(5) A description of any amounts received by the United States in carrying out a written arrangement or agreement entered into under subsection (b).

''(f) COMPTROLLER GENERAL OF UNITED STATES REPORT.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Comptroller General of the United States shall submit to the congressional defense committees a report on the ATARES program. The report shall set forth the assessment of the Comptroller General of the program, including the types of services available under the program, whether the program is achieving its intended purposes, and, on the basis of actual cost data from the performance of the program, the cost-effectiveness of the program.

''(g) EXPIRATION.—The authority provided by this section to participate in the ATARES program shall expire five years after the date on which the Secretary of Defense first enters into a written arrangement or agreement under subsection (b). The Secretary shall publish notice of such date on a public website of the Department of Defense.''

DEPARTMENT OF DEFENSE PARTICIPATION IN STRATEGIC AIRLIFT CAPABILITY PARTNERSHIP

Pub. L. 110–181, div. A, title X, § 1032, Jan. 28, 2008, 122 Stat. 306, provided that:

''(a) AUTHORITY TO PARTICIPATE IN PARTNERSHIP.—

''(1) MEMORANDUM OF UNDERSTANDING.—The Secretary of Defense may enter into a multilateral memorandum of understanding authorizing the Strategic Airlift Capability Partnership to conduct activities necessary to accomplish its purpose, including—

''(A) the acquisition, equipping, ownership, and operation of strategic airlift aircraft; and

''(B) the acquisition or transfer of airlift and airlift-related services and supplies among members of the Strategic Airlift Capability Partnership, or between the Partnership and non-member countries or international organizations, on a reimbursable basis or by replacement-in-kind or exchange of airlift or airlift-related services of an equal value.

''(2) PAYMENTS.—From funds available to the Department of Defense for such purpose, the Secretary of Defense may pay the United States equitable share of the recurring and non-recurring costs of the activities and operations of the Strategic Airlift Capability Partnership, including costs associated with procurement of aircraft components and spare parts, maintenance, facilities, and training, and the costs of claims.

''(b) AUTHORITIES UNDER PARTNERSHIP.—In carrying out the memorandum of understanding entered into under subsection (a), the Secretary of Defense may do the following:

''(1) Waive reimbursement of the United States for the cost of the following functions performed by Department of Defense personnel with respect to the Strategic Airlift Capability Partnership:

''(A) Auditing.

''(B) Quality assurance.

''(C) Inspection.

''(D) Contract administration.

''(E) Acceptance testing.

''(F) Certification services.

''(G) Planning, programming, and management services.

''(2) Waive the imposition of any surcharge for administrative services provided by the United States that would otherwise be chargeable against the Strategic Airlift Capability Partnership.

''(3) Pay the salaries, travel, lodging, and subsistence expenses of Department of Defense personnel assigned for duty to the Strategic Airlift Capability Partnership without seeking reimbursement or cost-sharing for such expenses.

''(c) CREDITING OF RECEIPTS.—Any amount received by the United States in carrying out the memorandum of understanding entered into under subsection (a) shall be credited, as elected by the Secretary of Defense, to the following:

''(1) The appropriation, fund, or account used in incurring the obligation for which such amount is received.

''(2) An appropriation, fund, or account currently providing funds for the purposes for which such obligation was made.

''(d) AUTHORITY TO TRANSFER AIRCRAFT.—

''(1) TRANSFER AUTHORITY.—The Secretary of Defense may transfer one strategic airlift aircraft to the Strategic Airlift Capability Partnership in accordance with the terms and conditions of the memorandum of understanding entered into under subsection (a).

''(2) REPORT.—Not later than 30 days before the date on which the Secretary transfers a strategic airlift aircraft under paragraph (1), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the strategic airlift aircraft to be transferred, including the type of strategic airlift aircraft to be transferred and the tail registration or serial number of such aircraft.

''(e) STRATEGIC AIRLIFT CAPABILITY PARTNERSHIP DEFINED.—In this section the term 'Strategic Airlift Capability Partnership' means the strategic airlift capability consortium established by the United States and other participating countries.''

§ 2350d. Cooperative logistic support agreements: NATO countries

(a) GENERAL AUTHORITY.—(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as Support Partnership Agreements with one or more governments of other member countries of the North Atlantic Treaty Organization (NATO) participating in the operation of the NATO Support Organization and its executive agencies. Any such agreement shall be for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreement. Any such agreement—

(A) shall be entered into pursuant to the terms of the charter of the NATO Support Organization and its executive agencies; and

(B) shall provide for the common logistic support of activities common to the participating countries.

(2) Such an agreement may provide for—

(A) the transfer of logistics support, supplies, and services by the United States to the NATO Support Organization and its executive agencies; and

(B) the acquisition of logistics support, supplies, and services by the United States from that Organization.

(b) AUTHORITY OF SECRETARY.—Under the terms of a Support Partnership Agreement, the Secretary of Defense—

(1) may agree that the NATO Support Organization and its executive agencies may enter into contracts for supply and acquisition of logistics support in Europe for requirements of the United States, to the extent the Secretary determines that the procedures of such Organization governing such supply and acquisition are appropriate; and

(2) may share the costs of set-up charges of facilities for use by the NATO Support Organization and its executive agencies to provide cooperative logistics support and in the costs of establishing a revolving fund for initial ac-

quisition and replenishment of supply stocks to be used by the NATO Support Organization and its executive agencies to provide cooperative logistics support.

(c) SHARING OF ADMINISTRATIVE EXPENSES.—Each Support Partnership Agreement shall provide for joint management by the participating countries and for the equitable sharing of the administrative costs and costs of claims incident to the agreement.

(d) APPLICATION OF CHAPTER 137.—Except as otherwise provided in this section, the provisions of chapter 137 of this title apply to a contract entered into by the Secretary of Defense for the acquisition of logistics support under a Support Partnership Agreement.

(e) APPLICATION OF ARMS EXPORT CONTROL ACT.—Any transfer of defense articles or defense services to a member country of the North Atlantic Treaty Organization or to the NATO Support Organization and its executive agencies for the purposes of a Support Partnership Agreement shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) SUPPLEMENTAL AUTHORITY.—The authority of the Secretary of Defense under this section is in addition to the authority of the Secretary under subchapter I and any other provision of law.

(Added and amended Pub. L. 101–189, div. A, title IX, §§931(c), 938(c), Nov. 29, 1989, 103 Stat. 1534, 1539; Pub. L. 102–484, div. A, title VIII, §843(b)(2), Oct. 23, 1992, 106 Stat. 2469; Pub. L. 113–66, div. A, title XII, §1250(a), Dec. 26, 2013, 127 Stat. 926.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (e), 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 99–661, div. A, title XI, §1102, Nov. 14, 1986, 100 Stat. 3961, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, §931(d)(2).

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 113–66, §1250(a)(1), (2)(A), in introductory provisions, substituted ''Support Partnership Agreements'' for ''Weapon System Partnership Agreements'' and ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization''.

Subsec. (a)(1)(A). Pub. L. 113–66, §1250(a)(1), substituted ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization''.

Subsec. (a)(1)(B). Pub. L. 113–66, §1250(a)(2)(B), substituted ''activities'' for ''a specific weapon system''.

Subsec. (a)(2)(A). Pub. L. 113–66, §1250(a)(1), substituted ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization''.

Subsec. (b). Pub. L. 113–66, §1250(a)(3), substituted ''Support Partnership Agreement'' for ''Weapon System Partnership Agreement'' in introductory provisions.

Pub. L. 113–66, §1250(a)(1), substituted ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization'' wherever appearing.

Subsecs. (c), (d). Pub. L. 113–66, §1250(a)(3), substituted ''Support Partnership Agreement'' for ''Weapon System Partnership Agreement''.

Subsec. (e). Pub. L. 113–66, §1250(a)(1), (3), substituted ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization'' and ''Support Partnership Agreement'' for ''Weapon System Partnership Agreement''.

1992—Subsec. (c). Pub. L. 102–484 inserted ''and costs of claims'' after ''administrative costs''.

1989—Subsec. (e). Pub. L. 101–189, §938(c), inserted ''this chapter and'' after ''in accordance with''.

§ 2350e. NATO Airborne Warning and Control System (AWACS) program: authority of Secretary of Defense

(a) AUTHORITY UNDER AWACS PROGRAM.—The Secretary of Defense, in carrying out an AWACS memorandum of understanding, may do the following:

(1) Waive reimbursement for the cost of the following functions performed by personnel other than personnel employed in the United States Air Force Airborne Warning and Control System (AWACS) program office:

(A) Auditing.

(B) Quality assurance.

(C) Codification.

(D) Inspection.

(E) Contract administration.

(F) Acceptance testing.

(G) Certification services.

(H) Planning, programming, and management services.

(2) Waive any surcharge for administrative services otherwise chargeable.

(3) In connection with that Program, assume contingent liability for—

(A) program losses resulting from the gross negligence of any contracting officer of the United States;

(B) identifiable taxes, customs duties, and other charges levied within the United States on the program; and

(C) the United States share of the unfunded termination liability.

(b) CONTRACT AUTHORITY LIMITATION.—Authority under this section to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(c) DEFINITION.—In this section, the term ''AWACS memorandum of understanding'' means—

(1) the Multilateral Memorandum of Understanding Between the North Atlantic Treaty Organization (NATO) Ministers of Defence on the NATO E–3A Cooperative Programme, signed by the Secretary of Defense on December 6, 1978;

(2) the Memorandum of Understanding for Operations and Support of the NATO Airborne Early Warning and Control Force, signed by the United States Ambassador to NATO on September 26, 1984;

(3) the Addendum to the Multilateral Memorandum of Understanding Between the North Atlantic Treaty Organization (NATO) Ministers of Defence on the NATO E–3A Coopera-

tive Programme (dated December 6, 1978) relating to the modernization of the NATO Airborne Early Warning and Control (NAEW&C) System, dated December 7, 1990; and

(4) any other follow-on support agreement for the NATO E–3A Cooperative Programme.

(Added Pub. L. 101–189, div. A, title IX, § 932(a)(1), Nov. 29, 1989, 103 Stat. 1536; amended Pub. L. 102–190, div. A, title X, § 1051, Dec. 5, 1991, 105 Stat. 1470; Pub. L. 103–160, div. A, title XIV, § 1413, Nov. 30, 1993, 107 Stat. 1829.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97–86, title I, § 103, Dec. 1, 1981, 95 Stat. 1100, as amended, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 932(b).

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 struck out subsec. (d) which read as follows: ''EXPIRATION.—The authority provided by this section expires on September 30, 1993.''

1991—Subsec. (c)(3), (4). Pub. L. 102–190, § 1051(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 102–190, § 1051(2), substituted ''1993'' for ''1991''.

§ 2350f. Procurement of communications support and related supplies and services

(a) As an alternative means of obtaining communications support and related supplies and services, the Secretary of Defense, subject to the approval of the Secretary of State, may enter into a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations, under which, in return for being provided communications support and related supplies and services, the United States would agree to provide to the allied country or countries or allied international organization or allied international organizations, as the case may be, an equivalent value of communications support and related supplies and services. The term of an arrangement entered into under this subsection may not exceed five years.

(b)(1) Any arrangement entered into under this section shall require that any accrued credits and liabilities resulting from an unequal exchange of communications support and related supplies and services during the term of such arrangement would be liquidated by direct payment to the party having provided the greater amount of communications support and related supplies and services. Liquidations may be made at such times as the parties in an arrangement may agree upon, but in no case may final liquidation in the case of an arrangement be made later than 30 days after the end of the term for which the arrangement was entered into.

(2) Parties to an arrangement entered into under this section shall annually reconcile accrued credits and liabilities accruing under such agreement. Any liability of the United States resulting from a reconciliation shall be charged against the applicable appropriation available to the Department of Defense (at the time of the reconciliation) for obligation for communications support and related supplies and services.

(3) Payments received by the United States shall be credited to the appropriation from which such communications support and related supplies and services have been provided.

[(c) Repealed. Pub. L. 107–314, div. A, title X, § 1041(a)(10), Dec. 2, 2002, 116 Stat. 2645.]

(d) In this section:

(1) The term ''allied country'' means—

(A) a country that is a member of the North Atlantic Treaty Organization;

(B) Australia, New Zealand, Japan, or the Republic of Korea; or

(C) any other country designated as an allied country for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term ''allied international organization'' means the North Atlantic Treaty Organization (NATO) or any other international organization designated as an allied international organization for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(Added Pub. L. 98–525, title X, § 1005(a), Oct. 19, 1984, 98 Stat. 2578, § 2401a; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2350f and amended Pub. L. 101–189, div. A, title IX, § 933(a)–(d), Nov. 29, 1989, 103 Stat. 1537; Pub. L. 101–510, div. A, title XIV, § 1484(k)(8), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 104–106, div. A, title XV, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, § 1041(a)(10), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 struck out subsec. (c) which read as follows: ''The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of all documents evidencing an arrangement entered into under subsection (a) not later than 45 days after entering into such an arrangement.''

1999—Subsec. (c). 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 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1990—Subsec. (d)(1)(A). Pub. L. 101–510 substituted a semicolon for '', or'' at end.

1989—Pub. L. 101–189, § 933(a), renumbered section 2401a of this title as this section.

Subsec. (a). Pub. L. 101–189, § 933(b), substituted ''a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations'' for ''an arrangement with the Minister of Defense or other appropriate official of any allied country or with the North Atlantic Treaty Organization (NATO),'' and ''the allied country or countries or allied international organization or allied international organizations, as the case may be,'' for ''such country or NATO'' and inserted ''The term of an arrangement entered into under this subsection may not exceed five years.''

Subsec. (b). Pub. L. 101–189, § 933(c), designated first sentence as par. (1), inserted ''Liquidations may be made at such times as the parties in an arrangement may agree upon, but in no case may final liquidation in the case of an arrangement be made later than 30 days after the end of the term for which the arrangement

was entered into.'' after ''supplies and services.'', added par. (2), and designated second sentence as par. (3).

Subsec. (d). Pub. L. 101–189, §933(d)(1), (2), substituted ''In this section:'' and par. (1) for ''In this section, the term 'allied country' means—'' and redesignated former cls. (1) and (2) as cls. (A) and (B).

Subsec. (d)(1)(A). Pub. L. 101–189, §933(d)(3), which directed amendment of cl. (A) by substituting a semicolon for ''; or'' at end, could not be executed because ''; or'' did not appear.

Subsec. (d)(1)(B). Pub. L. 101–189, §933(d)(4), substituted ''; or'' for period at end.

Subsec. (d)(1)(C), (2). Pub. L. 101–189, §933(d)(5), added cl. (C) and par. (2).

1987—Subsec. (d). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2350g. Authority to accept use of real property, services, and supplies from foreign countries in connection with mutual defense agreements and occupational arrangements

(a) AUTHORITY TO ACCEPT.—The Secretary of Defense may accept from a foreign country, for the support of any element of the armed forces in an area of that country—

(1) real property or the use of real property and services and supplies for the United States or for the use of the United States in accordance with a mutual defense agreement or occupational arrangement; and

(2) services furnished as reciprocal international courtesies or as services customarily made available without charge.

(b) AUTHORITY TO USE PROPERTY, SERVICES, AND SUPPLIES.—Property, services, or supplies referred to in subsection (a) may be used by the Secretary of Defense without specific authorization, except that such property, services, and supplies may not be used in connection with any program, project, or activity if the use of such property, services, or supplies would result in the violation of any prohibition or limitation otherwise applicable to that program, project, or activity.

(c) PERIODIC AUDITS BY GAO.—The Comptroller General of the United States shall make periodic audits of money and property accepted under this section, at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(Added Pub. L. 101–510, div. A, title XIV, §1451(b)(1), Nov. 5, 1990, 104 Stat. 1692; amended Pub. L. 103–160, div. A, title XI, §1105(a), Nov. 30, 1993, 107 Stat. 1749; Pub. L. 106–65, div. A, title X, §1032(a)(3), Oct. 5, 1999, 113 Stat. 751.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, §9008, Nov. 21, 1989, 103 Stat. 1130, which was set out as a note under section 2341 of this title, prior to repeal by Pub. L. 101–510, §1451(c).

AMENDMENTS

1999—Subsecs. (b) to (d). Pub. L. 106–65 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out heading and text of former subsec. (b). Text read as follows:

''(1) Not later than 30 days after the end of each quarter of each fiscal year, the Secretary of Defense shall submit to Congress a report on property, services, and supplies accepted by the Secretary under this section during the preceding quarter. The Secretary shall include in each such report a description of all property, services, and supplies having a value of more than $1,000,000.

''(2) In computing the value of any property, services, and supplies referred to in paragraph (1), the Secretary shall aggregate the value of—

''(A) similar items of property, services, and supplies accepted by the Secretary during the quarter concerned; and

''(B) components which, if assembled, would comprise all or a substantial part of an item of equipment or a facility.''

1993—Subsec. (d). Pub. L. 103–160 substituted ''Periodic Audits'' for ''Annual Audit'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall conduct an annual audit of property, services, and supplies accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.''

§ 2350h. Memorandums of agreement: Department of Defense ombudsman for foreign signatories

The Secretary of Defense shall designate an official to act as ombudsman within the Department of Defense on behalf of foreign governments who are parties to memorandums of agreement with the United States concerning acquisition matters under the jurisdiction of the Secretary of Defense. The official so designated shall assist officials of those foreign governments in understanding and complying with procedures and requirements of the Department of Defense (and, as appropriate, other departments and agencies of the United States) insofar as they relate to any such memorandum of agreement.

(Added Pub. L. 101–510, div. A, title XIV, §1452(a)(1), Nov. 5, 1990, 104 Stat. 1693.)

DEADLINE FOR DESIGNATION OF OMBUDSMAN

Pub. L. 101–510, div. A, title XIV, §1452(b), Nov. 5, 1990, 104 Stat. 1694, provided that the official required to be designated under this section was to be designated by the Secretary of Defense not later than 90 days after Nov. 5, 1990.

§ 2350i. Foreign contributions for cooperative projects

(a) CREDITING OF CONTRIBUTIONS.—Whenever the United States participates in a cooperative project with a friendly foreign country or the North Atlantic Treaty Organization (NATO) on a cost-sharing basis, any contribution received by the United States from that foreign country or NATO to meet its share of the costs of the project may be credited to appropriations available to an appropriate military department or another appropriate organization within the Department of Defense, as determined by the Secretary of Defense.

(b) USE OF AMOUNTS CREDITED.—The amount of a contribution credited pursuant to subsection (a) to an appropriation account in connection with a cooperative project referred to in that subsection shall be available only for payment of the share of the project expenses allocated to the foreign country or NATO making the contribution. Payments for which such amount is available include the following:

(1) Payments to contractors and other suppliers (including the Department of Defense and other participants acting as suppliers) for necessary articles and services.

(2) Payments for any damages and costs resulting from the performance or cancellation of any contract or other obligation.

(3) Payments or reimbursements of other program expenses, including program office overhead and administrative costs.

(4) Refunds to other participants.

(c) DEFINITIONS.—In this section:

(1) The term ''cooperative project'' means a jointly managed arrangement, described in a written cooperative agreement entered into by the participants, that—

(A) is undertaken by the participants in order to improve the conventional defense capabilities of the participants; and

(B) provides for—

(i) one or more participants (other than the United States) to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of defense articles;

(ii) the United States and another participant concurrently to produce in the United States and the country of such other participant a defense article jointly developed in a cooperative project described in clause (i); or

(iii) the United States to procure a defense article or a defense service from another participant in the cooperative project.

(2) The term ''defense article'' has the meaning given such term in section 47(3) of the Arms Export Control Act (22 U.S.C. 2794(3)).

(3) The term ''defense service'' has the meaning given such term in section 47(4) of the Arms Export Control Act (22 U.S.C. 2794(4)).

(Added Pub. L. 102–190, div. A, title X, § 1047(a), Dec. 5, 1991, 105 Stat. 1467.)

§ 2350j. Burden sharing contributions by designated countries and regional organizations

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense, after consultation with the Secretary of State, may accept cash contributions from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State, for the purposes specified in subsection (c).

(b) ACCOUNTING.—Contributions accepted under subsection (a) which are not related to security assistance may be accepted, managed, and expended in dollars or in the currency of the host nation (or, in the case of a contribution from a regional organization, in the currency in which the contribution was provided). Any such contribution shall be placed in an account established for such purpose and shall remain available until expended for the purposes specified in subsection (c). The Secretary of Defense shall establish a separate account for such purpose for each country or regional organization from which such contributions are accepted under subsection (a).

(c) AVAILABILITY OF CONTRIBUTIONS.—Contributions accepted under subsection (a) shall be available only for the payment of the following costs:

(1) Compensation for local national employees of the Department of Defense.

(2) Military construction projects of the Department of Defense.

(3) Supplies and services of the Department of Defense.

(d) AUTHORIZATION OF MILITARY CONSTRUCTION.—Contributions placed in an account established under subsection (b) may be used—

(1) by the Secretary of Defense to carry out a military construction project that is consistent with the purposes for which the contributions were made and is not otherwise authorized by law; or

(2) by the Secretary of a military department, with the approval of the Secretary of Defense, to carry out such a project.

(e) NOTICE AND WAIT REQUIREMENTS.—(1) When a decision is made to carry out a military construction project under subsection (d), the Secretary of Defense shall submit to the congressional defense committees a report containing—

(A) an explanation of the need for the project;

(B) the then current estimate of the cost of the project; and

(C) a justification for carrying out the project under that subsection.

(2) The Secretary of Defense or the Secretary of a military department may not commence a military construction project under subsection (d) until the end of the 21-day period beginning on the date on which the Secretary of Defense submits the report under paragraph (1) regarding the project or, if earlier, the end of the 14-day period beginning on the date on which a copy of that report is provided in an electronic medium pursuant to section 480 of this title.

(3)(A) A military construction project under subsection (d) may be carried out without regard to the requirement in paragraph (1) and the limitation in paragraph (2) if the project is necessary to support the armed forces in the country or region in which the project is carried out by reason of a declaration of war, or a declaration by the President of a national emergency pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.), that is in force at the time of the commencement of the project.

(B) When a decision is made to carry out a military construction project under subparagraph (A), the Secretary of Defense shall submit to the congressional defense committees—

(i) a notice of the decision; and

(ii) a statement of the current estimated cost of the project, including the cost of any real property transaction in connection with the project.

(f) REPORTS.—Not later than 30 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report specifying separately for each country and regional organization from which contributions have been accepted by the Secretary under subsection (a)—

(1) the amount of the contributions accepted by the Secretary during the preceding fiscal

year under subsection (a) and the purposes for which the contributions were made; and

(2) the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.

(Added Pub. L. 103–160, div. A, title XIV, §1402(a), Nov. 30, 1993, 107 Stat. 1825; amended Pub. L. 103–337, div. A, title X, §1070(a)(10), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XIII, §1331, Feb. 10, 1996, 110 Stat. 482; Pub. L. 106–65, div. A, title X, §1067(1), div. B, title XXVIII, §2801, Oct. 5, 1999, 113 Stat. 774, 845; Pub. L. 108–136, div. A, title X, §§1031(a)(18), 1043(b)(12), Nov. 24, 2003, 117 Stat. 1597, 1611.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (e)(3), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 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 1601 of Title 50 and Tables.

CODIFICATION

Section, as added by Pub. L. 103–160, consists of text of Pub. L. 102–190, div. A, title X, §1045, Dec. 5, 1991, 105 Stat. 1465, as amended by Pub. L. 102–484, div. A, title XIII, §1305(a), (b), Oct. 23, 1992, 106 Stat. 2546, and revised by Pub. L. 103–160, in subsec. (a), by substituting ''The Secretary'' for ''During fiscal years 1992 and 1993, the Secretary'', inserting '', after consultation with the Secretary of State,'' after ''Secretary of Defense'', and substituting ''from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State'' for ''from Japan, Kuwait, and the Republic of Korea'', and in subsec. (f), by substituting ''each fiscal year'' for ''each quarter of fiscal years 1992 and 1993'', ''Congress'' for ''congressional defense committees'', ''each country and regional organization from which contributions have been accepted by the Secretary under subsection (a)'' for ''Japan, Kuwait, and the Republic of Korea'', and ''the preceding fiscal year'' for ''the preceding quarter'' in pars. (1) and (2).

AMENDMENTS

2003—Subsec. (e)(1). Pub. L. 108–136, §1043(b)(12)(A), substituted ''congressional defense committees'' for ''congressional committees specified in subsection (g)'' in introductory provisions.

Subsec. (e)(2). Pub. L. 108–136, §1031(a)(18), inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of that report is provided in an electronic medium pursuant to section 480 of this title''.

Subsec. (e)(3)(B). Pub. L. 108–136, §1043(b)(12)(A), substituted ''congressional defense committees'' for ''congressional committees specified in subsection (g)'' in introductory provisions.

Subsec. (g). Pub. L. 108–136, §1043(b)(12)(B), struck out subsec. (g) which listed the congressional committees referred to in subsec. (e).

1999—Subsec. (e)(3). Pub. L. 106–65, §2801(a), added par. (3).

Subsec. (g). Pub. L. 106–65, §2801(b), substituted ''subsection (e)'' for ''subsection (e)(1)'' in introductory provisions.

Subsec. (g)(2). Pub. L. 106–65, §1067(1), substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106, §1331(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''CREDIT TO APPROPRIATIONS.—Contributions accepted in a fiscal year under subsection (a) shall be credited to appropriations of the Department of Defense that are available for that fiscal year for the purposes for which the contributions are made. The contributions so credited shall be—

''(1) merged with the appropriations to which they are credited; and

''(2) available for the same time period as those appropriations.''

Subsec. (d). Pub. L. 104–106, §1331(b), substituted ''placed in an account established under subsection (b)'' for ''credited under subsection (b) to an appropriation account of the Department of Defense''.

Subsec. (e)(1). Pub. L. 104–106, §1331(c)(1), substituted ''to the congressional committees specified in subsection (g) a report'' for ''a report to the congressional defense committees''.

Subsec. (g). Pub. L. 104–106, §1331(c)(2), added subsec. (g).

1994—Subsec. (a). Pub. L. 103–337, §1070(a)(10)(A), inserted a comma after second reference to ''Secretary of State''.

Subsec. (f). Pub. L. 103–337, §1070(a)(10)(B), struck out ''the'' before ''Congress'' in introductory provisions.

TEMPORARY AUTHORITY FOR ACCEPTANCE AND USE OF CONTRIBUTIONS FOR CERTAIN CONSTRUCTION, MAINTENANCE, AND REPAIR PROJECTS MUTUALLY BENEFICIAL TO THE DEPARTMENT OF DEFENSE AND KUWAIT MILITARY FORCES

Pub. L. 114–92, div. B, title XXVIII, §2804, Nov. 25, 2015, 129 Stat. 1170, provided that:

''(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense, after consultation with the Secretary of State, may accept cash contributions from the government of Kuwait for the purpose of paying for the costs of construction (including military construction not otherwise authorized by law), maintenance, and repair projects mutually beneficial to the Department of Defense and Kuwait military forces.

''(b) ACCOUNTING.—Contributions accepted under subsection (a) shall be placed in an account established by the Secretary of Defense and shall remain available until expended as provided in such subsection.

''(c) PROHIBITION ON USE OF CONTRIBUTIONS TO OFFSET BURDEN SHARING CONTRIBUTIONS.—Contributions accepted under subsection (a) may not be used to offset any burden sharing contributions made by the government of Kuwait.

''(d) NOTICE.—When a decision is made to carry out a project using contributions accepted under subsection (a) and the estimated cost of the project will exceed the thresholds prescribed by section 2805 of title 10, United States Code, 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 Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives written notice of decision, the justification for the project, and the estimated cost of the project.

''(e) MUTUALLY BENEFICIAL DEFINED.—A project described in subsection (a) shall be considered to be 'mutually beneficial' if—

''(1) the project is in support of a bilateral defense cooperation agreement between the United States and the government of Kuwait; or

''(2) the Secretary of Defense determines that the United States may derive a benefit from the project, including—

''(A) access to and use of facilities of the Kuwait military forces;

''(B) ability or capacity for future force posture; and

''(C) increased interoperability between the Department of Defense and Kuwait military forces.

''(f) EXPIRATION OF PROJECT AUTHORITY.—The authority to carry out projects under this section expires on September 30, 2020. The expiration of the authority does not prevent the continuation of any project commenced before that date.''

§ 2350k. Relocation within host nation of elements of armed forces overseas

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept contributions from any nation because of or in support of the relocation of elements of the armed forces from or to any location within that nation. Such contributions may be accepted in dollars or in the currency of the host nation. Any such contribution shall be placed in an account established for such purpose and shall remain available until expended for the purposes specified in subsection (b). The Secretary shall establish a separate account for such purpose for each country from which such contributions are accepted.

(b) USE OF CONTRIBUTIONS.—The Secretary may use a contribution accepted under subsection (a) only for payment of costs incurred in connection with the relocation concerning which the contribution was made. Those costs include the following:

(1) Design and construction services, including development and review of statements of work, master plans and designs, acquisition of construction, and supervision and administration of contracts relating thereto.

(2) Transportation and movement services, including packing, unpacking, storage, and transportation.

(3) Communications services, including installation and deinstallation of communications equipment, transmission of messages and data, and rental of transmission capability.

(4) Supply and administration, including acquisition of expendable office supplies, rental of office space, budgeting and accounting services, auditing services, secretarial services, and translation services.

(5) Personnel costs, including salary, allowances and overhead of employees whether full-time or part-time, temporary or permanent (except for military personnel), and travel and temporary duty costs.

(6) All other clearly identifiable expenses directly related to relocation.

(c) METHOD OF CONTRIBUTION.—Contributions may be accepted in any of the following forms:

(1) Irrevocable letter of credit issued by a financial institution acceptable to the Treasurer of the United States.

(2) Drawing rights on a commercial bank account established and funded by the host nation, which account is blocked such that funds deposited cannot be withdrawn except by or with the approval of the United States.

(3) Cash, which shall be deposited in a separate trust fund in the United States Treasury pending expenditure and which shall accrue interest in accordance with section 9702 of title 31.

(Added Pub. L. 104–106, div. A, title XIII, § 1332(a)(1), Feb. 10, 1996, 110 Stat. 482; amended Pub. L. 107–314, div. A, title X, § 1041(a)(11), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows: ''Not later than 30 days after the end of each fiscal year, the Secretary shall submit to Congress a report specifying—

''(1) the amount of the contributions accepted by the Secretary during the preceding fiscal year under subsection (a) and the purposes for which the contributions were made; and

''(2) the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.''

EFFECTIVE DATE

Pub. L. 104–106, div. A, title XIII, § 1332(b), Feb. 10, 1996, 110 Stat. 484, provided that: ''Section 2350k of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to contributions for relocation of elements of the Armed Forces in or to any nation received on or after such date.''

§ 2350*l*. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations

(a) AUTHORITY.—The Secretary of Defense, with the concurrence of the Secretary of State, may enter into a memorandum of understanding (or other formal agreement) with a foreign country or international organization to provide for the testing, on a reciprocal basis, of defense equipment (1) by the United States using test facilities of that country or organization, and (2) by that country or organization using test facilities of the United States.

(b) PAYMENT OF COSTS.—A memorandum or other agreement under subsection (a) shall provide that, when a party to the agreement uses a test facility of another party to the agreement, the party using the test facility is charged by the party providing the test facility in accordance with the following principles:

(1) The user party shall be charged the amount equal to the direct costs incurred by the provider party in furnishing test and evaluation services by the providing party's officers, employees, or governmental agencies.

(2) The user party may also be charged indirect costs relating to the use of the test facility, but only to the extent specified in the memorandum or other agreement.

(c) DETERMINATION OF INDIRECT COSTS; DELEGATION OF AUTHORITY.—(1) The Secretary of Defense shall determine the appropriateness of the amount of indirect costs charged by the United States pursuant to subsection (b)(2).

(2) The Secretary may delegate the authority under paragraph (1) only to the Deputy Secretary of Defense and to one other official of the Department of Defense.

(d) RETENTION OF FUNDS COLLECTED BY THE UNITED STATES.—Amounts collected by the United States from a party using a test facility of the United States pursuant to a memorandum or other agreement under this section shall be credited to the appropriation accounts from which the costs incurred by the United States in providing such test facility were paid.

(e) DEFINITIONS.—In this section:

(1) The term ''direct cost'', with respect to the use of a test facility pursuant to a memorandum or other agreement under subsection (a)—

(A) means any item of cost that is easily and readily identified to a specific unit of work or output within the test facility

where the use occurred, that would not have been incurred if such use had not occurred; and

(B) may include costs of labor, materials, facilities, utilities, equipment, supplies, and any other resources of the test facility that are consumed or damaged in connection with—

(i) the use; or

(ii) the maintenance of the test facility for purposes of the use.

(2) The term ''indirect cost'', with respect to the use of a test facility pursuant to a memorandum or other agreement under subsection (a)—

(A) means any item of cost that is not easily and readily identified to a specific unit of work or output within the test facility where the use occurred; and

(B) may include general and administrative expenses for such activities as supporting base operations, manufacturing, supervision, procurement of office supplies, and utilities that are accumulated costs allocated among several users.

(3) The term ''test facility'' means a range or other facility at which testing of defense equipment may be carried out.

(Added Pub. L. 107–107, div. A, title XII, §1213(a), Dec. 28, 2001, 115 Stat. 1250.)

§ 2350m. Participation in multinational military centers of excellence

(a) PARTICIPATION AUTHORIZED.—The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of members of the armed forces and Department of Defense civilian personnel in any multinational military center of excellence for purposes of—

(1) enhancing the ability of military forces and civilian personnel of the nations participating in such center to engage in joint exercises or coalition or international military operations; or

(2) improving interoperability between the armed forces and the military forces of friendly foreign nations.

(b) MEMORANDUM OF UNDERSTANDING.—(1) The participation of members of the armed forces or Department of Defense civilian personnel in a multinational military center of excellence under subsection (a) shall be in accordance with the terms of one or more memoranda of understanding entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and the foreign nation or nations concerned.

(2) If Department of Defense facilities, equipment, or funds are used to support a multinational military center of excellence under subsection (a), the memoranda of understanding under paragraph (1) with respect to that center shall provide details of any cost-sharing arrangement or other funding arrangement.

(c) AVAILABILITY OF APPROPRIATED FUNDS.—(1) Funds appropriated to the Department of Defense for operation and maintenance are available as follows:

(A) To pay the United States share of the operating expenses of any multinational military center of excellence in which the United States participates under this section.

(B) To pay the costs of the participation of members of the armed forces and Department of Defense civilian personnel in multinational military centers of excellence under this section, including the costs of expenses of such participants.

(2) No funds may be used under this section to fund the pay or salaries of members of the armed forces and Department of Defense civilian personnel who participate in multinational military centers of excellence under this section.

(d) USE OF DEPARTMENT OF DEFENSE FACILITIES AND EQUIPMENT.—Facilities and equipment of the Department of Defense may be used for purposes of the support of multinational military centers of excellence under this section that are hosted by the Department.

(e) ANNUAL REPORTS ON USE OF AUTHORITY.—(1) Not later than October 31 each year, the Secretary of Defense 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 use of the authority in this section during the preceding fiscal year.

(2) Each report required by paragraph (1) shall include, for the fiscal year covered by such report, the following:

(A) A detailed description of the participation of the Department of Defense, and of members of the armed forces and civilian personnel of the Department, in multinational military centers of excellence under the authority of this section.

(B) For each multinational military center of excellence in which the Department of Defense, or members of the armed forces or civilian personnel of the Department, so participated—

(i) a description of such multinational military center of excellence;

(ii) a description of the activities participated in by the Department, or by members of the armed forces or civilian personnel of the Department; and

(iii) a statement of the costs of the Department for such participation, including—

(I) a statement of the United States share of the expenses of such center and a statement of the percentage of the United States share of the expenses of such center to the total expenses of such center; and

(II) a statement of the amount of such costs (including a separate statement of the amount of costs paid for under the authority of this section by category of costs).

(f) MULTINATIONAL MILITARY CENTER OF EXCELLENCE DEFINED.—In this section, the term ''multinational military center of excellence'' means an entity sponsored by one or more nations that is accredited and approved by the Military Committee of the North Atlantic Treaty Organization (NATO) as offering recognized expertise and experience to personnel participating in the activities of such entity for the benefit of NATO by providing such personnel opportunities to—

(1) enhance education and training;
(2) improve interoperability and capabilities;
(3) assist in the development of doctrine; and
(4) validate concepts through experimentation.

(Added Pub. L. 110–417, [div. A], title XII, § 1232(a)(1), Oct. 14, 2008, 122 Stat. 4637; amended Pub. L. 112–239, div. A, title X, § 1076(f)(25), Jan. 2, 2013, 126 Stat. 1953.)

AMENDMENTS

2013—Subsec. (e)(1). Pub. L. 112–239 substituted ''Not later than October 31 each year'' for ''Not later than October 31, 2009, and annually thereafter''.

EFFECTIVE DATE

Pub. L. 110–417, [div. A], title XII, § 1232(c), Oct. 14, 2008, 122 Stat. 4639, provided that: ''The amendments made by this section [enacting this section] shall take effect on October 1, 2008''.

CHAPTER 139—RESEARCH AND DEVELOPMENT

Sec.
2351. Availability of appropriations.
[2352. Repealed.]
2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment.
2354. Contracts: indemnification provisions.
[2355 to 2357. Repealed.]
2358. Research and development projects.
2359. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation.
[2359a. Repealed.]
2359b. Defense Acquisition Challenge Program.
2360. Research and development laboratories: contracts for services of university students.
2361. Award of grants and contracts to colleges and universities: requirement of competition.
2362. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education.
[2363. Repealed.]
2364. Coordination and communication of defense research activities and technology domain awareness.
2365. Global Research Watch Program.
2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production.
2366a. Major defense acquisition programs: determination required before Milestone A approval.
2366b. Major defense acquisition programs: certification required before Milestone B approval.
2367. Use of federally funded research and development centers.
2368. Centers for Science, Technology, and Engineering Partnership.
[2369 to 2370a. Repealed.]
2371. Research projects: transactions other than contracts and grants.
2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980.
2371b. Authority of the Department of Defense to carry out certain prototype projects.
2372. Independent research and development and bid and proposal costs: payments to contractors.
2373. Procurement for experimental purposes.
2374. Merit-based award of grants for research and development.
Sec.
2374a. Prizes for advanced technology achievements.
[2374b. Repealed.]

AMENDMENTS

2015—Pub. L. 114–92, div. A, title II, §§ 211(b), 214(b), title VIII, §§ 815(a)(2), 823(b), title X, § 1078(c)(2), Nov. 25, 2015, 129 Stat. 767, 769, 896, 903, 999, added items 2368 and 2371b, substituted ''Coordination and communication of defense research activities and technology domain awareness'' for ''Coordination and communication of defense research activities'' in item 2364 and ''Major defense acquisition programs: determination required before Milestone A approval'' for ''Major defense acquisition programs: certification required before Milestone A approval'' in item 2366a, and struck out item 2352 ''Defense Advanced Research Projects Agency: biennial strategic plan''.

2013—Pub. L. 112–239, div. A, title X, § 1076(g)(4), Jan. 2, 2013, 126 Stat. 1955, struck out item 2374b ''Prizes for achievements in promoting science, mathematics, engineering, or technology education''.

2011—Pub. L. 112–81, div. A, title VIII, § 801(e)(3), Dec. 31, 2011, 125 Stat. 1484, substituted ''Major defense acquisition programs: certification required before Milestone A approval'' for ''Major defense acquisition programs: certification required before Milestone A or Key Decision Point A approval'' in item 2366a and ''Major defense acquisition programs: certification required before Milestone B approval'' for ''Major defense acquisition programs: certification required before Milestone B or Key Decision Point B approval'' in item 2366b.

Pub. L. 112–81, div. A, title II, § 251(a)(2), (b), Dec. 31, 2011, 125 Stat. 1347, effective Oct. 1, 2013, struck out item 2359a ''Technology Transition Initiative''.

2009—Pub. L. 111–84, div. A, title II, § 252(b), Oct. 28, 2009, 123 Stat. 2243, added item 2362.

2008—Pub. L. 110–417, [div. A], title VIII, § 813(c), Oct. 14, 2008, 122 Stat. 4527, added items 2366a and 2366b and struck out former items 2366a ''Major defense acquisition programs: certification required before Milestone B approval or Key Decision Point B approval'' and 2366b ''Major defense acquisition programs: certification required before Milestone A or Key Decision Point A approval''.

Pub. L. 110–181, div. A, title IX, § 943(a)(2), Jan. 28, 2008, 122 Stat. 289, added item 2366b.

2006—Pub. L. 109–163, div. A, title VIII, § 801(b), Jan. 6, 2006, 119 Stat. 3367, added item 2366a.

2004—Pub. L. 108–375, div. A, title X, § 1005(b), Oct. 28, 2004, 118 Stat. 2036, struck out item 2370a ''Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats''.

2003—Pub. L. 108–136, div. A, title II, §§ 231(b), 232(b), Nov. 24, 2003, 117 Stat. 1422, 1423, added items 2352 and 2365.

2002—Pub. L. 107–314, div. A, title II, §§ 242(a)(2), 243(b), 248(c)(2), Dec. 2, 2002, 116 Stat. 2495, 2498, 2503, added items 2359a, 2359b, and 2374b.

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 904(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225, added item 2359.

1999—Pub. L. 106–65, div. A, title II, § 244(b), Oct. 5, 1999, 113 Stat. 552, added item 2374a.

1996—Pub. L. 104–201, div. A, title II, § 267(c)(1)(C), Sept. 23, 1996, 110 Stat. 2468, added item 2371a.

Pub. L. 104–106, div. A, title VIII, § 802(b), title X, §§ 1061(j)(2), 1062(c)(2), Feb. 10, 1996, 110 Stat. 390, 443, 444, struck out items 2352 ''Contracts: notice to Congress required for contracts performed over period exceeding 10 years'', 2356 ''Contracts: delegations'', and 2370 ''Biological Defense Research Program''.

1994—Pub. L. 103–355, title I, § 1301(c), title II, § 2002(b), title III, § 3062(b), title VII, § 7203(a)(3), Oct. 13, 1994, 108 Stat. 3287, 3303, 3337, 3380, added item 2374, substituted in item 2358 ''Research and development projects'' for ''Research projects'' and in item 2371 ''Research projects: transactions other than contracts and grants'' for ''Advanced research projects: cooperative agreements and other transactions'', and struck out item 2355 ''Contracts: vouchering procedures'' and item 2369 ''Product evaluation activity''.

1993—Pub. L. 103–160, div. A, title II, §214(b), title VIII, §828(a)(2), (c)(2), Nov. 30, 1993, 107 Stat. 1586, 1713, 1714, struck out item 2362 ''Testing requirements: wheeled or tracked armored vehicles'' and added items 2370a and 2373.

1992—Pub. L. 102–484, div. A, title VIII, §821(c)(2), div. D, title XLII, §4271(b)(3), Oct. 23, 1992, 106 Stat. 2460, 2696, struck out items 2363 ''Encouragement of technology transfer'' and 2365 ''Competitive prototype strategy requirement: major defense acquisition programs''.

1991—Pub. L. 102–190, div. A, title VIII, §§802(a)(2), 803(a)(2), 821(c)(2), Dec. 5, 1991, 105 Stat. 1414, 1415, 1431, substituted item 2352 for former item 2352 ''Contracts: limited to five-year terms'', struck out item 2368 ''Critical technologies research'', and substituted item 2372 for former item 2372 ''Independent research and development''.

Pub. L. 102–25, title VII, §701(e)(5), Apr. 6, 1991, 105 Stat. 114, inserted period at end of item 2366.

1990—Pub. L. 101–510, div. A, title II, §241(b), title VIII, §824(a)(2), title XIII, §1331(5), Nov. 5, 1990, 104 Stat. 1517, 1604, 1673, struck out items 2357 ''Contracts: reports to Congress'' and 2359 ''Salaries of officers of Federal contract research centers: reports to Congress'' and added items 2370 and 2372.

1989—Pub. L. 101–189, div. A, title II, §251(a)(2), title VIII, §§802(c)(4)(B), 841(c)(2), Nov. 29, 1989, 103 Stat. 1404, 1486, 1514, substituted ''testing and lethality testing required before full-scale production'' for ''and lethality testing; operational testing'' in item 2366, substituted ''research'' for ''plan'' in item 2368, and added item 2371.

1988—Pub. L. 100–456, div. A, title II, §220(b), title VIII, §§823(a)(2), 842(b), Sept. 29, 1988, 102 Stat. 1941, 2018, 2026, added items 2361, 2368, and 2369.

Pub. L. 100–370, §1(g)(4), July 19, 1988, 102 Stat. 847, added item 2351, and struck out item 2361 ''Availability of appropriations''.

1987—Pub. L. 100–180, div. A, title XII, §1231(10)(C), (12), Dec. 4, 1987, 101 Stat. 1160, substituted ''defense'' for ''Defense'' in item 2364 and ''federally'' for ''Federally'' in item 2367.

Pub. L. 100–26, §5(3)(B), Apr. 21, 1987, 101 Stat. 274, made technical amendment to directory language of section 909(a)(2) of Pub. L. 99–500, Pub. L. 99–591, and 99–661. See 1986 Amendment note below.

Pub. L. 100–26, §3(1)(B), Apr. 21, 1987, 101 Stat. 273, made technical amendment to directory language of section 234(c)(2) of Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title II, §234(c)(2), Nov. 14, 1986, 100 Stat. 3849, as amended by Pub. L. 100–26, §3(1)(B), Apr. 21, 1987, 101 Stat. 273, added item 2364.

Pub. L. 99–500, §101(c) [title X, §§909(a)(2), 910(a)(2), 912(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, 1783–144, 1783–146, and Pub. L. 99–591, §101(c) [title X, §§909(a)(2), 910(a)(2), 912(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143, 3341–144, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, §§909(a)(2), 910(a)(2), 912(a)(2), Nov. 14, 1986, 100 Stat. 3849, 3922, 3924, 3926, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, §5(3)(B), Apr. 21, 1987, 101 Stat. 274, amended analysis identically, adding items 2365, 2366, and 2367.

1985—Pub. L. 99–145, title I, §123(a)(2), title XIV, §1457(b), Nov. 8, 1985, 99 Stat. 601, 763, added items 2362 and 2363.

1982—Pub. L. 97–258, §2(b)(3)(A), Sept. 13, 1982, 96 Stat. 1052, added item 2361.

1981—Pub. L. 97–86, title VI, §603(b), Dec. 1, 1981, 95 Stat. 1110, added item 2360.

1979—Pub. L. 96–107, title VIII, 819(a)(2), Nov. 9, 1979, 93 Stat. 819, added item 2359.

1962—Pub. L. 87–651, title II, §208(b), Sept. 7, 1962, 76 Stat. 523, added item 2358.

1958—Pub. L. 85–599, §3(d), Aug. 6, 1958, 72 Stat. 516, struck out item 2351 ''Policy, plans, and coordination''.

§ 2351. Availability of appropriations

(a) Funds appropriated to the Department of Defense for research and development remain available for obligation for a period of two consecutive years.

(b) Funds appropriated to the Department of Defense for research and development may be used—

(1) for the purposes of section 2353 of this title; and

(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.

(Added Pub. L. 97–258, §2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052, §2361; renumbered §2351 and amended Pub. L. 100–370, §1(g)(1), July 19, 1988, 102 Stat. 846.)

HISTORICAL AND REVISION NOTES

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2361	31:649c(2).	Aug. 10, 1956, ch. 1041, §40(2), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, §201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10.

1988 ACT

Subsection (a) is based on section 2361 of this title.

Subsection (b) is based on Pub. L. 99–190, §101(b) [title VIII, §8015], Dec. 19, 1985, 99 Stat. 1185, 1205.

PRIOR PROVISIONS

A prior section 2351, act Aug. 10, 1956, ch. 1041, 70A Stat. 133, related to policy, plans, and coordination relative to research and development on scientific problems relating to the national security, prior to repeal by Pub. L. 85–599, §3(d).

AMENDMENTS

1988—Pub. L. 100–370 renumbered section 2361 of this title as this section, designated such provisions as subsec. (a), and added subsec. (b).

[§ 2352. Repealed. Pub. L. 114–92, div. A, title X, § 1078(c)(1), Nov. 25, 2015, 129 Stat. 999]

Section, added Pub. L. 108–136, div. A, title II, §232(a), Nov. 24, 2003, 117 Stat. 1422; amended Pub. L. 113–66, div. A, title II, §211(a), (b), Dec. 26, 2013, 127 Stat. 703, related to the biennial strategic plan of the Defense Advanced Research Projects Agency.

A prior section 2352, acts Aug. 10, 1956, ch. 1041, 70A Stat. 133; Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, §803(a)(1), 105 Stat. 1414; Pub. L. 102–484, div. A, title X, §1053(4), Oct. 23, 1992, 106 Stat. 2501, required Secretary of military department to give notice to Congress of contracts performed over a period exceeding 10 years, prior to repeal by Pub. L. 104–106, div. A, title X, §1062(c)(1), Feb. 10, 1996, 110 Stat. 444.

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The facilities and equipment, and

specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2353(a)	5:235e (1st sentence; and 2d sentence, less 2d and last provisos). 5:475j (1st sentence; and 2d sentence, less 2d and last provisos). 5:628e (1st sentence; and 2d sentence, less 2d and last provisos).	July 16, 1952, ch. 882, §4 (less 3d and last sentences), 66 Stat. 725.
2353(b)	5:235e (2d proviso of 2d sentence). 5:475j (2d proviso of 2d sentence). 5:628e (2d proviso of 2d sentence).	
2353(c)	5:235e (last proviso of 2d sentence). 5:475j (last proviso of 2d sentence). 5:628e (last proviso of 2d sentence).	

In subsection (a), the words ''furnished to'' and ''for the use thereof'' are omitted as surplusage.

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

In subsection (b), the introductory clause is substituted for 5:235e (words of 2d proviso before clause (1)), 475j, and 628e. The words ''that * * * considers'' are substituted for the words ''as will in the opinion''. The words ''an alternative'' are substituted for the words ''such other''.

In subsection (c), the words ''Proceeds of'' are substituted for the words ''That all moneys arising from''.

LIMITATIONS ON MODIFICATIONS OF CERTAIN GOVERNMENT-FURNISHED EQUIPMENT; ONE-TIME AUTHORITY TO TRANSFER A CERTAIN MILITARY PROTOTYPE

Pub. L. 111–84, div. A, title X, §1043, Oct. 28, 2009, 123 Stat. 2456, as amended by Pub. L. 111–383, div. A, title X, §1075(d)(12), Jan. 7, 2011, 124 Stat. 4373, provided that:

''(a) LIMITATION.—An article of military equipment that is an end item of a major weapon system may not be furnished or transferred to a private entity for the conduct of research, development, test and evaluation under contractual agreement with the Department of Defense, if such research, development, test, and evaluation necessitates significantly modifying the military equipment, until the senior acquisition official of a military department, or his designee, submits to the congressional defense committees certification in writing—

''(1) that the modification of such article of military equipment is necessary to execute the contractual scope of work and there is no suitable alternative to modifying such article;

''(2) that the research, development, test, and evaluation effort is of sufficient interest to the military department to warrant the modification of such article of military equipment;

''(3) that—

''(A) prior to the end of the period of performance of such a contractual agreement, the article of military equipment will be restored to its original condition; or

''(B) it is not necessary to restore the article of military equipment to its original condition because the military department intends to dispose of the equipment or operate the equipment in its modified form.

''(4) that the private entity has sufficient resources and capability to fully perform the contractual research, development, test, and evaluation; and

''(5) that the military department has—

''(A) identified the scope of future test and evaluation likely to be required prior to transition of the associated technology to a program of record; and

''(B) a plan for the conduct of such future test and evaluation, including the anticipated roles and responsibilities of government and the private entity, as applicable.

''(b) CERTIFICATION.—No military equipment that is an end item of a major weapons system may be transferred or furnished to a private entity for purposes of research and development as authorized under subsection (a) unless the senior officer of the military service concerned certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such equipment is not essential to the defense of the United States.

''(c) ONE-TIME AUTHORITY TO TRANSFER.—The Secretary of the Navy may transfer, to Piasecki Aircraft Corporation of Essington, Pennsylvania (in this section referred to as 'transferee'), all right, title, and interest of the United States, except as otherwise provided in this subsection, in and to Navy aircraft N40VT (Bureau Number 163283), also known as the X–49A aircraft, and associated components and test equipment, previously specified as Government-furnished equipment in contract N00019–00–C–0284. The transferee shall provide consideration for the transfer of such military equipment to the transferor of an amount not to exceed fair value, as determined, on a non-delegable basis, by the Secretary.

''(d) APPLICABLE LAW.—The transfer or use of military equipment is subject to all applicable Federal and State laws and regulations, including, but not limited to, the Arms Export Control Act [22 U.S.C. 2751 et seq.], the Export Administration Act of 1979 [50 U.S.C. 4601 et seq.], continued under Executive Order 12924 [listed in a table under 50 U.S.C. 1701], International Traffic in Arms Regulations (22 C.F.R. 120 et seq.), Export Administration Regulations (15 C.F.R. 730 et seq.), Foreign Assets Control Regulations (31 C.F.R. 500 et seq.), and the Espionage Act [act June 15, 1917, ch. 30, 40 Stat. 217, see Tables for classification].

''(e) CONDITION OF EQUIPMENT TO BE TRANSFERRED.—

''(1) AS-IS CONDITION.—The military equipment transferred under subsection (c) shall be transferred in its current 'as-is' condition. The Secretary is not required to repair or alter the condition of any military equipment before transferring any interest in such equipment under subsection (c).

''(2) SPARE PARTS OR EQUIPMENT.—The Secretary of the Navy is not required to provide spare parts or

equipment as a result of the transfer authorized under subsection (c).

''(f) TRANSFER AT NO COST TO THE UNITED STATES.—The transfer of military equipment under subsection (c) shall be made at no cost to the United States. Any costs associated with the transfer shall be borne by the transferee.

''(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary shall require that the transfer authorized by section (c) be carried out by means of a written agreement and shall require, at a minimum, the following conditions to the transfer:

''(1) A condition stipulating that the transfer of the X-49A aircraft is for the sole purpose of further development, test, and evaluation of vectored thrust ducted propeller (hereinafter in this section referred to as 'VTDP') technology.

''(2) A condition providing the Government the right to procure the VTDP technology demonstrated under this program at a discounted cost based on the value of the X-49A aircraft and associated equipment at the time of transfer, with such valuation and terms determined by the Secretary.

''(3) A condition that the transferee not transfer any interest in, or transfer possession of, the military equipment transferred under subsection (b) to any other party without the prior written approval of the Secretary.

''(4) A condition that if the Secretary determines at any time that the transferee has failed to comply with a condition set forth in paragraphs (1) through (3), all items referred to in subsection (b) shall be transferred back to the Navy, at no cost to the United States.

''(5) A condition that the transferee acknowledges sole responsibility of the X-49A aircraft and associated equipment and assumes all liability for operation of the X-49A aircraft and associated equipment.

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

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

''(j) DEFINITIONS.—In this subsection:

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

''(2) The term 'contractual agreement' includes contracts, grants, cooperative agreements, and other transactions.''

USE OF RESEARCH AND DEVELOPMENT FUNDS FOR TEST FACILITIES AND EQUIPMENT

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

§ 2354. Contracts: indemnification provisions

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

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

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

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

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

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

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

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

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

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

(3) funds appropriated for those payments.

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

HISTORICAL AND REVISION NOTES

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

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

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

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

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

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

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

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

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

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

[§ 2357. Repealed. Pub. L. 101–510, div. A, title XIII, § 1301(11), Nov. 5, 1990, 104 Stat. 1668]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, required Secretary of each military department to report to Congress on contracts for research and development.

§ 2358. Research and development projects

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

(2) either—

(A) relate to weapon systems and other military needs; or

(B) are of potential interest to the Department of Defense.

(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense; or

(4) by mutual agreement with the head of any other department or agency of the Federal Government.

(c) REQUIREMENT OF POTENTIAL DEPARTMENT OF DEFENSE INTEREST.—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

(d) ADDITIONAL PROVISIONS APPLICABLE TO COOPERATIVE AGREEMENTS.—Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in sections 2371 and 2371a of this title.

(Added Pub. L. 87–651, title II, § 208(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 97–86, title IX, § 910, Dec. 1, 1981, 95 Stat. 1120; Pub. L. 100–370, § 1(g)(3), July 19, 1988, 102 Stat. 846; Pub. L. 103–160, div. A, title VIII, § 827(a), Nov. 30, 1993, 107 Stat. 1712; Pub. L. 103–355, title I, § 1301(a), Oct. 13, 1994, 108 Stat. 3284; Pub. L. 104–201, div. A, title II, § 267(c)(2), Sept. 23, 1996, 110 Stat. 2468.)

HISTORICAL AND REVISION NOTES

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2358	5:171c(b)(2), (3).	July 26, 1947, ch. 343, § 203(b)(2), (3); added Aug. 6, 1958, Pub. L. 85–599, § 9(a) (3d and 4th pars.), 72 Stat. 520.

5 U.S.C. 171c(b)(3) is omitted as unnecessary since the authorization for appropriations is implied in 5 U.S.C. 171c(b)(2).

1988 ACT

In the existing text of 10 U.S.C. 2358, the bill would in two instances strike the phrase ''or his designee'' appearing after ''Secretary of Defense'' (section 1(g)(3)). The change is made for consistency in the Code, and no substantive change is intended. The committee notes that the Secretary of Defense has general authority to delegate functions under 10 U.S.C. 113(d).

Subsection (b) is based on Pub. L. 91–441, title II, § 204, Oct. 7, 1970, 84 Stat. 908.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–201 substituted ''sections 2371 and 2371a'' for ''section 2371''.

1994—Pub. L. 103–355 amended section generally, inserting reference to development projects in section catchline, and in text specifying that relevant Secretary may perform research and development projects in accordance with chapter 63 of title 31, and adding subsec. (d) relating to additional provisions applicable to cooperative agreements.

1993—Pub. L. 103–160 amended section generally. Prior to amendment, section read as follows:

''(a) IN GENERAL.—Subject to approval by the President, the Secretary of Defense may engage in basic and applied research projects that are necessary to the responsibilities of the Department of Defense in the field of basic and applied research and development and that relate to weapons systems and other military needs. Subject to approval by the President, the Secretary may perform assigned research and development projects—

''(1) by contract with, or by grant to, educational or research institutions, private businesses, or other agencies of the United States;

''(2) through one or more of the military departments; or

''(3) by using employees and consultants of the Department of Defense.

''(b) REQUIREMENT OF POTENTIAL MILITARY RELATIONSHIP.—Funds appropriated to the Department of Defense may not be used to finance any research project or study unless the project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation.''

1988—Pub. L. 100–370 designated existing provisions as subsec. (a), inserted heading, struck out ''or his designee'' after ''Secretary of Defense'' and ''President, the Secretary'', and added subsec. (b).

1981—Par. (1). Pub. L. 97–86 substituted ''by contract with, or by grant to,'' for ''by contract with''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

PLAN FOR ADVANCED WEAPONS TECHNOLOGY WAR GAMES

Pub. L. 114–92, div. A, title II, §240, Nov. 25, 2015, 129 Stat. 784, provided that:

''(a) PLAN REQUIRED.—The Secretary of Defense, in coordination with the Chairman of the Joint Chiefs of Staff, shall develop and implement a plan for integrating advanced weapons and offset technologies into exercises carried out individually and jointly by the military departments to improve the development and experimentation of various concepts for employment by the Armed Forces.

''(b) ELEMENTS.—The plan under subsection (a) shall include the following:

''(1) Identification of specific exercises to be carried out individually or jointly by the military departments under the plan.

''(2) Identification of emerging advanced weapons and offset technologies based on joint and individual recommendations of the military departments, including with respect to directed-energy weapons, hypersonic strike systems, autonomous systems, or other technologies as determined by the Secretary.

''(3) A schedule for integrating either prototype capabilities or table-top exercises into relevant exercises.

''(4) A method for capturing lessons learned and providing feedback both to the developers of the advanced weapons and offset technology and the military departments.

''(c) SUBMISSION.—Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report containing the plan under subsection (a) and a status update on the implementation of such plan.''

INFORMATION OPERATIONS AND ENGAGEMENT TECHNOLOGY DEMONSTRATIONS

Pub. L. 114–92, div. A, title X, §1056, Nov. 25, 2015, 129 Stat. 984, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) military information support operations are a critical component of the efforts of the Department of Defense to provide commanders with capabilities to shape the operational environment;

''(2) military information support operations are integral to armed conflict and therefore the Secretary of Defense has broad latitude to conduct military information support operations;

''(3) the Secretary of Defense should develop creative and agile concepts, technologies, and strategies across all available media to most effectively reach target audiences, to counter and degrade the ability of adversaries and potential adversaries to persuade, inspire, and recruit inside areas of hostilities or in other areas in direct support of the objectives of commanders; and

''(4) the Secretary of Defense should request additional funds in future budgets to carry out military information support operations to support the broader efforts of the Government to counter violent extremism.

''(b) TECHNOLOGY DEMONSTRATIONS REQUIRED.—To support the ability of the Department of Defense to provide innovative operational concepts and technologies to shape the informational environment, the Secretary of Defense shall carry out a series of technology demonstrations, subject to the availability of funds for such purpose or to a prior approval reprogramming, to assess innovative new technologies for information operations and information engagement to support the operational and strategic requirements of the commanders of the geographic and functional combatant commands, including the urgent and emergent operational needs and the operational and theater campaign plans of such combatant commanders to further the national security objectives and strategic communications requirements of the United States.

''(c) PLAN.—By not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan describing how the Department of Defense will execute the technology demonstrations required under subsection (b). Such plan shall include each of the following elements:

''(1) A general timeline for conducting the technology demonstrations.

''(2) Clearly defined goals and endstate objectives for the demonstrations, including traceability of such goals to the tactical, operational, or strategic requirements of the combatant commanders.

''(3) A process for measuring the performance and effectiveness of the demonstrations.

''(4) A coordination structure to include participation between the technology development and the operational communities, including potentially joint, interagency, intergovernmental, and multinational partners.

''(5) The identification of potential technologies to support the tactical, operational, or strategic needs of the combatant commanders.

''(6) An explanation of how such technologies will support and coordinate with elements of joint, interagency, intergovernmental, and multinational partners.

''(d) CONGRESSIONAL NOTICE.—Upon initiating a technology demonstration under subsection (b), the Secretary of Defense shall submit to the congressional defense committees written notice of the demonstration that includes a detailed description of the demonstration, including its purpose, cost, engagement medium, targeted audience, and any other details the Secretary of Defense believes will assist the committees in evaluating the demonstration.

''(e) TERMINATION.—The authority to carry out a technology demonstration under this section shall terminate on September 30, 2022.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit or alter any authority under which the Department of Defense supports information operations activities within the Department.''

PILOT PROGRAM ON DYNAMIC SHAPING OF THE WORKFORCE TO IMPROVE THE TECHNICAL SKILLS AND EXPERTISE AT CERTAIN DEPARTMENT OF DEFENSE LABORATORIES

Pub. L. 114–92, div. A, title XI, §1109, Nov. 25, 2015, 129 Stat. 1028, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense shall establish a pilot program to utilize the authorities specified in subsection (b) at the Department of Defense laboratories specified in subsection (c) to provide the directors of such laboratories the authority to dynamically shape the mix of technical skills and expertise in the workforces of such laboratories in order to achieve one or more of the following:

''(1) To meet organizational and Department-designated missions in the most cost-effective and efficient manner.

''(2) To upgrade and enhance the scientific quality of the workforces of such laboratories.

''(3) To shape such workforces to better respond to such missions.

''(4) To reduce the average unit cost of such workforces.

''(b) WORKFORCE SHAPING AUTHORITIES.—The authorities that shall be available for use by the director of a Department of Defense laboratory under the pilot program are the following:

''(1) FLEXIBLE LENGTH AND RENEWABLE TERM TECHNICAL APPOINTMENTS.—

''(A) IN GENERAL.—Subject to the provisions of this paragraph, authority otherwise available to the director by law (and within the available budg-

etary resources of the laboratory) to appoint qualified scientific and technical personnel who are not currently Department of Defense civilian employees into any scientific or technical position in the laboratory for a period of more than one year but not more than six years.

''(B) BENEFITS.—Personnel appointed under this paragraph shall be provided with benefits comparable to those provided to similar employees at the laboratory concerned, including professional development opportunities, eligibility for all laboratory awards programs, and designation as 'status applicants' for the purposes of eligibility for positions in the Federal service.

''(C) EXTENSION OF APPOINTMENTS.—The appointment of any individual under this paragraph may be extended without limit in up to six year increments at any time during any term of service under such conditions as the director concerned shall establish for purposes of this paragraph.

''(D) CONSTRUCTION WITH CERTAIN LIMITATION.—For purposes of determining the workforce size of a laboratory in connection with compliance with section 955 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1896; 10 U.S.C. 129a note), any individual serving in an appointment under this paragraph shall be treated as a fractional employee of the laboratory, which fraction is—

''(i) the current term of appointment of the individual under this paragraph; divided by

''(ii) the average length of tenure of a career employee at the laboratory, as calculated at the end of the last fiscal year ending before the date of the most recent appointment or extension of the individual under this paragraph.

''(2) REEMPLOYMENT OF ANNUITANTS.—Authorities to authorize the director of any science and technology reinvention laboratory (in this section referred to as 'STRL') to reemploy annuitants in accordance with section 9902(g) of title 5, United States Code, except that as a condition for reemployment the director may authorize the deduction from the pay of any annuitant so reemployed of an amount up to the amount of the annuity otherwise payable to such annuitant allocable to the period of actual employment of such annuitant, which amount shall be determined in a manner specified by the director for purposes of this paragraph to ensure the most cost effective execution of designated missions by the laboratory while retaining critical technical skills.

''(3) EARLY RETIREMENT INCENTIVES.—Authorities to authorize the director of any STRL to authorize voluntary early retirement of employees in accordance with section 8336 of title 5, United States Code, without regard to section 8336(d)(2)(D) or 3522 of such title, and with employees so separated voluntarily from service.

''(4) SEPARATION INCENTIVE PAY.—Authorities to authorize the director of any STRL to pay voluntary separation pay to employees in accordance with section 8414(b)(1)(B) of title 5, United States Code, without regard to clause (iv) or (v) of such section or section 3522 of such title, and with—

''(A) employees so separated voluntarily from service under regulations prescribed by the Secretary of Defense for purposes of the pilot program; and

''(B) payments to employees so separated authorized under section 3523 of such title without regard to—

''(i) the plan otherwise required by section 3522 of such title; and

''(ii) paragraph (1) or (3) of section 3523(b) of such title.

''(c) LABORATORIES.—The Department of Defense laboratories specified in this subsection are the laboratories specified in section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note).

''(d) EXPIRATION.—

''(1) IN GENERAL.—The authority in this section shall expire on December 31, 2023.

''(2) CONTINUATION OF AUTHORITIES EXERCISED BEFORE TERMINATION.—The expiration in paragraph (1) shall not be construed to effect the continuation after the date specified in paragraph (1) of any term of employment or other benefit authorized under this section before that date in accordance with the terms of such authorization.''

DEFENSE LABORATORY MODERNIZATION PILOT PROGRAM

Pub. L. 114–92, div. B, title XXVIII, § 2803, Nov. 25, 2015, 129 Stat. 1169, provided that:

''(a) AUTHORITY TO USE RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FUNDS.—Using amounts appropriated or otherwise made available to the Department of Defense for research, development, test, and evaluation, the Secretary of Defense may fund a military construction project described in subsection (d) at any of the following:

''(1) A Department of Defense Science and Technology Reinvention Laboratory (as designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note)[)].

''(2) A Department of Defense Federally Funded Research and Development Center that functions primarily as a research laboratory.

''(3) A Department of Defense facility in support of a technology development program that is consistent with the fielding of offset technologies as described in section 218 of this Act [set out as a note under section 2501 of this title].

''(b) CONDITION ON AND SCOPE OF PROJECT AUTHORITY.—Subject to the condition that a military construction project under this section be authorized in a Military Construction Authorization Act, the authority to carry out the military construction project includes authority for—

''(1) surveys, site preparation, and advanced planning and design;

''(2) acquisition, conversion, rehabilitation, and installation of facilities;

''(3) acquisition and installation of equipment and appurtenances integral to the project; acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and

''(4) planning, supervision, administration, and overhead expenses incident to the project.

''(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—

''(1) SUBMISSION OF PROJECT REQUESTS.—The Secretary of Defense shall include military construction projects proposed to be carried out under this section in the budget justification documents for the Department of Defense submitted to Congress in connection with the budget for a fiscal year submitted under 1105 of title 31, United States Code.

''(2) NOTIFICATION OF IMPLEMENTATION.—Not less than 14 days prior to the first obligation of funds described in subsection (a) for a military construction project to be carried out under this section, the Secretary of Defense shall submit a notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] providing an updated construction description, cost, and schedule for the project and any other matters regarding the project as the Secretary considers appropriate.

''(d) AUTHORIZED PROJECTS DESCRIBED.—The authority provided by this section to fund military construction projects using amounts appropriated or otherwise made available for research, development, test, and evaluation is limited to military construction projects that the Secretary of Defense, in the budget justification documents exhibits submitted pursuant to subsection (c)(1), determines—

''(1) will support research and development activities at laboratories described in subsection (a);

''(2) will establish facilities that will have significant potential for use by entities outside the Department of Defense, including universities, industrial partners, and other Federal agencies;

''(3) are endorsed for funding by more than one military department or Defense Agency; and

''(4) cannot be fully funded within the thresholds specified in section 2805 of title 10, United States Code.

''(e) FUNDING LIMITATION.—The maximum amount of funds appropriated or otherwise made available for research, development, test, and evaluation that may be obligated in any fiscal year for military construction projects under this section is $150,000,000.

''(f) TERMINATION OF AUTHORITY.—The authority provided by this section to fund military construction projects using funds appropriated or otherwise made available for research, development, test, and evaluation shall terminate on October 1, 2020.''

PILOT PROGRAM ON ASSIGNMENT TO DEFENSE ADVANCED RESEARCH PROJECTS AGENCY OF PRIVATE SECTOR PERSONNEL WITH CRITICAL RESEARCH AND DEVELOPMENT EXPERTISE

Pub. L. 113–291, div. A, title II, §232, Dec. 19, 2014, 128 Stat. 3332, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—In accordance with the provisions of this section, the Director of the Defense Advanced Research Projects Agency may carry out a pilot program to assess the feasibility and advisability of temporarily assigning covered individuals with significant technical expertise in research and development areas of critical importance to defense missions to the Defense Advanced Research Projects Agency to lead research or development projects of the Agency.

''(b) ASSIGNMENT OF COVERED INDIVIDUALS.—

''(1) NUMBER OF INDIVIDUALS ASSIGNED.—Under the pilot program, the Director may assign covered individuals to the Agency as described in subsection (a), but may not have more than five covered individuals so assigned at any given time.

''(2) PERIOD OF ASSIGNMENT.—

''(A) Except as provided in subparagraph (B), the Director may, under the pilot program, assign a covered individual described in subsection (a) to lead research and development projects of the Agency for a period of not more than two years.

''(B) The Director may extend the assignment of a covered individual for one additional period of not more than two years as the Director considers appropriate.

''(3) APPLICATION OF CERTAIN PROVISIONS OF LAW.—

''(A) Except as otherwise provided in this section, the Director shall carry out the pilot program in accordance with the provisions of subchapter VI of chapter 33 of title 5, United States Code, except that, for purposes of the pilot program, the term 'other organization', as used in such subchapter, shall be deemed to include a covered entity.

''(B) A covered individual employed by a covered entity who is assigned to the Agency under the pilot program is deemed to be an employee of the Department of Defense for purposes of the following provisions of law:

''(i) Chapter 73 of title 5, United States Code.

''(ii) Sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, United States Code.

''(iii) Sections 1343, 1344, and 1349(b) of title 31, United States Code.

''(iv) Chapter 171 of title 28, United States Code (commonly known as the 'Federal Tort Claims Act'), and any other Federal tort liability statute.

''(v) The Ethics in Government Act of 1978 (5 U.S.C. App.).

''(vi) Section 1043 of the Internal Revenue Code of 1986 [26 U.S.C. 1043].

''(vii) Chapter 21 of title 41, United States Code.

''(4) PAY AND SUPERVISION.—A covered individual employed by a covered entity who is assigned to the Agency under the pilot program—

''(A) may continue to receive pay and benefits from such covered entity with or without reimbursement by the Agency;

''(B) is not entitled to pay from the Agency; and

''(C) shall be subject to supervision by the Director in all duties performed for the Agency under the pilot program.

''(c) CONFLICTS OF INTEREST.—

''(1) PRACTICES AND PROCEDURES REQUIRED.—The Director shall develop practices and procedures to manage conflicts of interest and the appearance of conflicts of interest that could arise through assignments under the pilot program.

''(2) ELEMENTS.—The practices and procedures required by paragraph (1) shall include, at a minimum, the requirement that each covered individual assigned to the Agency under the pilot program shall sign an agreement that provides for the following:

''(A) The nondisclosure of any trade secrets or other nonpublic or proprietary information which is of commercial value to the covered entity from which such covered individual is assigned.

''(B) The assignment of rights to intellectual property developed in the course of any research or development project under the pilot program—

''(i) to the Agency and its contracting partners in accordance with applicable provisions of law regarding intellectual property rights; and

''(ii) not to the covered individual or the covered entity from which such covered individual is assigned.

''(C) Such additional measures as the Director considers necessary to carry out the program in accordance with Federal law.

''(d) PROHIBITION ON CHARGES BY COVERED ENTITIES.—A covered entity may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the covered entity to a covered individual assigned to the Agency under the pilot program.

''(e) ANNUAL REPORT.—Not later than the first October 31 after the first fiscal year in which the Director carries out the pilot program and each October 31 thereafter that immediately follows a fiscal year in which the Director carries out the pilot program, the Director shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the activities carried out under the pilot program during the most recently completed fiscal year.

''(f) TERMINATION OF AUTHORITY.—The authority provided in this section shall expire on September 30, 2025, except that any covered individual assigned to the Agency under the pilot program shall continue in such assignment until the terms of such assignment have been satisfied.

''(g) DEFINITIONS.—In this section:

''(1) The term 'covered individual' means any individual who is employed by a covered entity.

''(2) The term 'covered entity' means any non-Federal, nongovernmental entity that, as of the date on which a covered individual employed by the entity is assigned to the Agency under the pilot program, is a nontraditional defense contractor (as defined in section 2302 of title 10, United States Code).''

TEMPORARY AUTHORITIES FOR CERTAIN POSITIONS AT DEPARTMENT OF DEFENSE RESEARCH AND ENGINEERING FACILITIES

Pub. L. 113–66, div. A, title XI, §1107, Dec. 26, 2013, 127 Stat. 887, as amended by Pub. L. 113–291, div. A, title XI, §1105, Dec. 19, 2014, 128 Stat. 3526; Pub. L. 114–92, div. A, title XI, §1104, Nov. 25, 2015, 129 Stat. 1023, provided that:

''(a) AUTHORITY TO MAKE DIRECT APPOINTMENTS.—

''(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS AT SCIENCE AND TECHNOLOGY REINVENTION

LABORATORIES.—The director of any Science and Technology Reinvention Laboratory (hereinafter in this section referred to as an 'STRL') may appoint qualified candidates possessing a bachelor's degree to positions described in paragraph (1) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code (other than sections 3303 and 3328 of such title).

''(2) VETERAN CANDIDATES FOR SIMILAR POSITIONS AT RESEARCH AND ENGINEERING FACILITIES.—The director of any STRL may appoint qualified veteran candidates to positions described in paragraph (2) of subsection (b) as an employee at a laboratory, agency, or organization specified in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.

''(3) STUDENTS ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The director of any STRL may appoint qualified candidates enrolled in a program of undergraduate or graduate instruction leading to a bachelor's or an advanced degree in a scientific, technical, engineering or mathematical course of study at an institution of higher education (as that term is defined in section [sic] 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001[, 1002])) to positions described in paragraph (3) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code (other than sections 3303 and 3328 of such title).

''(4) NONCOMPETITIVE CONVERSION TO PERMANENT APPOINTMENT.—With respect to any student appointed by the director of an STRL under paragraph (3) to a temporary or term appointment, upon graduation from the applicable institution of higher education (as defined in such paragraph), the director may noncompetitively convert such student to a permanent appointment within the STRL without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code (other than sections 3303 and 3328 of such title), provided the student meets all eligibility and Office of Personnel Management qualification requirements for the position.

''(b) COVERED POSITIONS.—

''(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS.—The positions described in this paragraph are scientific and engineering positions that may be temporary, term, or permanent in any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

''(2) QUALIFIED VETERAN CANDIDATES.—The positions described in this paragraph are scientific, technical, engineering, and mathematics positions, including technicians, in the following:

''(A) Any laboratory referred to in paragraph (1).

''(B) Any other Department of Defense research and engineering agency or organization designated by the Secretary for purposes of subsection (a)(2).

''(3) CANDIDATES ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The positions described in this paragraph are scientific and engineering positions that may be temporary or term in any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

''(c) LIMITATION ON NUMBER OF APPOINTMENTS ALLOWABLE IN A CALENDAR YEAR.—The authority under subsection (a) may not, in any calendar year and with respect to any laboratory, agency, or organization described in subsection (b), be exercised with respect to a number of candidates greater than the following:

''(1) In the case of a laboratory described in subsection (b)(1), with respect to appointment authority under subsection (a)(1), the number equal to 6 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

''(2) In the case of a laboratory, agency, or organization described in subsection (b)(2), with respect to appointment authority under subsection (a)(2), the number equal to 3 percent of the total number of scientific, technical, engineering, mathematics, and technician positions in such laboratory, agency, or organization that are filled as of the close of the fiscal year last ending before the start of such calendar year.

''(3) In the case of a laboratory described in subsection (b)(3), with respect to appointment authority under subsection (a)(3), the number equal to 3 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

''(d) DEFINITIONS.—In this section:

''(1) The term 'employee' has the meaning given that term in section 2105 of title 5, United States Code.

''(2) The term 'veteran' has the meaning given that term in section 101 of title 38, United States Code.

''(e) SUNSET.—Appointments under subsection (a) may not be made after December 31, 2019.

''(f) SENIOR SCIENTIFIC TECHNICAL MANAGERS.—

''(1) ESTABLISHMENT.—There is hereby established in each STRL a category of senior professional scientific and technical positions, the incumbents of which shall be designated as 'senior scientific technical managers' and which shall be positions classified above GS–15 of the General Schedule, notwithstanding section 5108(a) of title 5, United States Code. The primary functions of such positions shall be—

''(A) to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of such STRL; and

''(B) to carry out technical supervisory responsibilities.

''(2) APPOINTMENTS.—The positions described in paragraph (1) may be filled, and shall be managed, by the director of the STRL involved, under criteria established pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) [set out below], relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director of the laboratory involved shall determine the number of such positions at such laboratory, not to exceed 2 percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made.

''(3) SUNSET.—Appointments under this subsection may not be made after December 31, 2019.

''(g) REPORTING 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] an annual report on the operation of this section. Each such report shall include, for the period covered by such report—

''(1) the total number of individuals appointed under subsection (a)(1) during such period;

''(2) the total number of individuals appointed under subsection (a)(2) during such period; and

''(3) the total number of senior scientific technical managers at each STRL as of the end of such period.

''(h) EXCLUSION FROM PERSONNEL LIMITATIONS.—

''(1) IN GENERAL.—The director of an STRL shall manage the workforce strength, structure, positions, and compensation of such STRL—

''(A) without regard to any limitation on appointments, positions, or funding with respect to such STRL, subject to subparagraph (B); and

''(B) in a manner consistent with the budget available with respect to such STRL.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to Senior Executive Service positions (as defined in section 3132(a) of title 5, United States Code) or scientific and professional positions authorized under section 3104 of such title.''

REGIONAL ADVANCED TECHNOLOGY CLUSTERS

Pub. L. 112–239, div. A, title II, § 252, Jan. 2, 2013, 126 Stat. 1688, provided that:

''(a) DEVELOPMENT OF INNOVATIVE ADVANCED TECHNOLOGIES.—The Secretary of Defense may use the research and engineering network of the Department of Defense, including the organic industrial base, to support regional advanced technology clusters established by the Secretary of Commerce to encourage the development of innovative advanced technologies to address national security and homeland defense challenges.

''(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the appropriate congressional committees a report describing—

''(1) the participation of the Department of Defense in regional advanced technology clusters, including the number of—

''(A) clusters supported;

''(B) technologies developed and transitioned to acquisition programs;

''(C) products commercialized;

''(D) small businesses trained;

''(E) companies started; and

''(F) research and development facilities shared;

''(2) implementation by the Department of processes and tools to facilitate collaboration with the clusters;

''(3) agreements established by the Department with the Department of Commerce to jointly support the continued growth of the clusters;

''(4) methods to evaluate the effectiveness of technology cluster policies;

''(5) any additional required authorities and any impediments to supporting regional advanced technology clusters; and

''(6) the use of any agreements entered into under the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701 et seq.) and any access granted to facilities of the Department of Defense for research and development purposes.

''(c) COLLABORATION.—The Secretary of Defense may meet, collaborate, and share resources with other Federal agencies for purposes of assisting in the use and appropriate growth of regional advanced technology clusters under this section.

''(d) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(B) the Committee on Commerce, Science, and Transportation of the Senate; and

''(C) the Committee on Energy and Commerce of the House of Representatives.

''(2) The term 'regional advanced technology clusters' means geographic centers focused on building science and technology-based innovation capacity in areas of local and regional strength to foster economic growth and improve quality of life.''

ADVANCED ROTORCRAFT FLIGHT RESEARCH AND DEVELOPMENT

Pub. L. 112–81, div. A, title II, § 222, Dec. 31, 2011, 125 Stat. 1336, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of the Army may conduct a program for flight research and demonstration of advanced rotorcraft technology.

''(b) GOALS AND OBJECTIVES.—The goals and objectives of the program authorized by subsection (a) are as follows:

''(1) To flight demonstrate the ability of advanced rotorcraft technology to expand the flight envelope and improve the speed, range, payload, ceiling, survivability, reliability, and affordability of current and future rotorcraft of the Department of Defense.

''(2) To mature advanced rotorcraft technology and obtain flight-test data to—

''(A) support the assessment of such technology for future rotorcraft platform development programs of the Department; and

''(B) have the ability to add such technology to the existing rotorcraft of the Department to extend the capability and life of such rotorcraft until next-generation platforms are fielded.

''(c) ELEMENTS OF PROGRAM.—The program authorized by subsection (a) may include—

''(1) integration and demonstration of advanced rotorcraft technology to meet the goals and objectives described in subsection (b); and

''(2) flight demonstration of the advanced rotorcraft technology test bed under the experimental airworthiness process of the Federal Aviation Administration or other appropriate airworthiness process approved by the Secretary of Defense.

''(d) COMPETITION.—In awarding a contract under this section, the Secretary shall use competitive procedures in accordance with the requirements of section 2304 of title 10, United States Code, and shall consider a timely offer submitted by a small business concern (as defined in section 2225(f)(3) of such title) in accordance with the specifications and evaluation factors specified in the solicitation.''

PROGRAM FOR RESEARCH, DEVELOPMENT, AND DEPLOYMENT OF ADVANCED GROUND VEHICLES, GROUND VEHICLE SYSTEMS, AND COMPONENTS

Pub. L. 111–383, div. A, title II, § 214, Jan. 7, 2011, 124 Stat. 4164, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program for research and development on, and deployment of, advanced technology ground vehicles, ground vehicle systems, and components within the Department of Defense.

''(b) GOALS AND OBJECTIVES.—The goals and objectives of the program authorized by subsection (a) are as follows:

''(1) To identify and support technological advances that are necessary for the development of advanced technologies for use in ground vehicles of types to be used by the Department of Defense.

''(2) To procure and deploy significant quantities of advanced technology ground vehicles for use by the Department.

''(3) To maximize the leverage of Federal and nongovernment funds used for the development and deployment of advanced technology ground vehicles, ground vehicle systems, and components.

''(c) ELEMENTS OF PROGRAM.—The program authorized by subsection (a) may include—

''(1) enhanced research and development activities for advanced technology ground vehicles, ground vehicle systems, and components, including—

''(A) increased investments in research and development of batteries, advanced materials, power electronics, fuel cells and fuel cell systems, hybrid systems, and advanced engines;

''(B) pilot projects for the demonstration of advanced technologies in ground vehicles for use by the Department of Defense; and

''(C) the establishment of public-private partnerships, including research centers, manufacturing and prototyping facilities, and test beds, to speed the development, deployment, and transition to use of advanced technology ground vehicles, ground vehicle systems, and components; and

''(2) enhanced activities to procure and deploy advanced technology ground vehicles in the Department, including—

''(A) preferences for the purchase of advanced technology ground vehicles;

''(B) the use of authorities available to the Secretary of Defense to stimulate the development and production of advanced technology systems and ground vehicles through purchases, loan guarantees, and other mechanisms;

''(C) pilot programs to demonstrate advanced technology ground vehicles and associated infrastructure at select defense installations;

''(D) metrics to evaluate environmental and other benefits, life cycle costs, and greenhouse gas emissions associated with the deployment of advanced technology ground vehicles; and

''(E) schedules and objectives for the conversion of the ground vehicle fleet of the Department to advanced technology ground vehicles.

''(d) COOPERATION WITH INDUSTRY AND ACADEMIA.—

''(1) IN GENERAL.—The Secretary may carry out the program authorized by subsection (a) through partnerships and other cooperative agreements with private sector entities, including—

''(A) universities and other academic institutions;

''(B) companies in the automobile and truck manufacturing industry;

''(C) companies that supply systems and components to the automobile and truck manufacturing industry; and

''(D) any other companies or private sector entities that the Secretary considers appropriate.

''(2) NATURE OF COOPERATION.—The Secretary shall ensure that any partnership or cooperative agreement under paragraph (1) provides for private sector participants to collectively contribute, in cash or in kind, not less than one-half of the total cost of the activities carried out under such partnership or cooperative agreement.

''(e) COORDINATION WITH OTHER FEDERAL AGENCIES.—The program authorized by subsection (a) shall be carried out, to the maximum extent practicable, in coordination with the Department of Energy and other appropriate departments and agencies of the Federal Government.''

PILOT PROGRAM TO INCLUDE TECHNOLOGY PROTECTION FEATURES DURING RESEARCH AND DEVELOPMENT OF DEFENSE SYSTEMS

Pub. L. 111–383, div. A, title II, § 243, Jan. 7, 2011, 124 Stat. 4178, as amended by Pub. L. 112–81, div. A, title II, § 252, Dec. 31, 2011, 125 Stat. 1347; Pub. L. 113–66, div. A, title II, § 264, Dec. 26, 2013, 127 Stat. 726; Pub. L. 113–291, div. A, title II, § 231, Dec. 19, 2014, 128 Stat. 3332, provided that:

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

''(b) COST-SHARING.—Any contract for the design or development of a system resulting from activities under subsection (a) for the purpose of enhancing or enabling the exportability of the system either—

''(1) for the development of program protection strategies for the system; or

''(2) for the design and incorporation of exportability features into the system,

shall include a cost-sharing provision that requires the contractor to bear half of the cost of such activities, or such other portion of such cost as the Secretary considers appropriate upon showing of good cause.

''(c) ANNUAL REPORTS.—Not later than December 31 of each year in which the Secretary carries out the pilot program established under this section, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program, including a list of each designated system included in the program.

''(d) TERMINATION.—The pilot program established under this section shall terminate on October 1, 2020.

''(e) DEFINITIONS.—In this section:

''(1) The term 'designated system' means any system (including a major system, as defined in section 2302(5) of title 10, United States Code) that the Under Secretary of Defense for Acquisition, Technology, and Logistics designates as being included in the pilot program established under this section.

''(2) The term 'technology protection features' means the technical modifications necessary to protect critical program information, including anti-tamper technologies and other systems engineering activities intended to prevent or delay exploitation of critical technologies in a designated system.''

PROGRAM TO ASSESS THE UTILITY OF NON-LETHAL WEAPONS

Pub. L. 111–383, div. A, title X, § 1078, Jan. 7, 2011, 124 Stat. 4380, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should support the research, development, test, and evaluation, procurement, and fielding of effective non-lethal weapons and technologies explicitly designed to, with respect to counterinsurgency operations, reduce military casualties and fatalities, improve military mission accomplishment and operational effectiveness, reduce civilian casualties and fatalities, and minimize undesired damage to property and the environment.

''(b) PROGRAM REQUIRED.—

''(1) DEMONSTRATION AND ASSESSMENT.—The Secretary of Defense, acting through the Executive Agent for Non-lethal Weapons and in coordination with the Secretaries of the military departments and the combatant commanders, shall carry out a program to demonstrate and assess the utility and effectiveness of non-lethal weapons to provide escalation of force options in counter-insurgency operations.

''(2) NON-LETHAL WEAPONS EVALUATED.—In evaluating non-lethal weapons under the program under this subsection, the Secretary shall include non-lethal weapons designed for counter-personnel and counter-materiel missions.

''(c) REPORT.—

''(1) REPORT REQUIRED.—Not later than October 1, 2011, 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 the role and utility of non-lethal weapons and technologies in counterinsurgency operations.

''(2) ELEMENTS.—The report under paragraph (1) shall include the following:

''(A) A description of the results of any demonstrations and assessments of non-lethal weapons conducted during fiscal year 2011.

''(B) A description of the Secretary's plans for any demonstrations and assessments of non-lethal weapons to be conducted during fiscal years 2012 and 2013.

''(C) A description of the extent to which non-lethal weapons doctrine, training, and employment include the use of strategic communications strategies to enable the effective employment of non-lethal weapons.

''(D) A description of the input of the military departments in developing concepts of operations and tactics, techniques, and procedures for incorporating non-lethal weapons into the current escalation of force procedures of each department.

''(E) A description of the extent to which non-lethal weapons and technologies are integrated into the standard equipment and training of military units.''

MECHANISMS TO PROVIDE FUNDS FOR DEFENSE LABORATORIES FOR RESEARCH AND DEVELOPMENT OF TECHNOLOGIES FOR MILITARY MISSIONS

Pub. L. 110–417, [div. A], title II, § 219, Oct. 14, 2008, 122 Stat. 4389, as amended by Pub. L. 111–84, div. B, title XXVIII, § 2801(c), Oct. 28, 2009, 123 Stat. 2660; Pub. L. 112–81, div. A, title II, § 253, Dec. 31, 2011, 125 Stat. 1347; Pub. L. 113–66, div. A, title II, § 262(a), (b), Dec. 26, 2013, 127 Stat. 725, 726, provided that:

''(a) MECHANISMS TO PROVIDE FUNDS.—

''(1) IN GENERAL.—The Secretary of Defense, in consultation with the Secretaries of the military departments, shall establish mechanisms under which the director of a defense laboratory may use an amount of funds equal to not more than three percent of all funds available to the defense laboratory for the following purposes:

''(A) To fund innovative basic and applied research that is conducted at the defense laboratory and supports military missions.

''(B) To fund development programs that support the transition of technologies developed by the defense laboratory into operational use.

''(C) To fund workforce development activities that improve the capacity of the defense laboratory to recruit and retain personnel with needed scientific and engineering expertise.

''(D) To fund the revitalization[,] recapitalization, or minor military construction of the laboratory infrastructure, in accordance with subsection (b).

''(2) CONSULTATION REQUIRED.—The mechanisms established under paragraph (1) shall provide that funding shall be used under paragraph (1) at the discretion of the director of a defense laboratory in consultation with the science and technology executive of the military department concerned.

''(b) AVAILABILITY OF FUNDS FOR INFRASTRUCTURE PROJECTS.—

''(1) IN GENERAL.—Subject to the provisions of this subsection, funds available under a mechanism under subsection (a)(1)(D) that are solely intended to carry out a laboratory infrastructure project shall be available for such project until expended.

''(2) PRIOR NOTICE OF COSTS OF PROJECTS.—Funds shall be available in accordance with paragraph (1) for a project referred to in such paragraph only if the Secretary notifies the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the total cost of the project before the date on which the Secretary uses a mechanism under subsection (a)(1)(D) for such project.

''(3) ACCUMULATION OF FUNDS FOR PROJECTS.—Funds may accumulate under a mechanism under subsection (a) for a project referred to in paragraph (1) for not more than five years.

''(4) COST LIMIT COMPLIANCE.—The Secretary shall ensure that a project referred to in paragraph (1) for which funds are made available in accordance with such paragraph complies with the applicable cost limitations in the following provisions of law:

''(A) Section 2805(d) of title 10, United States Code, with respect to revitalization and recapitalization projects.

''(B) Section 2811 of such title, with respect to repair projects.

''(c) ANNUAL REPORT ON USE OF AUTHORITY.—Not later than March 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority under subsection (a) during the preceding year.

''(d) SUNSET.—The authority under subsection (a) shall expire on September 30, 2020.''

[Pub. L. 113–66, div. A, title II, §262(c), Dec. 26, 2013, 127 Stat. 726, provided that: ''Subsection (b) of such section 219 [section 219 of Pub. L. 110–417, set out above], as added by subsection (a)(3), shall apply with respect to funds made available under such section on or after the date of the enactment of this Act [Dec. 26, 2013].'']

SCIENCE AND TECHNOLOGY INVESTMENT STRATEGY TO DEFEAT OR COUNTER IMPROVISED EXPLOSIVE DEVICES

Pub. L. 110–417, [div. A], title XV, §1504, Oct. 14, 2008, 122 Stat. 4650, as amended by Pub. L. 112–81, div. A, title X, §1062(b), Dec. 31, 2011, 125 Stat. 1585; Pub. L. 112–239, div. A, title X, §1076(c)(2)(D), Jan. 2, 2013, 126 Stat. 1950, provided that:

''(a) STRATEGY REQUIRED.—The Director of the Joint Improvised Explosive Device Defeat Organization (JIEDDO), jointly with the Assistant Secretary of Defense for Research and Engineering, shall develop a comprehensive science and technology investment strategy for countering the threat of improvised explosive devices (IEDs).

''(b) ELEMENTS.—The strategy developed under subsection (a) shall include the following:

''(1) Identification of counter-IED capability gaps.

''(2) A taxonomy describing the major technical areas for the Department of Defense to address the counter-IED capability gaps and in which science and technology funding investments should be made.

''(3) Identification of funded programs to develop or mature technologies from or to the level of system or subsystem model or prototype demonstration in a relevant environment, and investment levels for those initiatives.

''(4) Identification of JIEDDO's mechanisms for coordinating Department of Defense and Federal Government science and technology activities in areas covered by the strategy.

''(5) Identification of technology transition mechanisms developed or utilized to efficiently transition technologies to acquisition programs of the Department of Defense or into operational use, including a summary of counter-IED technologies transitioned from JIEDDO, the military departments, and other Defense Agencies to the acquisition programs or into operational use.

''(6) Identification of high priority basic research efforts that should be addressed through JIEDDO or other Department of Defense activities to support development of next generation IED defeat capabilities.

''(7) Identification of barriers or issues, such as industrial base, workforce, or statutory or regulatory barriers, that could hinder the efficient and effective development and operational use of advanced IED defeat capabilities, and discussion of activities undertaken to address them.

''(8) Identification of the measures of effectiveness for the overall Department of Defense science and technology counter-IED effort.

''(9) Such other matters as the Director and the Assistant Secretary consider appropriate.''

HYPERSONICS DEVELOPMENT

Pub. L. 109–364, div. A, title II, §218, Oct. 17, 2006, 120 Stat. 2126, as amended by Pub. L. 112–81, div. A, title II, §241, Dec. 31, 2011, 125 Stat. 1343; Pub. L. 114–92, div. A, title X, §1079(f), Nov. 25, 2015, 129 Stat. 999, provided that:

''(a) ESTABLISHMENT OF JOINT TECHNOLOGY OFFICE ON HYPERSONICS.—The Secretary of Defense shall establish within the Office of the Secretary of Defense a joint technology office on hypersonics. The office shall carry out the program required under subsection (b), and shall have such other responsibilities relating to hypersonics as the Secretary shall specify.

''(b) PROGRAM ON HYPERSONICS.—The joint technology office established under subsection (a) shall carry out a program for the development of hypersonics for defense purposes.

''(c) RESPONSIBILITIES.—In carrying out the program required by subsection (b), the joint technology office established under subsection (a) shall do the following:

''(1) Coordinate and integrate current and future research, development, test, and evaluation programs and system demonstration programs of the Department of Defense on hypersonics.

''(2) Undertake appropriate actions to ensure—

''(A) close and continuous integration of the programs on hypersonics of the military departments with the programs on hypersonics of the Defense Agencies;

''(B) coordination of the programs referred to in subparagraph (A) with the programs on hypersonics of the National Aeronautics and Space Administration; and

''(C) that developmental testing resources are adequate and facilities are made available in a

timely manner to support hypersonics research, demonstration programs, and system development.

''(3) Approve demonstration programs on hypersonic systems.

''(4) Ensure that any demonstration program on hypersonic systems that is carried out in any year after its approval under paragraph (3) is carried out only if certified under subsection (e) as being consistent with the roadmap under subsection (d).

''(d) ROADMAP.—

''(1) ROADMAP REQUIRED.—The joint technology office established under subsection (a) shall develop, and every two years revise, a roadmap for the hypersonics programs of the Department of Defense.

''(2) COORDINATION.—The roadmap shall be developed and revised under paragraph (1) in coordination with the Joint Staff and in consultation with the National Aeronautics and Space Administration.

''(3) ELEMENTS.—The roadmap shall include the following matters:

''(A) Anticipated or potential mission requirements for hypersonics.

''(B) Short-term, mid-term, and long-term goals for the Department of Defense on hypersonics, which shall be consistent with the missions and anticipated requirements of the Department over the applicable period.

''(C) A schedule for meeting such goals, including—

''(i) the activities and funding anticipated to be required for meeting such goals; and

''(ii) the activities of the National Aeronautics and Space Administration to be leveraged by the Department to meet such goals.

''(D) The test and evaluation facilities required to support the activities identified in subparagraph (C), along with the schedule and funding required to upgrade those facilities, as necessary.

''(E) Acquisition transition plans for hypersonics.

''(e) ANNUAL REVIEW AND CERTIFICATION OF FUNDING.—

''(1) ANNUAL REVIEW.—The joint technology office established under subsection (a) shall conduct on an annual basis a review of—

''(A) the funding available for research, development, test, and evaluation and demonstration programs within the Department of Defense for hypersonics, in order to determine whether or not such funding is consistent with the roadmap developed under subsection (d); and

''(B) the hypersonics demonstration programs of the Department, in order to determine whether or not such programs avoid duplication of effort and support the goals of the Department in a manner consistent with the roadmap developed under subsection (d).

''(2) CERTIFICATION.—The joint technology office shall, as a result of each review under paragraph (1), certify to the Secretary whether or not the funding and programs subject to such review are consistent with the roadmap developed under subsection (d).

''(3) TERMINATION.—The requirements of this subsection shall terminate after the submittal to Congress of the budget for fiscal year 2016 pursuant to section 1105 of title 31, United States Code.''

COLLABORATIVE PROGRAM FOR RESEARCH AND DEVELOPMENT OF VACUUM ELECTRONICS TECHNOLOGIES

Pub. L. 108–375, div. A, title II, §212, Oct. 28, 2004, 118 Stat. 1832, as amended by Pub. L. 112–239, div. A, title X, §1076(c)(2)(A)(iii), Jan. 2, 2013, 126 Stat. 1950, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall establish a program for research and development in advanced vacuum electronics to meet the requirements of Department of Defense systems.

''(b) DESCRIPTION OF PROGRAM.—The program under subsection (a) shall be carried out collaboratively by the Assistant Secretary of Defense for Research and Engineering, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of the Army, and other appropriate elements of the Department of Defense. The program shall include the following activities:

''(1) Activities needed for development and maturation of advanced vacuum electronics technologies needed to meet the requirements of the Department of Defense.

''(2) Identification of legacy and developmental Department of Defense systems which may make use of advanced vacuum electronics under the program.

''(c) REPORT.—Not later than January 31, 2005, the Assistant Secretary of Defense for Research and Engineering shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the implementation of the program under subsection (a). The report shall include the following:

''(1) Identification of the organization to have lead responsibility for carrying out the program.

''(2) Assessment of the role of investing in vacuum electronics technologies as part of the overall strategy of the Department of Defense for investing in electronics technologies to meet the requirements of the Department.

''(3) The management plan and schedule for the program and any agreements relating to that plan.

''(4) Identification of the funding required for fiscal year 2006 and for the future-years defense program to carry out the program.

''(5) A list of program capability goals and objectives.

''(6) An outline of the role of basic and applied research in support of the development and maturation of advanced vacuum electronics technologies needed to meet the requirements of the Department of Defense.

''(7) Assessment of global capabilities in vacuum electronics technologies and the effect of those capabilities on the national security and economic competitiveness of the United States.''

DEPARTMENT OF DEFENSE PROGRAM TO EXPAND HIGH-SPEED, HIGH-BANDWIDTH CAPABILITIES FOR NETWORK-CENTRIC OPERATIONS

Pub. L. 108–136, div. A, title II, §234, Nov. 24, 2003, 117 Stat. 1423, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall carry out a program of research and development to promote the development of high-speed, high-bandwidth communications capabilities for support of network-centric operations by the Armed Forces.

''(b) PURPOSES.—The purposes of the program required by subsection (a) are as follows:

''(1) To accelerate the development and fielding by the Armed Forces of network-centric operational capabilities (including expanded use of unmanned vehicles, satellite communications, and sensors) through the promotion of research and development, and the focused coordination of programs, to achieve high-speed, high-bandwidth connectivity to military assets.

''(2) To provide for the development of equipment and technologies for military high-speed, high-bandwidth communications capabilities for support of network-centric operations.

''(c) DESCRIPTION OF PROGRAM.—In carrying out the program of research and development required by subsection (a), the Secretary shall—

''(1) identify areas of advanced wireless communications in which research and development, or the use of emerging technologies, has significant potential to improve the performance, efficiency, cost, and flexibility of advanced communications systems for support of network-centric operations;

''(2) develop a coordinated plan for research and development on—

''(A) improved spectrum access through spectrum-efficient communications for support of network-centric operations;

''(B) high-speed, high-bandwidth communications;

''(C) networks, including complex ad hoc adaptive network structures;

''(D) communications devices, including efficient receivers and transmitters;

''(E) computer software and wireless communication applications, including robust security and encryption; and

''(F) any other matters that the Secretary considers appropriate for the purposes described in subsection (b);

''(3) ensure joint research and development, and promote joint systems acquisition and deployment, among the military departments and defense agencies, including the development of common cross-service technology requirements and doctrine, so as to enhance interoperability among the military services and defense agencies;

''(4) conduct joint experimentation among the Armed Forces, and coordinate with the Joint Forces Command, on experimentation to support the development of network-centric warfare capabilities from the operational to the small unit level in the Armed Forces;

''(5) consult with other Federal entities and with private industry to develop cooperative research and development efforts, to the extent that such efforts are practicable.

''(d) REPORT.—(1) The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives], together with the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2006 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), a report on the activities carried out under this section through the date on which the report is submitted.

''(2) The report under paragraph (1) shall include the following:

''(A) A description of the research and development activities carried out under subsection (a), including the particular activities carried out under the plan required by subsection (c)(2).

''(B) Current and proposed funding for the particular activities carried out under that plan, as set forth in each of subparagraphs (A) through (F) of subsection (c)(2).

''(C) A description of the joint research and development activities required by subsection (c)(3).

''(D) A description of the joint experimentation activities required by subsection (c)(4).

''(E) An analysis of the effects on recent military operations of limitations on communications bandwidth and access to radio frequency spectrum.

''(F) An assessment of the effect of additional resources on the ability to achieve the purposes described in subsection (b).

''(G) Such recommendations for additional activities under this section as the Secretary considers appropriate to meet the purposes described in subsection (b).''

RESEARCH AND DEVELOPMENT OF DEFENSE BIOMEDICAL COUNTERMEASURES

Pub. L. 108–136, div. A, title XVI, §1601, Nov. 24, 2003, 117 Stat. 1680, as amended by Pub. L. 112–81, div. A, title X, §1062(g)(3), Dec. 31, 2011, 125 Stat. 1585; Pub. L. 113–291, div. A, title X, §1071(b)(5)(B), Dec. 19, 2014, 128 Stat. 3507; Pub. L. 114–92, div. A, title VIII, §815(d), Nov. 25, 2015, 129 Stat. 896, provided that:

''(a) IN GENERAL.—The Secretary of Defense (in this section referred to as the 'Secretary') shall carry out a program to accelerate the research, development and procurement of biomedical countermeasures, including but not limited to therapeutics and vaccines, for the protection of the Armed Forces from attack by one or more biological, chemical, radiological, or nuclear agents.

''(b) INTERAGENCY COOPERATION.—(1) In carrying out the program under subsection (a), the Secretary may enter into interagency agreements and other collaborative undertakings with other Federal agencies.

''(2) The Secretary, through regular, structured, and close consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security, shall ensure that the activities of the Department of Defense in carrying out the program are coordinated with, complement, and do not unnecessarily duplicate activities of the Department of Health and Human Services or the Department of Homeland Security.

''(c) EXPEDITED PROCUREMENT AUTHORITY.—(1) For any procurement of property or services for use (as determined by the Secretary) in performing, administering, or supporting biomedical countermeasures research and development, the Secretary may, when appropriate, use streamlined acquisition procedures and other expedited procurement procedures authorized in—

''(A) section 1903 of title 41, United States Code; and

''(B) sections 2371 and 2371b of title 10, United States Code.

''(2) Notwithstanding paragraph (1) and the provisions of law referred to in such paragraph, each of the following provisions shall apply to the procurements described in this subsection to the same extent that such provisions would apply to such procurements in the absence of paragraph (1):

''(A) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

''(B) Section 8703(a) of title 41, United States Code.

''(C) Section 2313 of title 10, United States Code (relating to the examination of contractor records).

''(3) The Secretary shall institute appropriate internal controls for use of the authority under paragraph (1), including requirements for documenting the justification for each use of such authority.

''(d) DEPARTMENT OF DEFENSE FACILITIES AUTHORITY.—(1) If the Secretary determines that it is necessary to acquire, lease, construct, or improve laboratories, research facilities, and other real property of the Department of Defense in order to carry out the program under this section, the Secretary may do so using the procedures set forth in paragraphs (2), (3), (4), and (5).

''(2) The Secretary shall use existing construction authorities provided by subchapter I of chapter 169 of title 10, United States Code, to the maximum extent possible.

''(3)(A) If the Secretary determines that use of authorities in paragraph (2) would prevent the Department from meeting a specific facility requirement for the program, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] advance notification, which shall include the following:

''(i) Certification by the Secretary that use of existing construction authorities would prevent the Department from meeting the specific facility requirement.

''(ii) A detailed explanation of the reasons why existing authorities cannot be used.

''(iii) A justification of the facility requirement.

''(iv) Construction project data and estimated cost.

''(v) Identification of the source or sources of the funds proposed to be expended.

''(B) The facility project may be carried out only after the end of the 21-day period beginning on the date the notification is received by the congressional defense committees.

''(4) If the Secretary determines: (A) that the facility is vital to national security or to the protection of health, safety, or the quality of the environment; and (B) the requirement for the facility is so urgent that the advance notification in paragraph (3) and the subsequent 21-day deferral of the facility project would threaten the life, health, or safety of personnel, or would otherwise jeopardize national security, the Secretary may obligate funds for the facility and notify the congressional defense committees within seven

days after the date on which appropriated funds are obligated with the information required in paragraph (3).

''(5) Nothing in this section shall be construed to authorize the Secretary to acquire, construct, lease, or improve a facility having general utility beyond the specific purposes of the program.

''(6) In this subsection, the term 'facility' has the meaning given the term in section 2801(c) of title 10, United States Code.

''(e) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—(1) Subject to paragraph (2), the authority provided by section 1091 of title 10, United States Code, for personal services contracts to carry out health care responsibilities in medical treatment facilities of the Department of Defense shall also be available, subject to the same terms and conditions, for personal services contracts to carry out research and development activities under this section. The number of individuals whose personal services are obtained under this subsection may not exceed 30 at any time.

''(2) The authority provided by such section 1091 may not be used for a personal services contract unless the contracting officer for the contract ensures that—

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

''(B) it would not be practicable for the Department of Defense to obtain such services by other measures.

''(f) STREAMLINED PERSONNEL AUTHORITY.—(1) The Secretary may appoint highly qualified experts, including scientific and technical personnel, to carry out research and development under this section in accordance with the authorities provided in section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261 [5 U.S.C. 3104 note]), and section 1101 of this Act [enacting chapter 99 of Title 5, Government Organization and Employees, and provisions set out as a note under section 9901 of Title 5].

''(2) The Secretary may use the authority under paragraph (1) only upon a determination by the Secretary that use of such authority is necessary to accelerate the research and development under the program.

''(3) The Secretary shall institute appropriate internal controls for each use of the authority under paragraph (1).''

Pub. L. 107–107, div. A, title X, §1044(a), Dec. 28, 2001, 115 Stat. 1219, provided that:

''(1) The Secretary of Defense shall carry out a program to aggressively accelerate the research, development, testing, and licensure of new medical countermeasures for defense against the biological warfare agents that are the highest threat.

''(2) The program shall include the following activities:

''(A) As the program's first priority, investment in multiple new technologies for medical countermeasures for defense against the biological warfare agents that are the highest threat, including for the prevention and treatment of anthrax.

''(B) Leveraging of ideas and technologies from the biological technology industry.''

VEHICLE FUEL CELL PROGRAM

Pub. L. 107–314, div. A, title II, §245, Dec. 2, 2002, 116 Stat. 2500, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program for the development of vehicle fuel cell technology.

''(b) GOALS AND OBJECTIVES.—The goals and objectives of the program shall be as follows:

''(1) To identify and support technological advances that are necessary for the development of fuel cell technology for use in vehicles of types to be used by the Department of Defense.

''(2) To ensure that critical technology advances are shared among the various fuel cell technology programs within the Federal Government.

''(3) To maximize the leverage of Federal funds that are used for the development of fuel cell technology.

''(c) CONTENT OF PROGRAM.—The program shall include—

''(1) development of vehicle propulsion technologies and fuel cell auxiliary power units, together with pilot projects for the demonstration of such technologies, as appropriate; and

''(2) development of technologies necessary to address critical issues with respect to vehicle fuel cells, such as issues relating to hydrogen storage and hydrogen fuel infrastructure.

''(d) COOPERATION WITH INDUSTRY.—(1) The Secretary shall carry out the program in cooperation with companies selected by the Secretary. The Secretary shall select such companies from among—

''(A) companies in the automobile and truck manufacturing industry;

''(B) companies in the business of supplying systems and components to that industry; and

''(C) companies in any other industries that the Secretary considers appropriate.

''(2) The Secretary may enter into a cooperative agreement with one or more companies selected under paragraph (1) to establish an entity for carrying out activities required by subsection (c).

''(3) The Secretary shall ensure that companies referred to in paragraph (1) collectively contribute, in cash or in kind, not less than one-half of the total cost of carrying out the program under this section.

''(e) COORDINATION WITH OTHER FEDERAL AGENCIES.—The Secretary shall carry out the program using a coordinating mechanism for sharing information and resources with the Department of Energy and other Federal agencies.

''(f) INTIAL [SIC] FUNDING.—Of the funds authorized to be appropriated by section 201(4) [116 Stat. 2479], $10,000,000 shall be available for the program required by this section.''

DEFENSE NANOTECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

Pub. L. 107–314, div. A, title II, §246, Dec. 2, 2002, 116 Stat. 2500, as amended by Pub. L. 110–181, div. A, title II, §240, Jan. 28, 2008, 122 Stat. 48; Pub. L. 111–84, div. A, title II, §242, Oct. 28, 2009, 123 Stat. 2237; Pub. L. 112–239, div. A, title X, §1076(c)(2)(A)(iv), Jan. 2, 2013, 126 Stat. 1950, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a defense nanotechnology research and development program.

''(b) PURPOSES.—The purposes of the program are as follows:

''(1) To ensure United States global superiority in nanotechnology necessary for meeting national security requirements.

''(2) To coordinate all nanoscale research and development within the Department of Defense, and to provide for interagency cooperation and collaboration on nanoscale research and development between the Department of Defense and other departments and agencies of the United States that are involved in the National Nanotechnology Initiative and with the National Nanotechnology Coordination Office under section 3 of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7502).

''(3) To develop and manage a portfolio of nanotechnology research and development initiatives that is stable, consistent, and balanced across scientific disciplines.

''(4) To accelerate the transition and deployment of technologies and concepts derived from nanoscale research and development into the Armed Forces, and to establish policies, procedures, and standards for measuring the success of such efforts.

''(5) To collect, synthesize, and disseminate critical information on nanoscale research and development.

''(c) ADMINISTRATION.—In carrying out the program, the Secretary shall act through the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall supervise the planning, management, and coordination of the program. The Under Secretary, in

consultation with the Secretaries of the military departments and the heads of participating Defense Agencies and other departments and agencies of the United States, shall—

''(1) prescribe a set of long-term challenges and a set of specific technical goals for the program;

''(2) develop a coordinated and integrated research and investment plan for meeting the long-term challenges and achieving the specific technical goals that builds upon investments by the Department and other departments and agencies participating in the National Nanotechnology Initiative in nanotechnology research and development;

''(3) develop memoranda of agreement, joint funding agreements, and other cooperative arrangements necessary for meeting the long-term challenges and achieving the specific technical goals; and

''(4) oversee Department of Defense participation in interagency coordination of the program with other departments and agencies participating in the National Nanotechnology Initiative.

''(d) STRATEGIC PLAN.—The Under Secretary shall develop and maintain a strategic plan for defense nanotechnology research and development that—

''(1) is integrated with the strategic plan for the National Nanotechnology Initiative and the strategic plans of the Assistant Secretary of Defense for Research and Engineering, the military departments, and the Defense Agencies; and

''(2) includes a clear strategy for transitioning the research into products needed by the Department.

''(e) REPORTS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the National Science and Technology Council information on the program that covers the information described in paragraphs (1) through (5) of section 2(d) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(d)) to be included in the annual report submitted by the Council under that section.''

REPORT ON WEAPONS AND CAPABILITIES TO DEFEAT HARDENED AND DEEPLY BURIED TARGETS

Pub. L. 107–314, div. A, title X, §1032, Dec. 2, 2002, 116 Stat. 2643, as amended by Pub. L. 108–136, div. C, title XXXI, §3135, Nov. 24, 2003, 117 Stat. 1752, as amended by Pub. L. 110–181, div. A, title X, §1041, Jan. 28, 2008, 122 Stat. 310; Pub. L. 111–383, div. A, title X, §1075(j), Jan. 7, 2011, 124 Stat. 4378, provided that:

''(a) REPORT.—Not later than March 1, 2009, and every two years thereafter, the Secretary of Defense, the Secretary of Energy, and the Director of National Intelligence shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on the research and development, procurement, and other activities undertaken during the preceding two fiscal years and planned for the current fiscal year and the next fiscal year by the Department of Defense, the Department of Energy, and the intelligence community to develop weapons and capabilities to defeat hardened and deeply buried targets.

''(b) REPORT ELEMENTS.—A report submitted under subsection (a) shall—

''(1) include a discussion of the integration and interoperability of the activities referred to in that subsection that were or will be undertaken during the four-fiscal-year period covered by the report, including a discussion of the relevance of such activities to applicable recommendations by the Chairman of the Joint Chiefs of Staff, assisted under section 181(b) of title 10, United States Code, by the Joint Requirements Oversight Council; and

''(2) set forth separately a description of the activities referred to in that subsection, if any, that were or will be undertaken during the four-fiscal-year period covered by the report by each element of—

''(A) the Department of Defense;

''(B) the Department of Energy; and

''(C) the intelligence community.

''(c) DEFINITION.—In this section, the term 'intelligence community' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) [now 50 U.S.C. 3003(4)].

''(d) TERMINATION.—No report is required under this section after the submission of the report that is due on March 1, 2013.

''(e) INTEGRATION ACTIVITIES IN FISCAL YEAR 2003 WITH RESPECT TO RNEP.—The report under subsection (a) that is due on April 1, 2004, shall include, in addition to the elements specified in subsection (b), a description of the integration and interoperability of the research and development, procurement, and other activities undertaken during fiscal year 2003 by the Department of Defense and the Department of Energy with respect to the Robust Nuclear Earth Penetrator.''

PILOT PROGRAMS FOR REVITALIZING LABORATORIES AND TEST AND EVALUATION CENTERS OF DEPARTMENT OF DEFENSE

Pub. L. 107–314, div. A, title II, §241, Dec. 2, 2002, 116 Stat. 2492, provided that:

''(a) ADDITIONAL PILOT PROGRAM.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense.

''(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation laboratory, of each military department with authority for the following:

''(A) To use innovative methods of personnel management appropriate for ensuring that the selected laboratories can—

''(i) employ and retain a workforce appropriately balanced between permanent and temporary personnel and among workers with appropriate levels of skills and experience; and

''(ii) effectively shape workforces to ensure that the workforces have the necessary sets of skills and experience to fulfill their organizational missions.

''(B) To develop or expand innovative methods of entering into and expanding cooperative relationships and arrangements with private sector organizations, educational institutions (including primary and secondary schools), and State and local governments to facilitate the training of a future scientific and technical workforce that will contribute significantly to the accomplishment of organizational missions.

''(C) To develop or expand innovative methods of establishing cooperative relationships and arrangements with private sector organizations and educational institutions to promote the establishment of the technological industrial base in areas critical for Department of Defense technological requirements.

''(D) To waive any restrictions not required by law that apply to the demonstration and implementation of methods for achieving the objectives set forth in subparagraphs (A), (B), and (C).

''(3) The Secretary may carry out the pilot program under this subsection at each selected laboratory for a period of three years beginning not later than March 1, 2003.

''(b) RELATIONSHIP TO FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS.—The pilot program under this section is in addition to, but may be carried out in conjunction with, the fiscal years 1999 and 2000 revitalization pilot programs.

''(c) REPORTS.—(1) Not later than January 1, 2003, the Secretary shall submit to Congress a report on the experience under the fiscal years 1999 and 2000 revitalization pilot programs in exercising the authorities provided for the administration of those programs. The report shall include a description of—

''(A) barriers to the exercise of the authorities that have been encountered;

''(B) the proposed solutions for overcoming the barriers; and

''(C) the progress made in overcoming the barriers.

''(2) Not later than September 1, 2003, the Secretary of Defense shall submit to Congress a report on the implementation of the pilot program under subsection (a) and the fiscal years 1999 and 2000 revitalization pilot programs. The report shall include, for each such pilot program, the following:

''(A) Each laboratory selected for the pilot program.

''(B) To the extent practicable, a description of the innovative methods that are to be tested at each laboratory.

''(C) The criteria to be used for measuring the success of each method to be tested.

''(3) Not later than 90 days after the expiration of the period for the participation of a laboratory in a pilot program referred to in paragraph (2), the Secretary of Defense shall submit to Congress a final report on the participation of that laboratory in the pilot program. The report shall include the following:

''(A) A description of the methods tested.

''(B) The results of the testing.

''(C) The lessons learned.

''(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at that laboratory under the pilot program.

''(d) EXTENSION OF AUTHORITY FOR OTHER REVITALIZATION PILOT PROGRAMS.—(1) [Amended section 246(a)(4) of Pub. L. 105–261, formerly set out as a note below.]

''(2) [Amended section 245(a)(4) of Pub. L. 106–65, formerly set out as a note below.]

''(e) PARTNERSHIPS UNDER PILOT PROGRAM.—(1) The Secretary of Defense may authorize one or more laboratories and test centers participating in the pilot program under subsection (a) or in one of the fiscal years 1999 and 2000 revitalization pilot programs to enter into a cooperative arrangement (in this subsection referred to as a 'public-private partnership') with entities in the private sector and institutions of higher education for the performance of work.

''(2) A competitive process shall be used for the selection of entities outside the Government to participate in a public-private partnership.

''(3)(A) Not more than one public-private partnership may be established as a limited liability company.

''(B) An entity participating in a limited liability company as a party to a public-private partnership under the pilot program may contribute funds to the company, accept contributions of funds for the company, and provide materials, services, and use of facilities for research, technology, and infrastructure of the company, if it is determined under regulations prescribed by the Secretary of Defense that doing so will improve the efficiency of the performance of research, test, and evaluation functions of the Department of Defense.

''(f) FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS DEFINED.—In this section, the term 'fiscal years 1999 and 2000 revitalization pilot programs' means—

''(1) the pilot programs authorized by section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1955; [former] 10 U.S.C. 2358 note); and

''(2) the pilot programs authorized by section 245 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 552; [former] 10 U.S.C. 2358 note).''

Pub. L. 106–65, div. A, title II, § 245, Oct. 5, 1999, 113 Stat. 552, as amended by Pub. L. 107–314, div. A, title II, § 241(d)(2), Dec. 2, 2002, 116 Stat. 2493, authorized the Secretary of Defense to carry out a pilot program for up to five years beginning not later than Mar. 1, 2000, to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense, and directed the Secretary to submit to Congress a report on the implementation of the program not later than Mar. 1, 2000, and a final report promptly after the expiration of the period for participation in the program.

Pub. L. 105–261, div. A, title II, § 246, Oct. 17, 1998, 112 Stat. 1955, as amended by Pub. L. 107–314, div. A, title II, § 241(d)(1), Dec. 2, 2002, 116 Stat. 2493, authorized the Secretary of Defense to carry out a pilot program for up to six years beginning not later than Mar. 1, 1999, to demonstrate improved cooperative relationships with universities and other private sector entities for the performance of research and development functions, and directed the Secretary to submit a report on the implementation of the program to Congress not later than Mar. 1, 1999, and a final report on participation in the program promptly after the expiration of the period for participation.

DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

Pub. L. 105–18, title I, § 307, June 12, 1997, 111 Stat. 169, provided that: ''For the purposes of implementing the 1997 Defense Experimental Program to Stimulate Competitive Research (DEPSCoR), the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands of the United States, American Samoa and the Commonwealth of the Northern Mariana Islands.''

Pub. L. 103–337, div. A, title II, § 257, Oct. 5, 1994, 108 Stat. 2705, as amended by Pub. L. 104–106, div. A, title II, § 273, Feb. 10, 1996, 110 Stat. 239; Pub. L. 104–201, div. A, title II, § 264, Sept. 23, 1996, 110 Stat. 2465; Pub. L. 105–85, div. A, title II, § 243, Nov. 18, 1997, 111 Stat. 1667; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 107–314, div. A, title II, § 247, Dec. 2, 2002, 116 Stat. 2502; Pub. L. 110–181, div. A, title II, § 239, Jan. 28, 2008, 122 Stat. 48; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(v), Jan. 2, 2013, 126 Stat. 1950, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering, shall carry out a Defense Experimental Program to Stimulate Competitive Research (DEPSCoR) as part of the university research programs of the Department of Defense.

''(b) PROGRAM OBJECTIVES.—The objectives of the program are as follows:

''(1) To enhance the capabilities of institutions of higher education in eligible States to develop, plan, and execute science and engineering research that is competitive under the peer-review systems used for awarding Federal research assistance.

''(2) To increase the probability of long-term growth in the competitively awarded financial assistance that institutions of higher education in eligible States receive from the Federal Government for science and engineering research.

''(c) PROGRAM ACTIVITIES.—In order to achieve the program objectives, the following activities are authorized under the program:

''(1) Competitive award of grants for research and instrumentation to support such research.

''(2) Competitive award of financial assistance for graduate students.

''(3) Any other activities that are determined necessary to further the achievement of the objectives of the program.

''(d) ELIGIBLE STATES.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate which States are eligible States for the purposes of this section.

''(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate a State as an eligible State if, as determined by the Under Secretary—

''(A) the average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the State for the three fiscal years preceding the fiscal year for which the designation is effective or for the last three fiscal years for which statistics are available is less than

the amount determined by multiplying 60 percent times the amount equal to 1/50 of the total average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the United States for such three preceding or last fiscal years, as the case may be; and

''(B) the State has demonstrated a commitment to developing research bases in the State and to improving science and engineering research and education programs at institutions of higher education in the State.

''(e) COORDINATION WITH SIMILAR FEDERAL PROGRAMS.—(1) The Secretary shall consult with the Director of the National Science Foundation and the Director of the Office of Science and Technology Policy in the planning, development, and execution of the program and shall coordinate the program with the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation and with similar programs sponsored by other departments and agencies of the Federal Government.

''(2) All solicitations under the Defense Experimental Program to Stimulate Competitive Research may be made to, and all awards may be made through, the State committees established for purposes of the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation.

''(3) A State committee referred to in paragraph (2) shall ensure that activities carried out in the State of that committee under the Defense Experimental Program to Stimulate Competitive Research are coordinated with the activities carried out in the State under other similar initiatives of the Federal Government to stimulate competitive research.

''(f) STATE DEFINED.—In this section, the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.''

DEFENSE LABORATORIES PERSONNEL DEMONSTRATION PROJECTS

Pub. L. 111–84, div. A, title XI, §1105, Oct. 28, 2009, 123 Stat. 2486, as amended by Pub. L. 113–291, div. A, title XI, §1103, Dec. 19, 2014, 128 Stat. 3525, provided that:

''(a) DESIGNATION OF LABORATORIES.—Each of the following is hereby designated as a Department of Defense science and technology reinvention laboratory (as described in section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) [set out below], as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001):

''(1) The Aviation and Missile Research Development and Engineering Center.

''(2) The Army Research Laboratory.

''(3) The Medical Research and Materiel Command.

''(4) The Engineer Research and Development Command.

''(5) The Communications-Electronics Command.

''(6) The Soldier and Biological Chemical Command.

''(7) The Naval Sea Systems Command Centers.

''(8) The Naval Research Laboratory.

''(9) The Office of Naval Research.

''(10) The Air Force Research Laboratory.

''(11) The Tank and Automotive Research Development and Engineering Center.

''(12) The Armament Research Development and Engineering Center.

''(13) The Naval Air Warfare Center, Weapons Division.

''(14) The Naval Air Warfare Center, Aircraft Division.

''(15) The Space and Naval Warfare Systems Center, Pacific.

''(16) The Space and Naval Warfare Systems Center, Atlantic.

''(17) The laboratories within the Army Research Development and Engineering Command.

''(18) The Army Research Institute for the Behavioral and Social Sciences.

''(19) The Space and Missile Defense Command Technical Center.

''(b) CONVERSION PROCEDURES.—The Secretary of Defense shall implement procedures to convert the civilian personnel of each Department of Defense science and technology reinvention laboratory, as so designated by subsection (a), from the personnel system which applies as of the date of the enactment of this Act [Oct. 28, 2009] to the personnel system under an appropriate demonstration project (as referred to in such section 342(b)). Any conversion under this subsection—

''(1) shall not adversely affect any employee with respect to pay or any other term or condition of employment;

''(2) shall be consistent with section 4703(f) of title 5, United States Code;

''(3) shall be completed within 18 months after the date of the enactment of this Act; and

''(4) shall not apply to prevailing rate employees (as defined by section 5342(a)(2) of title 5, United States Code) or senior executives (as defined by section 3132(a)(3) of such title).

''(c) LIMITATION.—The science and technology reinvention laboratories, as so designated by subsection (a), may not implement any personnel system, other than a personnel system under an appropriate demonstration project (as referred to in such section 342(b) [set out below]), without prior congressional authorization.''

Pub. L. 110–181, div. A, title XI, §1107, Jan. 28, 2008, 122 Stat. 357, as amended by Pub. L. 110–417, [div. A], title XI, §1109, Oct. 14, 2008, 122 Stat. 4618; Pub. L. 111–84, div. A, title X, §1073(d), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 111–383, div. A, title XI, §1101(b), Jan. 7, 2011, 124 Stat. 4382; Pub. L. 112–81, div. A, title X, §1066(b)(2), Dec. 31, 2011, 125 Stat. 1588, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall take all necessary actions to fully implement and use the authorities provided to the Secretary under section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) [set out below], as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–315), to carry out personnel management demonstration projects at Department of Defense laboratories designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as Department of Defense science and technology reinvention laboratories.

''(b) PROCESS FOR FULL IMPLEMENTATION.—The Secretary of Defense shall also implement a process and implementation plan to fully utilize the authorities described in subsection (a) to enhance the performance of the missions of the laboratories.

''(c) OTHER LABORATORIES.—Any flexibility available to any demonstration laboratory shall be available for use at any other laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486) as a Department of Defense science and technology reinvention laboratory.

''(d) SUBMISSION OF LIST AND DESCRIPTION.—Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report containing a list and description of the demonstration project notices, amendments, and changes requested by the laboratories during the preceding calendar year. The list shall include all approved and disapproved notices, amendments, and changes, and the reasons for disapproval or delay in approval.

''(e) STATUS REPORTS.—

''(1) IN GENERAL.—The Secretary shall include in each report under subsection (d) the information described in paragraph (2).

''(2) INFORMATION REQUIRED.—Each report under subsection (d) shall describe the following:

''(A) The actions taken by the Secretary of Defense under subsection (a) during the year covered by the report.

''(B) The progress made by the Secretary of Defense during such year in developing and implementing the plan required by subsection (b), including the anticipated date for completion of such plan and a list and description of any issues relating to the development or implementation of such plan.

''(C) With respect to any applications by any Department of Defense laboratories seeking to be designated as a demonstration laboratory or to otherwise obtain any of the personnel flexibilities available to a demonstration laboratory—

''(i) the number of applications that were received, pending, or acted on during such year;

''(ii) the status or disposition of any applications under clause (i), including, in the case of any application on which a final decision was rendered, the laboratory involved, what the laboratory had requested, the decision reached, and the reasons for the decision; and

''(iii) in the case of any applications under clause (i) on which a final decision was not rendered, the date by which a final decision is anticipated.

''(3) DEFINITION.—For purposes of this subsection, the term 'demonstration laboratory' means a laboratory designated by the Secretary of Defense under the provisions of section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 [Pub. L. 103–337, set out below] (as cited in subsection (a)).''

Pub. L. 103–337, div. A, title III, § 342(b), Oct. 5, 1994, 108 Stat. 2721, as amended by Pub. L. 106–65, div. A, title XI, § 1109, Oct. 5, 1999, 113 Stat. 779; Pub. L. 106–398, § 1 [[div. A], title XI, § 1114], Oct. 30, 2000, 114 Stat. 1654, 1654A–315, provided that:

''(1) The Secretary of Defense may carry out personnel demonstration projects at Department of Defense laboratories designated by the Secretary as Department of Defense science and technology reinvention laboratories.

''(2)(A) Each personnel demonstration project carried out under the authority of paragraph (1) shall be generally similar in nature to the China Lake demonstration project.

''(B) For purposes of subparagraph (A), the China Lake demonstration project is the demonstration project that is authorized by section 6 of the Civil Service Miscellaneous Amendments Act of 1983 [Pub. L. 98–224, 98 Stat. 49] to be continued at the Naval Weapons Center, China Lake, California, and at the Naval Ocean Systems Center, San Diego, California.

''(3) If the Secretary carries out a demonstration project at a laboratory pursuant to paragraph (1), section 4703 of title 5, United States Code, shall apply to the demonstration project, except that—

''(A) subsection (d) of such section 4703 shall not apply to the demonstration project;

''(B) the authority of the Secretary to carry out the demonstration project is that which is provided in paragraph (1) rather than the authority which is provided in such section 4703; and

''(C) the Secretary shall exercise the authorities granted to the Office of Personnel Management under such section 4703.

''(4) The employees of a laboratory covered by a personnel demonstration project carried out under this section [enacting this note] shall be exempt from, and may not be counted for the purposes of, any constraint or limitation in a statute or regulation in terms of supervisory ratios or maximum number of employees in any specific category or categories of employment that may otherwise be applicable to the employees. The employees shall be managed by the director of the laboratory subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(5) The limitations in section 5373 of title 5, United States Code, do not apply to the authority of the Secretary under this section to prescribe salary schedules and other related benefits.''

INCLUSION OF WOMEN AND MINORITIES IN CLINICAL RESEARCH PROJECTS

Pub. L. 103–160, div. A, title II, § 252, Nov. 30, 1993, 107 Stat. 1607, provided that:

''(a) GENERAL RULE.—In conducting or supporting clinical research, the Secretary of Defense shall ensure that—

''(1) women who are members of the Armed Forces are included as subjects in each project of such research; and

''(2) members of minority groups who are members of the Armed Forces are included as subjects of such research.

''(b) WAIVER AUTHORITY.—The requirement in subsection (a) regarding women and members of minority groups who are members of the Armed Forces may be waived by the Secretary of Defense with respect to a project of clinical research if the Secretary determines that the inclusion, as subjects in the project, of women and members of minority groups, respectively—

''(1) is inappropriate with respect to the health of the subjects;

''(2) is inappropriate with respect to the purpose of the research; or

''(3) is inappropriate under such other circumstances as the Secretary of Defense may designate.

''(c) REQUIREMENT FOR ANALYSIS OF RESEARCH.—In the case of a project of clinical research in which women or members of minority groups will under subsection (a) be included as subjects of the research, the Secretary of Defense shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.''

UNIVERSITY RESEARCH INITIATIVE SUPPORT PROGRAM

Pub. L. 103–160, div. A, title VIII, § 802, Nov. 30, 1993, 107 Stat. 1701, as amended by Pub. L. 104–106, div. A, title II, § 275, Feb. 10, 1996, 110 Stat. 241; Pub. L. 104–201, div. A, title II, § 263, Sept. 23, 1996, 110 Stat. 2465; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(E), Jan. 2, 2013, 126 Stat. 1950, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense, through the Assistant Secretary of Defense for Research and Engineering, may establish a University Research Initiative Support Program.

''(b) PURPOSE.—Under the program, the Assistant Secretary may award grants and contracts to eligible institutions of higher education to support the conduct of research and development relevant to requirements of the Department of Defense.

''(c) ELIGIBILITY.—An institution of higher education is eligible for a grant or contract under the program if the institution has received less than a total of $2,000,000 in grants and contracts from the Department of Defense in the two most recent fiscal years for which complete statistics are available when proposals are requested for such grant or contract.

''(d) COMPETITION REQUIRED.—The Assistant Secretary shall use competitive procedures in awarding grants and contracts under the program.

''(e) SELECTION PROCESS.—In awarding grants and contracts under the program, the Assistant Secretary shall use a merit-based selection process that is consistent with the provisions of section 2361(a) of title 10, United States Code.

''(f) REGULATIONS.—The Assistant Secretary shall prescribe regulations for carrying out the program.

''(g) FUNDING.—Of the amounts authorized to be appropriated under section 201 [107 Stat. 1583], $20,000,000 shall be available for the University Research Initiative Support Program.''

INDEPENDENT RESEARCH AND DEVELOPMENT; BID AND PROPOSAL COSTS; NEGOTIATION OF ADVANCE AGREEMENTS WITH CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 91–441, title II, § 203, Oct. 7, 1970, 84 Stat. 906, as amended by Pub. L. 96–342, title II, § 208, Sept. 8, 1980,

94 Stat. 1081, provided that no funds authorized to be appropriated to Department of Defense by this or any other Act were to be used to finance independent research and development or bid and proposal costs unless such work had, in opinion of Secretary of Defense, potential relationship to military functions or operations, and advance agreements regarding payment for such work had been negotiated, prior to repeal by Pub. L. 101–510, div. A, title VIII, §824(b), Nov. 5, 1990, 104 Stat. 1604. See section 2372 of this title.

RELATIONSHIP OF RESEARCH PROJECTS OR STUDIES TO MILITARY FUNCTION OR OPERATION

Pub. L. 91–441, title II, §204, Oct. 7, 1970, 84 Stat. 908, which provided that no funds authorized to be appropriated to the Department of Defense by this or any other Act may be used to finance any research project or study unless such project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation, was repealed and restated in subsec. (b) of this section by Pub. L. 100–370, §1(g)(3)(C), (5), July 19, 1988, 102 Stat. 847.

HERBICIDES AND DEFOLIATION PROGRAM; COMPREHENSIVE STUDY AND INVESTIGATION; REPORT BY JANUARY 31, 1972; TRANSMITTAL TO PRESIDENT AND CONGRESS BY MARCH 1, 1972

Pub. L. 91–441, title V, §506(c), Oct. 7, 1970, 84 Stat. 913, directed Secretary of Defense to enter into appropriate arrangements with National Academy of Sciences to conduct a comprehensive study and investigation to determine (A) ecological and physiological dangers inherent in use of herbicides, and (B) ecological and physiological effects of defoliation program carried out by Department of Defense in South Vietnam, with a report on the study to be transmitted to President and Congress by Mar. 1, 1972.

CAMPUSES BARRING MILITARY RECRUITERS; CESSATION OF PAYMENTS; NOTIFICATION OF SECRETARY OF DEFENSE

Pub. L. 92–436, title VI, §606, Sept. 29, 1972, 86 Stat. 740, provided that:

''(a) No part of the funds appropriated pursuant to this or any other Act for the Department of Defense or any of the Armed Forces may be used at any institution of higher learning if the Secretary of Defense or his designee determines that recruiting personnel of any of the Armed Forces of the United States are being barred by the policy of such institution from the premises of the institution: except in a case where the Secretary of the service concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and furnishes to the Congress the reasons why such course of instruction is of vital importance to the security of the United States.

''(b) The prohibition made by subsection (a) of this section as it applies to research and development funds shall not apply if the Secretary of Defense or his designee determines that the expenditure is a continuation or a renewal of a previous program with such institution which is likely to make a significant contribution to the defense effort.

''(c) The Secretaries of the military departments shall furnish to the Secretary of Defense or his designee within 60 days after the date of enactment of this Act [Sept. 29, 1972] and each January 31 and June 30 thereafter the names of any institution of higher learning which the Secretaries determine on such dates are affected by the prohibitions contained in this section.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 92–156, title V, §502, Nov. 17, 1971, 85 Stat. 427.
Pub. L. 91–441, title V, §510, Oct. 7, 1970, 84 Stat. 914.

FEDERAL CONTRACT RESEARCH CENTERS; OFFICERS' COMPENSATION; NOTIFICATION TO CONGRESS

Pub. L. 91–121, title IV, §407, Nov. 19, 1969, 83 Stat. 208, related to restrictions on use of appropriations for compensation of officers and employees of Federal contract research centers, and notice requirements respecting such payments, prior to repeal by Pub. L. 96–107, title VIII, §819(c), Nov. 9, 1979, 93 Stat. 819. See section 2359 of this title.

§ 2359. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation

(a) POLICY.—Each official specified in subsection (b) shall ensure that the management and conduct of the science and technology programs under the authority of that official are carried out in a manner that will foster the transition of science and technology to higher levels of research, development, test, and evaluation.

(b) COVERED OFFICIALS.—Subsection (a) applies to the following officials of the Department of Defense:

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) The Secretary of each military department.

(3) The Director of the Defense Advanced Research Projects Agency.

(4) The directors and heads of other offices and agencies of the Department of Defense with assigned research, development, test, and evaluation responsibilities.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §904(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225.)

PRIOR PROVISIONS

A prior section 2359, added Pub. L. 96–107, title VIII, §819(a)(1), Nov. 9, 1979, 93 Stat. 818, related to reports on salaries of officers of Federal contract research centers, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1322(a)(5), Nov. 5, 1990, 104 Stat. 1671.

PROOF OF CONCEPT COMMERCIALIZATION PILOT PROGRAM

Pub. L. 113–66, div. A, title XVI, §1603, Dec. 26, 2013, 127 Stat. 944, as amended by Pub. L. 113–291, div. A, title VIII, §818, Dec. 19, 2014, 128 Stat. 3432, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the Secretary of each military department, may establish and implement a pilot program, to be known as the 'Proof of Concept Commercialization Pilot Program', in accordance with this section.

''(b) PURPOSE.—The purpose of the pilot program is to accelerate the commercialization of basic research innovations from qualifying institutions.

''(c) AWARDS.—

''(1) IN GENERAL.—Under the pilot program, the Secretary shall make financial awards to qualifying institutions in accordance with this subsection.

''(2) COMPETITIVE, MERIT-BASED PROCESS.—An award under the pilot program shall be made using a competitive, merit-based process.

''(3) ELIGIBILITY.—A qualifying institution shall be eligible for an award under the pilot program if the institution agrees to—

''(A) use funds from the award for the uses specified in paragraph (5); and

''(B) oversee the use of the funds through—

''(i) rigorous review of commercialization potential or military utility of technologies, including through use of outside expertise;

''(ii) technology validation milestones focused on market feasibility;

''(iii) simple reporting on program progress; and

''(iv) a process to reallocate funding from poor performing projects to those with more potential.

''(4) CRITERIA.—An award may be made under the pilot program to a qualifying institution in accordance with the following criteria:

''(A) The extent to which a qualifying institution—

''(i) has an established and proven technology transfer or commercialization office and has a plan for engaging that office in the program's implementation or has outlined an innovative approach to technology transfer that has the potential to increase or accelerate technology transfer outcomes and can be adopted by other qualifying institutions;

''(ii) can assemble a project management board comprised of industry, start-up, venture capital, technical, financial, and business experts;

''(iii) has an intellectual property rights strategy or office; and

''(iv) demonstrates a plan for sustainability beyond the duration of the funding from the award.

''(B) Such other criteria as the Secretary determines necessary.

''(5) USE OF AWARD.—

''(A) IN GENERAL.—Subject to subparagraph (B), the funds from an award may be used to evaluate the commercial potential of existing discoveries, including activities that contribute to determining a project's commercialization path, including technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities.

''(B) LIMITATIONS.—

''(i) The amount of an award may not exceed $1,000,000 a year.

''(ii) Funds from an award may not be used for basic research, or to fund the acquisition of research equipment or supplies unrelated to commercialization activities.

''(d) REPORT.—Not later than one year after the establishment of the pilot program, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] and to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report evaluating the effectiveness of the activities of the pilot program. The report shall include—

''(1) a detailed description of the pilot program;

''(2) an accounting of the funds used in the pilot program;

''(3) a detailed description of the institutional selection process;

''(4) a detailed compilation of results achieved by the pilot program; and

''(5) an analysis of the program's effectiveness, with data supporting the analysis.

''(e) QUALIFYING INSTITUTION DEFINED.—In this section, the term 'qualifying institution' means a nonprofit institution, as defined in section 4(3) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(3)), or a Federal laboratory, as defined in section 4(4) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(4)).

''(f) LIMITATION AND USE OF FUNDS.—Not more than $5,000,000 may be obligated or expended to conduct the pilot program under this section. The Secretary of a military department may use basic research funds, or other funds considered appropriate by the Secretary, to conduct the pilot program within the military department concerned.

''(g) TERMINATION.—The pilot program conducted under this section shall terminate on September 30, 2019.''

DEFENSE RESEARCH AND DEVELOPMENT RAPID INNOVATION PROGRAM

Pub. L. 111–383, div. A, title X, § 1073, Jan. 7, 2011, 124 Stat. 4366, as amended by Pub. L. 114–92, div. A, title II, § 216, Nov. 25, 2015, 129 Stat. 769, provided that:

''(a) PROGRAM ESTABLISHED.—The Secretary of Defense shall establish a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research Program projects, technologies developed by the defense laboratories, and other innovative technologies (including dual use technologies). The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, and rapidly insert such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical national security needs.

''(b) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:

''(1) The issuance of an annual broad agency announcement or the use of any other competitive or merit-based processes by the Department of Defense for candidate proposals in support of defense acquisition programs as described in subsection (a).

''(2) The review of candidate proposals by the Department of Defense and by each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.

''(3) The total amount of funding provided to any project under the program shall not exceed $3,000,000, unless the Secretary, or the Secretary's designee, approves a larger amount of funding for the project.

''(4) No project shall receive more than a total of two years of funding under the program, unless the Secretary, or the Secretary's designee, approves funding for any additional year.

''(5) Mechanisms to facilitate transition of follow-on or current projects carried out under the program into defense acquisition programs, through the use of the authorities of section 819 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2302 note) or such other authorities as may be appropriate to conduct further testing, low rate production, or full rate production of technologies developed under the program.

''(6) Projects are selected using merit-based selection procedures and the selection of projects is not subject to undue influence by Congress or other Federal agencies.

''(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.

''(d) FUNDING.—Subject to the availability of appropriations for such purpose, the amounts authorized to be appropriated for research, development, test, and evaluation for each of fiscal years 2011 through 2023 may be used for any such fiscal year for the program established under subsection (a).

''(e) TRANSFER AUTHORITY.—The Secretary may transfer funds available for the program to the research, development, test, and evaluation accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines would directly support the purposes of the program. The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

''(f) TERMINATION.—The authority to carry out a program under this section shall terminate on September 30, 2023. Any amounts made available for the program that remain available for obligation on the date the program terminates may be transferred under sub-

section (e) during the 180-day period beginning on the date of the termination of the program.''

[§ 2359a. Repealed. Pub. L. 112–81, div. A, title II, § 251(a)(1), Dec. 31, 2011, 125 Stat. 1347]

Section, added Pub. L. 107–314, div. A, title II, § 242(a)(1), Dec. 2, 2002, 116 Stat. 2494; amended Pub. L. 109–163, div. A, title II, § 255(a), Jan. 6, 2006, 119 Stat. 3180; Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title II, § 233, Jan. 28, 2008, 122 Stat. 46; Pub. L. 110–417, [div. A], title II, § 253(b), Oct. 14, 2008, 122 Stat. 4402, related to Technology Transition Initiative.

EFFECTIVE DATE OF REPEAL

Pub. L. 112–81, div. A, title II, § 251(b), Dec. 31, 2011, 125 Stat. 1347, provided that: ''The amendments made by subsection (a) [repealing this section] shall take effect on October 1, 2013.''

§ 2359b. Defense Acquisition Challenge Program

(a) PROGRAM REQUIRED.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry out a program to provide opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense.

(2) The program, to be known as the Defense Acquisition Challenge Program (hereinafter in this section referred to as the ''Challenge Program''), shall provide any person or activity within or outside the Department of Defense with the opportunity to propose alternatives, to be known as challenge proposals, at the component, subsystem, or system level of an existing Department of Defense acquisition program that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program.

(b) PANELS.—The Under Secretary shall establish one or more panels of highly qualified scientists and engineers (hereinafter in this section referred to as ''Panels'') to provide preliminary evaluations of challenge proposals under subsection (c).

(c) PRELIMINARY EVALUATION BY PANELS.—(1) Under procedures prescribed by the Under Secretary, a person or activity within or outside the Department of Defense may submit challenge proposals to a Panel, through the unsolicited proposal process or in response to a broad agency announcement.

(2) The Under Secretary shall establish procedures pursuant to which appropriate officials of the Department of Defense may identify proposals submitted through the unsolicited proposal process as challenge proposals. The procedures shall provide for the expeditious referral of such proposals to a Panel for preliminary evaluation under this subsection.

(3) The Under Secretary shall issue on an annual basis not less than one such broad agency announcement inviting interested parties to submit challenge proposals. Such announcements may also identify particular technology areas and acquisition programs that will be given priority in the evaluation of challenge proposals.

(4)(A) The Under Secretary shall establish procedures for the prompt issuance of a solicitation for challenge proposals addressing—

(i) any acquisition program for which, since the last such announcement, the Secretary concerned has determined under section 2433(d) of this title that the program's acquisition unit cost or procurement unit cost has increased by a percentage equal to or greater than the critical cost growth threshold for the program (in this section referred to as a ''critical cost growth threshold breach''); and

(ii) any design, engineering, manufacturing, or technology integration issues, in accordance with the assessment required by section 2433(e)(2)(A) of this title, that have contributed significantly to the cost growth of such program.

(B) A solicitation under this paragraph may be included in a broad agency announcement issued pursuant to paragraph (3) as long as the broad agency announcement is released in an expeditious manner following the determination of the Secretary concerned that a critical cost growth threshold breach has occurred with respect to a major defense acquisition program.

(5) Under procedures established by the Under Secretary, a Panel shall carry out a preliminary evaluation of each challenge proposal submitted in response to a broad agency announcement, or submitted through the unsolicited proposal process and identified as a challenge proposal in accordance with paragraph (2), to determine each of the following:

(A) Whether the challenge proposal has merit.

(B) Whether the challenge proposal is likely to result in improvements in performance, affordability, manufacturability, or operational capability at the component, subsystem, or system level of an acquisition program.

(C) Whether the challenge proposal could be implemented in the acquisition program rapidly, at an acceptable cost, and without unacceptable disruption to the acquisition program.

(6) The Under Secretary—

(A) may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit; and

(B) may establish procedures to ensure that the Challenge Program establishes appropriate priorities for proposals from businesses that are not major contractors with the Department of Defense.

(7) If a Panel determines that a challenge proposal satisfies each of the criteria specified in paragraph (5), the person or activity submitting that challenge proposal shall be provided an opportunity to submit such challenge proposal for a full review and evaluation under subsection (d).

(d) FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, for each challenge proposal submitted for a full review and evaluation as provided in subsection (c)(7), the office carrying out the acquisition program to which the proposal relates shall, in consultation with the prime system contractor carrying out such program, conduct a full review and evaluation of the proposal.

(2) The full review and evaluation shall, independent of the determination of a Panel under subsection (c)(5), determine each of the matters specified in subparagraphs (A), (B), and (C) of such subsection. The full review and evaluation shall also include—

(A) an assessment of the cost of adopting the challenge proposal and implementing it in the acquisition program; and

(B) consideration of any intellectual property issues associated with the challenge proposal.

(e) ACTION UPON FAVORABLE FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, each challenge proposal determined under a full review and evaluation to satisfy each of the criteria specified in subsection (c)(5) with respect to an acquisition program shall be considered by the office carrying out the applicable acquisition program and the prime system contractor for incorporation into the acquisition program as a new technology insertion at the component, subsystem, or system level.

(2) The Under Secretary shall encourage the adoption of each challenge proposal referred to in paragraph (1) by providing suitable incentives to the office carrying out the acquisition program and the prime system contractor carrying out such program.

(3) In the case of a challenge proposal submitted in response to a solicitation issued as a result of a critical cost growth threshold breach that is determined under full review and evaluation to satisfy each of the criteria specified in subsection (c)(5), the Under Secretary shall establish guidelines for covering the costs of the challenge proposal. If appropriate, such guidelines shall not be restricted to funding provided by the Defense Acquisition Challenge Program, but shall also consider alternative funding sources, such as the acquisition program with respect to which the breach occurred.

(f) ACTION UPON UNFAVORABLE FULL REVIEW AND EVALUATION.—Under procedures prescribed by the Under Secretary, if a challenge proposal is determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but is not determined under a full review and evaluation to satisfy such criteria, the following provisions apply:

(1) The office carrying out the full review and evaluation shall provide to the Panel that conducted the preliminary evaluation a statement containing a summary of the rationale for the unfavorable evaluation.

(2) If the Panel disagrees with the rationale provided under paragraph (1), the Panel may return the challenge proposal to the office for further consideration.

(g) ACCESS TO TECHNICAL RESOURCES.—(1) Under procedures established by the Under Secretary, the technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department may be called upon to support the activities of the Challenge Program.

(2) Funds available to carry out this program may be used to compensate such laboratories, centers, activities, and elements for technical assistance provided to a Panel pursuant to paragraph (1).

(h) CONFLICTS OF INTEREST AND CONFIDENTIALITY.—In carrying out each preliminary evaluation under subsection (c) and full review under subsection (d), the Under Secretary shall ensure the elimination of conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity. For purposes of the proceeding sentence, the term ''Federal Government'' includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.

(i) LIMITATION ON USE OF FUNDS.—Funds made available for the Challenge Program may be used only for activities authorized by this section, and not for implementation of challenge proposals.

(j) SYSTEM DEFINED.—In this section, the term ''system''—

(1) means—

(A) the organization of hardware, software, material, facilities, personnel, data, and services needed to perform a designated function with specified results (such as the gathering of specified data, its processing, and its delivery to users); or

(B) a combination of two or more interrelated pieces (or sets) of equipment arranged in a functional package to perform an operational function or to satisfy a requirement; and

(2) includes a major system (as defined in section 2302(5) of this title).

(k) PILOT PROGRAM FOR PROGRAMS OTHER THAN MAJOR DEFENSE ACQUISITION PROGRAMS.—

(1) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall carry out a pilot program to expand the use of the authority provided in this section to provide opportunities for the introduction of innovative and cost-saving approaches to programs other than major defense acquisition programs through the submission, review, and implementation, where appropriate, of qualifying proposals.

(2) QUALIFYING PROPOSALS.—For purposes of this subsection, a qualifying proposal is an offer to supply a nondevelopmental item that—

(A) is evaluated as achieving a level of performance that is at least equal to the level of performance of an item being procured under a covered acquisition program and as providing savings in excess of 15 percent after considering all costs to the Government of implementing such proposal; or

(B) is evaluated as achieving a level of performance that is significantly better than the level of performance of an item being procured under a covered acquisition program without any increase in cost to the Government.

(3) REVIEW PROCEDURES.—The Under Secretary shall adopt modifications as may be

needed to the procedures applicable to the Challenge Program to provide for Department of Defense review of, and action on, qualifying proposals. Such procedures shall include, at a minimum, the issuance of a broad agency announcement inviting interested parties to submit qualifying proposals in areas of interest to the Department.

(4) DEFINITIONS.—In this subsection:

(A) NONDEVELOPMENTAL ITEM.—The term ''nondevelopmental item'' has the meaning given that term in section 110 of title 41.

(B) COVERED ACQUISITION PROGRAM.—The term ''covered acquisition program'' means any acquisition program of the Department of Defense other than a major defense acquisition program, but does not include any contract awarded under an exception to competitive acquisition authorized by the Small Business Act (15 U.S.C. 631 et seq.).

(C) LEVEL OF PERFORMANCE.—The term ''level of performance'', with respect to a nondevelopmental item, means the extent to which the item demonstrates required item functional characteristics.

(5) SUNSET.—The authority to carry out the pilot program under this subsection shall terminate on January 7, 2016.

(Added Pub. L. 107–314, div. A, title II, § 243(a), Dec. 2, 2002, 116 Stat. 2495; amended Pub. L. 109–364, div. A, title II, § 213(b), (d)–(g), Oct. 17, 2006, 120 Stat. 2121–2123; Pub. L. 110–417, [div. A], title VIII, § 821, Oct. 14, 2008, 122 Stat. 4531; Pub. L. 111–383, div. A, title VIII, § 827, Jan. 7, 2011, 124 Stat. 4270; Pub. L. 112–239, div. A, title X, § 1076(e)(3), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113–66, div. A, title X, § 1091(a)(10), Dec. 26, 2013, 127 Stat. 876; Pub. L. 113–291, div. A, title X, § 1071(a)(6), Dec. 19, 2014, 128 Stat. 3504.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (k)(4)(B), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2014—Subsec. (k)(4)(A). Pub. L. 113–291 substituted ''section 110 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

2013—Subsec. (k)(4)(B). Pub. L. 113–66 inserted period at end.

Subsec. (k)(5). Pub. L. 112–239 substituted ''January 7, 2016'' for ''the date that is five years after the date of the enactment of this Act''.

2011—Subsecs. (j) to (*l*). Pub. L. 111–383 redesignated subsec. (*l*) as (j), added subsec. (k), and struck out former subsecs. (j) and (k) which related to annual report and termination of authority, respectively.

2008—Subsec. (*l*). Pub. L. 110–417 added subsec. (*l*).

2006—Subsec. (c)(4), (5). Pub. L. 109–364, § 213(b)(1), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 109–364, § 213(b)(1)(A), (d), redesignated par. (5) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: ''The Under Secretary may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit.'' Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 109–364, § 213(b)(1)(A), (g)(1), redesignated par. (6) as (7) and substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (d)(1). Pub. L. 109–364, § 213(g)(2), substituted ''subsection (c)(7)'' for ''subsection (c)(6)''.

Subsec. (d)(2). Pub. L. 109–364, § 213(g)(3), substituted ''subsection (c)(5)'' for ''subsection (c)(4)'' in introductory provisions.

Subsec. (e)(1). Pub. L. 109–364, § 213(g)(4), substituted ''subsection (c)(5)'' for ''subsection (c)(4)''.

Subsec. (e)(3). Pub. L. 109–364, § 213(b)(2), added par. (3).

Subsecs. (f), (g). Pub. L. 109–364, § 213(b)(3), added subsec. (f) and redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109–364, § 213(b)(3)(A), (e), redesignated subsec. (g) as (h), substituted ''Conflicts of Interest and Confidentiality'' for ''Elimination of Conflicts of Interest'' in heading, substituted ''conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity'' for ''conflicts of interest'', and inserted at end ''For purposes of the proceeding sentence, the term 'Federal Government' includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.'' Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 109–364, § 213(b)(3)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 109–364, § 213(b)(3)(A), (4), redesignated subsec. (i) as (j) and substituted ''The report shall also include a list of each challenge proposal that was determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but was not determined under a full review and evaluation to satisfy such criteria, together with a detailed rationale for the Department's determination that such criteria were not satisfied'' for ''No report is required for a fiscal year in which the Challenge Program is not carried out''. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 109–364, § 213(b)(3)(A), (f), redesignated subsec. (j) as (k) and substituted ''2012'' for ''2007''.

§ 2360. Research and development laboratories: contracts for services of university students

(a) Subject to the availability of appropriations for such purpose, the Secretary of Defense may procure by contract under the authority of this section the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories. Such contracts may be made directly with such students or with nonprofit organizations employing such students.

(b) Students providing services pursuant to a contract made under subsection (a) shall be considered to be employees for the purposes of chapter 81 of title 5, relating to compensation for work injuries, and to be employees of the government for the purposes of chapter 171 of title 28, relating to tort claims. Such students who are not otherwise employed by the Federal Government shall not be considered to be Federal employees for any other purpose.

(c) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall include definitions for the purposes of this section of the terms ''student'', ''institution of higher learning'', and ''nonprofit organization''.

(Added Pub. L. 97–86, title VI, § 603(a), Dec. 1, 1981, 95 Stat. 1110.)

§ 2361. Award of grants and contracts to colleges and universities: requirement of competition

(a) The Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless—

(1) in the case of a grant, the grant is made using competitive procedures; and

(2) in the case of a contract, the contract is awarded in accordance with section 2304 of this title (other than pursuant to subsection (c)(5) of that section).

(b)(1) A provision of law may not be construed as modifying or superseding the provisions of subsection (a), or as requiring funds to be made available by the Secretary of Defense to a particular college or university by grant or contract, unless that provision of law—

(A) specifically refers to this section;

(B) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(C) specifically identifies the particular college or university involved and states that the grant to be made or the contract to be awarded, as the case may be, pursuant to such provision of law is being made or awarded in contravention of subsection (a).

(2) A grant may not be made, or a contract awarded, pursuant to a provision of law that authorizes or requires the making of the grant, or the awarding of the contract, in a manner that is inconsistent with subsection (a) until—

(A) the Secretary of Defense submits to Congress a notice in writing of the intent to make the grant or award the contract; and

(B) a period of 180 days has elapsed after the date on which the notice is received by Congress.

(Added Pub. L. 100–456, div. A, title II, § 220(a), Sept. 29, 1988, 102 Stat. 1940; amended Pub. L. 101–189, div. A, title II, § 252(a), (b)(1), (c)(1), Nov. 29, 1989, 103 Stat. 1404, 1405; Pub. L. 101–510, div. A, title XIII, § 1311(4), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 103–35, title II, § 201(g)(5), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title VIII, § 821(b), Nov. 30, 1993, 107 Stat. 1704; Pub. L. 103–337, div. A, title VIII, § 813, Oct. 5, 1994, 108 Stat. 2816; Pub. L. 104–106, div. A, title II, § 264, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 237, 502; Pub. L. 104–201, div. A, title II, § 265, Sept. 23, 1996, 110 Stat. 2466.)

Prior Provisions

A prior section 2361 was renumbered section 2351 of this title.

Amendments

1996—Subsec. (c). Pub. L. 104–201 struck out subsec. (c) which read as follows:

''(1) The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

''(A) a list of each college and university that, during the period covered by the report, received more than $1,000,000 in such contracts through the use of procedures other than competitive procedures; and

''(B) the cumulative amount of such contracts received during that period by each such college and university.

''(2) Each report under paragraph (1) shall cover the preceding fiscal year and shall be submitted not later than February 1 of the fiscal year after the fiscal year covered by the report.''

Subsec. (c)(1). Pub. L. 104–106, § 1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (c)(2). Pub. L. 104–106, § 264, substituted ''preceding fiscal year'' for ''preceding calendar year'' and ''the fiscal year after the fiscal year'' for ''the year after the year''.

1994—Subsec. (c). Pub. L. 103–337 added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103–35 substituted ''inconsistent'' for ''inconsisent''.

Subsec. (c). Pub. L. 103–160 struck out subsec. (c) which read as follows:

''(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

''(A) a list of each college and university that, during the period covered by the report, received more than $1,000,000 in such contracts through the use of procedures other than competitive procedures; and

''(B) the cumulative amount of such contracts received during that period by each such college and university.

''(2) The reports under paragraph (1) shall cover the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report.

''(3) A report is not required under paragraph (1) for any period beginning after December 31, 1993.''

1990—Subsec. (c)(1). Pub. L. 101–510, § 1311(4)(A), substituted ''an annual report'' for ''a semiannual report'' in introductory provisions.

Subsec. (c)(2). Pub. L. 101–510, § 1311(4)(B), substituted ''the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report'' for ''the six-month periods ending on June 30 and December 31 of each year. Each such report shall be submitted within 30 days after the end of the period covered by the report''.

1989—Subsec. (a). Pub. L. 101–189, § 252(a), substituted ''unless—'' for ''unless'' and pars. (1) and (2) for ''the grant or contract is made or awarded using competitive procedures.''

Subsec. (b). Pub. L. 101–189, § 252(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A provision of law enacted after the date of the enactment of this section may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law specifically refers to this section and specifically states that such provision of law modifies or supersedes the provisions of this section.''

Subsec. (c). Pub. L. 101–189, § 252(c)(1), added subsec. (c).

Effective Date of 1993 Amendment

Pub. L. 103–160, div. A, title VIII, § 821(b), Nov. 30, 1993, 107 Stat. 1704, provided that the amendment made by that section is effective Feb. 1, 1994.

Effective Date of 1989 Amendment

Pub. L. 101–189, div. A, title II, § 252(b)(2), Nov. 29, 1989, 103 Stat. 1405, provided that: ''Subsection (b) of section 2361 of title 10, United States Code, as amended by paragraph (1), applies with respect to any provision of law enacted after September 30, 1989.''

EFFECTIVE DATE

Pub. L. 100–456, div. A, title II, § 220(c), Sept. 29, 1988, 102 Stat. 1941, provided that: ''The limitation specified in section 2361(a) of title 10, United States Code (as added by subsection (a)), on the authority of the Secretary of Defense to make grants and award contracts shall take effect on October 1, 1989.''

INITIAL REPORT ON USE OF COMPETITIVE PROCEDURES IN AWARDING CONTRACTS

Pub. L. 101–189, div. A, title II, § 252(c)(2), Nov. 29, 1989, 103 Stat. 1405, required that first report under subsec. (c) of this section cover last six months of 1989 and be submitted not later than Feb. 1, 1990.

§ 2362. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education

(a) PROGRAM ESTABLISHED.—(1) The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the Secretary of each military department, shall carry out a program to provide assistance to covered educational institutions to assist the Department in defense-related research, development, testing, and evaluation activities.

(2) The Secretary of Defense may not delegate or transfer to an individual outside the Office of the Secretary of Defense the authority regarding the programming or budgeting of the program established by this section that is carried out by the Assistant Secretary of Defense for Research and Engineering.

(b) PROGRAM OBJECTIVE.—The objective of the program established by subsection (a)(1) is to enhance defense-related research and education at covered educational institutions. Such objective shall be accomplished through initiatives designed to—

(1) enhance the research and educational capabilities of such institutions in areas of importance to national defense, as determined by the Secretary;

(2) encourage the participation of such institutions in the research, development, testing, and evaluation programs and activities of the Department of Defense;

(3) increase the number of graduates from such institutions engaged in disciplines important to the national security functions of the Department of Defense, as determined by the Secretary; and

(4) encourage research and educational collaborations between such institutions and other institutions of higher education, Government defense organizations, and the defense industry.

(c) ASSISTANCE PROVIDED.—Under the program established by subsection (a)(1), the Secretary of Defense may provide covered educational institutions with funding or technical assistance, including any of the following:

(1) Support for research, development, testing, evaluation, or educational enhancements in areas important to national defense through the competitive awarding of grants, cooperative agreements, contracts, scholarships, fellowships, or the acquisition of research equipment or instrumentation.

(2) Support to assist in the attraction and retention of faculty in scientific disciplines important to the national security functions of the Department of Defense.

(3) Establishing partnerships between such institutions and defense laboratories, Government defense organizations, the defense industry, and other institutions of higher education in research, development, testing, and evaluation in areas important to the national security functions of the Department of Defense.

(4) Other such non-monetary assistance as the Secretary finds appropriate to enhance defense-related research, development, testing, and evaluation activities at such institutions.

(d) PRIORITY FOR FUNDING.—The Secretary of Defense may establish procedures under which the Secretary may give priority in providing funding under this section to institutions that have not otherwise received a significant amount of funding from the Department of Defense for research, development, testing, and evaluation programs supporting the national security functions of the Department.

(e) DEFINITION OF COVERED EDUCATIONAL INSTITUTION.—In this section the term ''covered educational institution'' means—

(1) an institution of higher education eligible for assistance under title III or V of the Higher Education Act of 1965 (20 U.S.C. 1051 et seq.); or

(2) an accredited postsecondary minority institution.

(Added Pub. L. 111–84, div. A, title II, § 252(a), Oct. 28, 2009, 123 Stat. 2242; amended Pub. L. 111–383, div. A, title X, § 1075(b)(32), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112–81, div. A, title II, § 219, Dec. 31, 2011, 125 Stat. 1335; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (e)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Titles III and V of the Act are classified generally to subchapters III (§ 1051 et seq.) and V (§ 1101 et seq.), respectively, of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2362, added Pub. L. 99–145, title I, § 123(a)(1), Nov. 8, 1985, 99 Stat. 599; amended Pub. L. 99–433, title I, § 110(g)(4), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284, which related to testing requirements for wheeled or tracked armored vehicles, was repealed by Pub. L. 103–160, div. A, title VIII, § 821(a)(3), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2013—Subsec. (a)(1). Pub L. 112–239 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

2011—Subsec. (a). Pub. L. 112–81, § 219(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 112–81, § 219(b)(1), substituted ''established by subsection (a)(1)'' for ''established under subsection (a)'' in introductory provisions.

Subsec. (c). Pub. L. 112–81, § 219(b)(2), substituted ''subsection (a)(1)'' for ''subsection (a)'' in introductory provisions.

Subsec. (e)(1). Pub. L. 111–383, § 1075(b)(32), substituted ''title III or V'' for ''title III or IV''.

STRATEGIES FOR ENGAGEMENT WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY-SERVING INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 114–92, div. A, title II, § 233, Nov. 25, 2015, 129 Stat. 779, provided that:

''(a) BASIC RESEARCH ENTITIES.—

''(1) STRATEGY.—The heads of each basic research entity shall each develop a strategy for how to engage with and support the development of scientific, technical, engineering, and mathematics capabilities of covered educational institutions in carrying out section 2362 of title 10, United States Code.

''(2) ELEMENTS.—Each strategy under paragraph (1) shall include the following:

''(A) Goals and vision for maintaining a credible and sustainable program relating to the engagement and support under the strategy.

''(B) Metrics to enhance scientific, technical, engineering, and mathematics capabilities at covered educational institutions, including with respect to measuring progress toward increasing the success of such institutions to compete for broader research funding sources other than set-aside funds.

''(C) Promotion of mentoring opportunities between covered educational institutions and other research institutions.

''(D) Regular assessment of activities that are used to develop, maintain, and grow scientific, technical, engineering, and mathematics capabilities.

''(E) Inclusion of faculty of covered educational institutions into program reviews, peer reviews, and other similar activities.

''(F) Targeting of undergraduate, graduate, and postgraduate students at covered educational institutions for inclusion into research or internship opportunities within the military department.

''(b) OFFICE OF THE SECRETARY.—The Secretary of Defense shall develop and implement a strategy for how to engage with and support the development of scientific, technical, engineering, and mathematics capabilities of covered educational institutions pursuant to the strategies developed under subsection (a).

''(c) Submission.—

''(1) BASIC RESEARCH ENTITIES.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the heads of each basic research entity shall each submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the strategy developed by the head under subsection (a)(1).

''(2) OFFICE OF THE SECRETARY.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees the strategy developed under subsection (b).

''(d) COVERED INSTITUTION DEFINED.—In this section:

''(1) The term 'basic research entity' means an entity of the Department of Defense that executes research, development, test, and evaluation budget activity 1 funding, as described in the Department of Defense Financial Management Regulation.

''(2) The term 'covered educational institution' has the meaning given that term in section 2362(e) of title 10, United States Code.''

[§ 2363. Repealed. Pub. L. 102–484, div. D, title XLII, §§ 4224(c), 4271(a)(2), Oct. 23, 1992, 106 Stat. 2683, 2695]

Section, added Pub. L. 99–145, title XIV, § 1457(a), Nov. 8, 1985, 99 Stat. 762, related to encouragement of technology transfer. See section 2514 of this title.

§ 2364. Coordination and communication of defense research activities and technology domain awareness

(a) COORDINATION OF DEPARTMENT OF DEFENSE RESEARCH, DEVELOPMENT, AND TECHNOLOGICAL DATA.—The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of research, development, and technological data—

(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces;

(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters;

(3) among other research facilities and other departments or agencies of the Federal Government that are engaged in research, development, and technological matters;

(4) among private commercial, research institution, and university entities engaged in research, development, and technological matters potentially relevant to defense on a voluntary basis;

(5) to the extent practicable, to achieve full awareness of scientific and technological advancement and innovation wherever it may occur, whether funded by the Department of Defense, another element of the Federal Government, or other entities; and

(6) through development and distribution of clear technical communications to the public, military operators, acquisition organizations, and civilian and military decision-makers that conveys[1] successes of research and engineering activities supported by the Department and the contributions of such activities to support national needs.

(b) FUNCTIONS OF DEFENSE RESEARCH FACILITIES.—The Secretary of Defense shall ensure, to the maximum extent practicable—

(1) that Defense research facilities are assigned broad mission requirements rather than specific hardware needs;

(2) that appropriate personnel of such facilities are assigned to serve as consultants on component and support system standardization;

(3) that the managers of such facilities have broad latitude to choose research and development projects based on awareness of activities throughout the technology domain, including within the Federal Government, the Department of Defense, public and private research institutions and universities, and the global commercial marketplace;

(4) that technology position and issue papers prepared by Defense research facilities are readily available to all components of the Department of Defense and to contractors who submit bids or proposals for Department of Defense contracts;

(5) that, in order to promote increased consideration of technological issues early in the

[1] So in original. Probably should be ''convey''.

development process, any technological assessment made by a Defense research facility shall be provided to the Defense Technical Information Center repository to support acquisition decisions; and

(6) that, in light of Defense research facilities being funded by the public, Defense research facilities are broadly authorized and encouraged to support national technological development goals and support technological missions of other departments and agencies of the Federal Government, when such support is determined by the Secretary of Defense to be in the best interests of the Federal Government.

(c) DEFINITIONS.—In this section, the term ''Defense research facility'' means a Department of Defense facility which performs or contracts for the performance of—

(1) basic research; or

(2) applied research known as exploratory development.

(Added Pub. L. 99–661, div. A, title II, § 234(c)(1), Nov. 14, 1986, 100 Stat. 3848; amended Pub. L. 100–26, §§ 3(1)(A), 7(a)(9), Apr. 21, 1987, 101 Stat. 273, 278; Pub. L. 100–180, div. A, title XII, § 1231(10)(A), (B), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 104–106, div. A, title VIII, § 805, Feb. 10, 1996, 110 Stat. 390; Pub. L. 113–291, div. A, title II, § 213, Dec. 19, 2014, 128 Stat. 3325; Pub. L. 114–92, div. A, title II, § 214(a), Nov. 25, 2015, 129 Stat. 767.)

AMENDMENTS

2015—Pub. L. 114–92, § 214(a)(3), inserted ''and technology domain awareness'' after ''activities'' in section catchline.

Subsec. (a). Pub. L. 114–92, § 214(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of technological data—

''(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces; and

''(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters.''

Subsec. (b)(3). Pub. L. 114–92, § 214(a)(2)(A), added par. (3) and struck out former par. (3) which read as follows: ''that the managers of such facilities have broad latitude to choose research and development projects;''.

Subsec. (b)(6). Pub. L. 114–92, § 214(a)(2)(B)–(D), added par. (6).

2014—Subsec. (b)(4). Pub. L. 113–291, § 213(1)(A), inserted ''and issue'' after ''technology position'' and substituted ''components of the Department of Defense'' for ''combatant commands''.

Subsec. (b)(5). Pub. L. 113–291, § 213(1)(B), substituted ''any technological assessment made by a Defense research facility shall be provided to the Defense Technical Information Center repository to support acquisition decisions.'' for ''any position paper prepared by a Defense research facility on a technological issue relating to a major weapon system, and any technological assessment made by such facility in the case of such component, is made a part of the records considered for the purpose of making acquisition program decisions.''

Subsec. (c). Pub. L. 113–291, § 213(2), struck out ''this section:'' after ''In'', substituted ''this section, the term'' for ''(1) The term'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, and struck out par. (2) which read as follows: ''The term 'acquisition program decision' has the meaning prescribed by the Secretary of Defense in regulations.''

1996—Subsec. (b)(5). Pub. L. 104–106, § 805(1), substituted ''acquisition program'' for ''milestone O, milestone I, and milestone II''.

Subsec. (c)(2) to (4). Pub. L. 104–106, § 805(2), added par. (2) and struck out former pars. (2) to (4) which read as follows:

''(2) The term 'milestone O decision' means the decision made within the Department of Defense that there is a mission need for a new major weapon system and that research and development is to begin to meet such need.

''(3) The term 'milestone I decision' means the decision by an appropriate official of the Department of Defense selecting a new major weapon system concept and a program for demonstration and validation of such concept.

''(4) The term 'milestone II decision' means the decision by an appropriate official of the Department of Defense approving the full-scale development of a new major weapon system.''

1987—Pub. L. 100–26, § 3(1)(A), made technical amendment to directory language of section 234(c)(1) of Pub. L. 99–661, which enacted this section.

Pub. L. 100–180, § 1231(10)(B), substituted ''defense'' for ''Defense'' in section catchline.

Subsec. (b)(5). Pub. L. 100–180, § 1231(10)(A), substituted ''milestone O, milestone I, and milestone II decisions'' for ''milestone O, I, and II decisions''.

Subsec. (c)(2). Pub. L. 100–26, § 7(a)(9)(A), substituted ''the decision'' for ''a decision''.

Subsec. (c)(3). Pub. L. 100–26, § 7(a)(9)(B), substituted ''the decision by an appropriate official of the Department of Defense selecting'' for ''[a]/[the] selection by an appropriate official of the Department of Defense of''.

Subsec. (c)(4). Pub. L. 100–26, § 7(a)(9)(C), substituted ''the decision by an appropriate official of the Department of Defense approving'' for ''approval by an appropriate official of the Department of Defense for''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(1)(A) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

PERFORMANCE REVIEW PROCESS

Pub. L. 106–65, div. A, title IX, § 913(b), Oct. 5, 1999, 113 Stat. 720, provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999], the Secretary of Defense shall develop an appropriate performance review process for rating the quality and relevance of work performed by the Department of Defense laboratories. The process shall include customer evaluation and peer review by Department of Defense personnel and appropriate experts from outside the Department of Defense. The process shall provide for rating all laboratories of the Army, Navy, and Air Force on a consistent basis.''

COORDINATION OF HIGH-TEMPERATURE SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Pub. L. 100–180, div. A, title II, § 218(b)(2), Dec. 4, 1987, 101 Stat. 1053, as amended by Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: ''The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

''(A) coordinate the research and development activities of the Department of Defense relating to high-temperature superconductivity; and

''(B) ensure that such research and development—

''(i) is carried out in coordination with the high-temperature superconductivity research and development activities of the Department of Energy (in-

cluding the national laboratories of the Department of Energy), the National Science Foundation, the National Institute of Standards and Technology, and the National Aeronautics and Space Administration; and

''(ii) complements rather than duplicates such activities.''

COORDINATION OF RESEARCH ACTIVITIES OF DEPARTMENT OF DEFENSE

Pub. L. 99–661, div. A, title II, § 234(a), (b), Nov. 14, 1986, 100 Stat. 3848, provided that:

''(a) PURPOSE.—The purpose of this section is to strengthen coordination among Department of Defense research facilities and other organizations in the Department of Defense.

''(b) FINDINGS.—The Congress finds that centralized coordination of the collection and dissemination of technological data among research facilities and other organizations within the Department of Defense is necessary—

''(1) to ensure that personnel of the Department are currently informed about emerging technology for defense systems; and

''(2) to avoid unnecessary and costly duplication of research staffs and projects.''

§ 2365. Global Research Watch Program

(a) PROGRAM.—The Assistant Secretary of Defense for Research and Engineering shall carry out a Global Research Watch program in accordance with this section.

(b) PROGRAM GOALS.—The goals of the program are as follows:

(1) To monitor and analyze the basic and applied research activities and capabilities of foreign nations and private sector persons in areas of military interest, including allies and competitors.

(2) To provide standards for comparison and comparative analysis of research capabilities of foreign nations and private sector persons in relation to the research capabilities of the United States.

(3) To assist Congress and Department of Defense officials in making investment decisions for research in technical areas where the United States may not be the global leader.

(4) To identify areas where significant opportunities for cooperative research may exist.

(5) To coordinate and promote the international cooperative research and analysis activities of each of the armed forces and Defense Agencies.

(6) To establish and maintain an electronic database on international research capabilities, comparative assessments of capabilities, cooperative research opportunities, and ongoing cooperative programs.

(c) FOCUS OF PROGRAM.—The program shall be focused on research and technologies at a technical maturity level equivalent to Department of Defense basic and applied research programs.

(d) COORDINATION.—(1) The Assistant Secretary shall coordinate the program with the international cooperation and analysis activities of the military departments and Defense Agencies.

(2) The Secretaries of the military departments and the directors of the Defense Agencies shall provide the Assistant Secretary of Defense for Research and Engineering such assistance as the Assistant Secretary may require for purposes of the program.

(3)(A) Funds available to a military department for a fiscal year for monitoring or analyzing the research activities and capabilities of foreign nations may not be obligated or expended until the Assistant Secretary certifies to the Under Secretary of Defense for Acquisition, Technology, and Logistics that the Secretary of such military department has provided the assistance required under paragraph (2).

(B) The limitation in subparagraph (A) shall not be construed to alter or effect the availability to a military department of funds for intelligence activities.

(e) CLASSIFICATION OF DATABASE INFORMATION.—Information in electronic databases of the Global Research Watch program shall be maintained in unclassified form and, as determined necessary by the Assistant Secretary, in classified form in such databases.

(f) TERMINATION.—The requirement to carry out the program under this section shall terminate on September 30, 2025.

(Added Pub. L. 108–136, div. A, title II, § 231(a), Nov. 24, 2003, 117 Stat. 1421; amended Pub. L. 109–364, div. A, title II, § 232, Oct. 17, 2006, 120 Stat. 2134; Pub. L. 111–84, div. A, title II, § 211, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 111–383, div. A, title IX, § 901(j)(3), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(B), Jan. 2, 2013, 126 Stat. 1950; Pub. L. 114–92, div. A, title II, § 215, Nov. 25, 2015, 129 Stat. 769.)

PRIOR PROVISIONS

A prior section 2365, added Pub. L. 99–500, § 101(c) [title X, § 909(a)(1), formerly § 909(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–142, and Pub. L. 99–591, § 101(c) [title X, § 909(a)(1), formerly § 909(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–142, redesignated § 909(a)(1), Pub. L. 100–26, § 4(b), Apr. 21, 1987, 101 Stat. 274; Pub. L. 99–661, div. A, title IX, formerly title IV, § 909(a)(1), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 5(3)(A), Apr. 21, 1987, 101 Stat. 274; Pub. L. 100–456, div. A, title VIII, § 802, Sept. 29, 1988, 102 Stat. 2008, required use of competitive prototype program strategy in development of major weapons systems, prior to repeal by Pub. L. 102–484, div. A, title VIII, § 821(c)(1), Oct. 23, 1992, 106 Stat. 2460.

AMENDMENTS

2015—Subsec. (b)(1), (2). Pub. L. 114–92, § 215(1), inserted ''and private sector persons'' after ''foreign nations''.

Subsec. (f). Pub. L. 114–92, § 215(2), substituted ''September 30, 2025'' for ''September 30, 2015''.

2013—Subsec. (a). Pub. L. 112–239, § 1076(c)(2)(B)(i), inserted ''of Defense for Research and Engineering'' after ''The Assistant Secretary''.

Subsec. (d)(3)(A). Pub. L. 112–239, § 1076(c)(2)(B)(ii), substituted ''Assistant Secretary'' for ''Director''.

2011—Subsec. (a). Pub. L. 111–383, § 901(j)(3)(A), substituted ''Assistant Secretary'' for ''Director of Defense Research and Engineering''.

Subsec. (d)(1). Pub. L. 111–383, § 901(j)(3)(B), substituted ''Assistant Secretary'' for ''Director''.

Subsec. (d)(2). Pub. L. 111–383, § 901(j)(3)(C), substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering'' and ''Assistant Secretary may'' for ''Director may''.

Subsec. (e). Pub. L. 111–383, § 901(j)(3)(D), substituted ''Assistant Secretary'' for ''Director''.

2009—Subsec. (d)(3). Pub. L. 111–84, § 211(a), added par. (3).

Subsec. (f). Pub. L. 111–84, § 211(b), substituted ''2015'' for ''2011''.

2006—Subsec. (f). Pub. L. 109–364 substituted ''2011'' for ''2006''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

§ 2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production

(a) REQUIREMENTS.—(1) The Secretary of Defense shall provide that—

(A) a covered system may not proceed beyond low-rate initial production until realistic survivability testing of the system is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and

(B) a major munition program or a missile program may not proceed beyond low-rate initial production until realistic lethality testing of the program is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.

(2) The Secretary of Defense shall provide that a covered product improvement program may not proceed beyond low-rate initial production until—

(A) in the case of a product improvement to a covered system, realistic survivability testing is completed in accordance with this section; and

(B) in the case of a product improvement to a major munitions program or a missile program, realistic lethality testing is completed in accordance with this section.

(b) TEST GUIDELINES.—(1) Survivability and lethality tests required under subsection (a) shall be carried out sufficiently early in the development phase of the system or program (including a covered product improvement program) to allow any design deficiency demonstrated by the testing to be corrected in the design of the system, munition, or missile (or in the product modification or upgrade to the system, munition, or missile) before proceeding beyond low-rate initial production.

(2) The costs of all tests required under that subsection shall be paid from funds available for the system being tested.

(c) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary determines that live-fire testing of such system or program would be unreasonably expensive and impractical and submits a certification of that determination to Congress—

(A) before Milestone B approval for the system or program; or

(B) in the case of a system or program initiated at—

(i) Milestone B, as soon as is practicable after the Milestone B approval; or

(ii) Milestone C, as soon as is practicable after the Milestone C approval.

(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and subassemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters system development and demonstration, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.

(3) The Secretary shall include with any certification under paragraph (1) or (2) a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.

(4) In time of war or mobilization, the President may suspend the operation of any provision of this section.

(d) REPORTING TO CONGRESS.—(1) At the conclusion of survivability or lethality testing under subsection (a), the Secretary of Defense shall submit a report on the testing to the congressional defense committees. Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.

(2) If a decision is made within the Department of Defense to proceed to operational use of a system, or to make procurement funds available for a system, before Milestone C approval of that system, the Secretary of Defense shall submit to the congressional defense committees, as soon as practicable after such decision, the following:

(A) A report describing the status of survivability and live fire testing of that system.

(B) The report required under paragraph (1).

(e) DEFINITIONS.—In this section:

(1) The term ''covered system'' means—

(A) a vehicle, weapon platform, or conventional weapon system that—

(i) includes features designed to provide some degree of protection to users in combat; and

(ii) is a major system as defined in section 2302(5) of this title; or

(B) any other system or program designated by the Secretary of Defense for purposes of this section.

(2) The term ''major munitions program'' means—

(A) a munition program for which more than 1,000,000 rounds are planned to be acquired; or

(B) a conventional munitions program that is a major system within the meaning of that term in section 2302(5) of this title.

(3) The term ''realistic survivability testing'' means, in the case of a covered system

(or a covered product improvement program for a covered system), testing for vulnerability of the system in combat by firing munitions likely to be encountered in combat (or munitions with a capability similar to such munitions) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties and taking into equal consideration the susceptibility to attack and combat performance of the system.

(4) The term ''realistic lethality testing'' means, in the case of a major munitions program or a missile program (or a covered product improvement program for such a program), testing for lethality by firing the munition or missile concerned at appropriate targets configured for combat.

(5) The term ''configured for combat'', with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous materials (including all flammables and explosives) that would normally be on board in combat.

(6) The term ''covered product improvement program'' means a program under which—

(A) a modification or upgrade will be made to a covered system which (as determined by the Secretary of Defense) is likely to affect significantly the survivability of such system; or

(B) a modification or upgrade will be made to a major munitions program or a missile program which (as determined by the Secretary of Defense) is likely to affect significantly the lethality of the munition or missile produced under the program.

(7) The term ''Milestone B approval'' means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(8) The term ''Milestone C approval'' means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(Added Pub. L. 99–500, § 101(c) [title X, § 910(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, and Pub. L. 99–591, § 101(c) [title X, § 910(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143; Pub. L. 99–661, div. A, title IX, formerly title IV, § 910(a)(1), Nov. 14, 1986, 100 Stat. 3923, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 802, title XII, § 1231(11), Dec. 4, 1987, 101 Stat. 1123, 1160; Pub. L. 100–456, div. A, title XII, § 1233(*l*)(3), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, §§ 802(c)(1)–(4)(A), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; Pub. L. 101–510, div. A, title XIV, § 1484(h)(7), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103–160, div. A, title VIII, § 828(d)(2), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 103–355, title III, § 3014, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104–106, div. A, title XV, § 1502(a)(18), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107–314, div. A, title VIII, § 818, Dec. 2, 2002, 116 Stat. 2611; Pub. L. 108–136, div. A, title X, § 1043(b)(13), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 110–417, [div. A], title II, § 251(a), (b), Oct. 14, 2008, 122 Stat. 4400.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–417, § 251(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(1). Pub. L. 110–417, § 251(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'covered system' means a vehicle, weapon platform, or conventional weapon system—

''(A) that includes features designed to provide some degree of protection to users in combat; and

''(B) that is a major system within the meaning of that term in section 2302(5) of this title.''

2003—Subsec. (e)(7) to (9). Pub. L. 108–136 redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: ''The term 'congressional defense committees' means—

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

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

2002—Subsec. (c)(1). Pub. L. 107–314, § 818(a), amended par. (1) generally. Prior to amendment par. (1) read as follows: ''The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary, before the system or program enters system development and demonstration, certifies to Congress that live-fire testing of such system or program would be unreasonably expensive and impractical.''

Subsec. (e)(8), (9). Pub. L. 107–314, § 818(b), added pars. (8) and (9).

2001—Subsec. (c)(1), (2). Pub. L. 107–107 substituted ''system development and demonstration'' for ''engineering and manufacturing development''.

1999—Subsec. (e)(7)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106, § 1502(a)(18)(A), substituted ''the congressional defense committees'' for ''the Committees on Armed Services and on Appropriations of the Senate and House of Representatives''.

Subsec. (e)(7). Pub. L. 104–106, § 1502(a)(18)(B), added par. (7).

1994—Subsec. (c)(1). Pub. L. 103–355, § 3014(a)(2), (b), substituted ''engineering and manufacturing development'' for ''full-scale engineering development'' in first sentence and redesignated second sentence as par. (3).

Subsec. (c)(2). Pub. L. 103–355, § 3014(a)(1), (3), added par. (2) and redesignated former par. (2) as (4).

Subsec. (c)(3). Pub. L. 103–355, § 3014(a)(2), redesignated second sentence of par. (1) as par. (3) and substituted ''certification under paragraph (1) or (2)'' for ''such certification''.

Subsec. (c)(4). Pub. L. 103–355, § 3014(a)(1), redesignated par. (2) as (4).

1993—Subsec. (d). Pub. L. 103–160 substituted ''to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives'' for ''to the defense committees of Congress (as defined in section 2362(e)(3) of this title)''.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–510 made technical correction to directory language of Pub. L. 101–189, § 804(a), see 1989 Amendment note below.

1989—Pub. L. 101–189, § 802(c)(4)(A), substituted ''testing and lethality testing required before full-scale production'' for ''and lethality testing; operational testing'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 101–189, §§ 802(c)(1)(A), 804(a), as amended by Pub. L. 101–510, substituted ''this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and'' for ''this section;''.

Subsec. (a)(1)(B). Pub. L. 101–189, §§ 802(c)(1)(B), 804(a), as amended by Pub. L. 101–510, substituted ''this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.'' for ''this section; and''.

Subsec. (a)(1)(C). Pub. L. 101–189, § 802(c)(1)(C), struck out subpar. (C) which read as follows: ''a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed in accordance with this section.''

Subsec. (b)(2), (3). Pub. L. 101–189, § 802(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''In the case of a major defense acquisition program, no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.''

Subsec. (d). Pub. L. 101–189, § 804(b), inserted at end ''Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.''

Subsec. (e)(3) to (8). Pub. L. 101–189, § 802(c)(3), redesignated pars. (4), (5), (6), and (8) as (3), (4), (5), and (6), respectively, and struck out former par. (3) which defined ''major defense acquisition program'' and former par. (7) which defined ''operational test and evaluation''.

1988—Subsec. (a)(2). Pub. L. 100–456 made technical correction to directory language of Pub. L. 100–180, § 802(a)(1)(C). See 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–180, § 802(a)(1), as amended by Pub. L. 100–456, designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), and added par. (2).

Subsec. (b)(1). Pub. L. 100–180, § 802(a)(2), inserted ''(including a covered product improvement program)'' after ''system or program'' and ''(or in the product modification or upgrade to the system, munition, or missile)'' after ''or missile''.

Subsec. (b)(2). Pub. L. 100–180, § 802(b), inserted at end ''The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.''

Subsec. (c). Pub. L. 100–180, § 802(a)(3), (c), (d)(1), designated existing provisions as par. (1), substituted ''missile program, or covered product improvement program'' for ''or missile program'', and inserted at end ''The Secretary shall include with any such certification a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.''

Pub. L. 100–180, § 802(d)(2), designated existing provisions of former subsec. (d) as par. (2) of subsec. (c) and struck out heading of former subsec. (d) ''Waiver in time of war or mobilization''.

Subsec. (d). Pub. L. 100–180, § 802(d)(3), added subsec. (d). Former subsec. (d) redesignated subsec. (c)(2).

Subsec. (e)(1)(B). Pub. L. 100–180, § 1231(11), substituted ''section 2302(5)'' for ''section 2303(5)''.

Subsec. (e)(4). Pub. L. 100–180, § 802(a)(4)(A), (e), inserted ''(or a covered product improvement program for a covered system)'' after ''covered system'', struck out ''and survivability'' after ''for vulnerability'', and substituted ''susceptibility to attack'' for ''operational requirements''.

Subsec. (e)(5). Pub. L. 100–180, § 802(a)(4)(B), inserted ''(or a covered product improvement program for such a program)'' after ''missile program''.

Subsec. (e)(8). Pub. L. 100–180, § 802(a)(4)(C), added par. (8).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title XII, § 1233(*l*)(5), Sept. 29, 1988, 102 Stat. 2058, provided that: ''The amendments made by this subsection [amending this section and sections 2435 and 8855 of this title and section 301c of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in the enactment of Public Law 100–180.''

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 910(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–145, Pub. L. 99–591, § 101(c) [title X, § 910(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–145, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 910(b), Nov. 14, 1986, 100 Stat. 3924, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2366 of title 10, United States Code (as added by subsection (a)), shall apply with respect to any decision to proceed with a program beyond low-rate initial production that is made—

''(1) after May 31, 1987, in the case of a decision referred to in subsection (a)(1) or (a)(2) of such section; or

''(2) after the date of the enactment of this Act [Oct. 18, 1986], in the case of a decision referred to in subsection (a)(3) of such section.''

§ 2366a. Major defense acquisition programs: determination required before Milestone A approval

(a) RESPONSIBILITIES.—Before granting Milestone A approval for a major defense acquisition program or a major subprogram, the milestone decision authority for the program or subprogram shall ensure that—

(1) information about the program or subprogram is sufficient to warrant entry of the program or subprogram into the risk reduction phase;

(2) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program; and

(3) there are sound plans for progression of the program or subprogram to the development phase.

(b) WRITTEN DETERMINATION REQUIRED.—A major defense acquisition program or subprogram may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the milestone decision authority determines in writing, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs—

(1) that the program fulfills an approved initial capabilities document;

(2) that the program has been developed in light of appropriate market research;

(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is necessary and appropriate;

(4) that, with respect to any identified areas of risk, there is a plan to reduce the risk;

(5) that planning for sustainment has been addressed and that a determination of applicability of core logistics capabilities requirements has been made;

(6) that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation;

(7) that a cost estimate for the program has been submitted, with the concurrence of the Director of Cost Assessment and Program Evaluation, and that the level of resources required to develop, procure, and sustain the program is sufficient for successful program execution; and

(8) that the program or subprogram meets any other considerations the milestone decision authority considers relevant.

(c) SUBMISSION TO CONGRESS.—At the request of any of the congressional defense committees, the Secretary of Defense shall submit to the committee an explanation of the basis for a determination made under subsection (b) with respect to a major defense acquisition program, together with a copy of the written determination. The explanation shall be submitted in unclassified form, but may include a classified annex.

(d) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' has the meaning provided in section 2430 of this title.

(2) The term ''initial capabilities document'' means any capabilities requirement document approved by the Joint Requirements Oversight Council that establishes the need for a materiel approach to resolve a capability gap.

(3) The term ''Milestone A approval'' means a decision to enter into technology maturation and risk reduction pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(4) The term ''Milestone B approval'' has the meaning provided that term in section 2366(e)(7) of this title.

(5) The term ''core logistics capabilities'' means the core logistics capabilities identified under section 2464(a) of this title.

(6) the term ''major subprogram'' means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(7) The term ''milestone decision authority'', with respect to a major defense acquisition program or a major subprogram, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or subprogram, including authority to approve entry of the program or subprogram into the next phase of the acquisition process.

(Added Pub. L. 110–181, div. A, title IX, § 943(a)(1), Jan. 28, 2008, 122 Stat. 288, § 2366b; renumbered § 2366a and amended Pub. L. 110–417, [div. A], title VIII, § 813(b), (e)(1), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, § 101(d)(3), title II, §§ 201(e), 204(a), (b), May 22, 2009, 123 Stat. 1710, 1720, 1723; Pub. L. 111–383, div. A, title VIII, § 814(b), title X, § 1075(b)(33), Jan. 7, 2011, 124 Stat. 4266, 4370; Pub. L. 112–81, div. A, title VIII, § 801(a), (e)(1), Dec. 31, 2011, 125 Stat. 1482, 1483; Pub. L. 112–239, div. A, title III, § 322(e)(1), title X, § 1076(a)(10), Jan. 2, 2013, 126 Stat. 1695, 1948; Pub. L. 114–92, div. A, title VIII, § 823(a), Nov. 25, 2015, 129 Stat. 902.)

PRIOR PROVISIONS

A prior section 2366a was renumbered section 2366b of this title.

AMENDMENTS

2015—Pub. L. 114–92 amended section generally. Prior to amendment, section related to certification required before Milestone A approval of major defense acquisition programs.

2013—Pub. L. 112–239, § 1076(a)(10)(C), made technical amendment to directory language of Pub. L. 112–81, § 801(e)(1)(A). See 2011 Amendment note below.

Subsec. (a)(4). Pub. L. 112–239, § 322(e)(1), substituted ''core logistics capabilities'' for ''core depot-level maintenance and repair capabilities''.

Subsec. (a)(5), (6). Pub. L. 112–239, § 1076(a)(10)(A), made technical amendment to directory language of Pub. L. 112–81, § 801(a)(1)(B). See 2011 Amendment notes below.

Subsec. (c)(7). Pub. L. 112–239, § 1076(a)(10)(B), made technical amendment to directory language of Pub. L. 112–81, § 801(a)(2). See 2011 Amendment note below.

Pub. L. 112–239, § 322(e)(1), substituted ''core logistics capabilities'' for ''core depot-level maintenance and repair capabilities'' in two places.

2011—Pub. L. 112–81, § 801(e)(1)(A), as amended by Pub. L. 112–239, § 1076(a)(10)(C), struck out ''or Key Decision Point A'' after ''Milestone A'' in section catchline.

Subsec. (a). Pub. L. 112–81, § 801(e)(1)(B), struck out '', or Key Decision Point A approval in the case of a space program,'' after ''Milestone A approval'' and '', or Key Decision Point B approval in the case of a space program,'' after ''Milestone B approval'' in introductory provisions.

Subsec. (a)(2). Pub. L. 112–81, § 801(a)(1)(A), substituted ''function'' for ''core competency''.

Subsec. (a)(4). Pub. L. 112–81, § 801(a)(1)(C), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 112–81, § 801(a)(1)(B), as amended by Pub. L. 112–239, § 1076(a)(10)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 112–81, § 801(a)(1)(D), substituted ''develop, procure, and sustain'' for ''develop and procure''.

Pub. L. 112–81, § 801(a)(1)(B), as amended by Pub. L. 112–239, § 1076(a)(10)(A), redesignated par. (5) as (6).

Subsec. (b)(1). Pub. L. 112–81, § 801(e)(1)(C)(i), struck out ''(or Key Decision Point A approval in the case of a space program)'' after ''Milestone A approval''.

Pub. L. 111–383, § 814(b)(1)(A), substituted ''a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram'' for ''a major defense acquisition program certified by the Milestone Decision Authority under subsection (a), if the projected cost of the program''.

Subsec. (b)(2). Pub. L. 111–383, § 814(b)(1)(B), inserted ''or designated major subprogram'' after ''major defense acquisition program''.

Subsec. (b)(2)(C)(ii). Pub. L. 112–81, § 801(e)(1)(C)(ii), struck out '', or Key Decision Point A approval in the case of a space program,'' after ''Milestone A approval''.

Subsec. (c). Pub. L. 111–383, § 1075(b)(33)(A), inserted a space after ''(c)''.

Subsec. (c)(2) to (5). Pub. L. 111–383, § 814(b)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Pub. L. 111–383, § 1075(b)(33)(B), which directed substitution of ''section 118b(c)(3) of this title'' for ''section 125a(a) of this title'' in par. (4), was executed by making

the substitution in par. (5) to reflect the probable intent of Congress and the amendment by Pub. L. 111–383, § 814(b)(2)(A). See above.

Subsec. (c)(6). Pub. L. 111–383, § 814(b)(2)(A), redesignated par. (5) as (6).

Subsec. (c)(7). Pub. L. 112–81, § 801(a)(2), as amended by Pub. L. 112–239, § 1076(a)(10)(B), added par. (7).

2009—Subsec. (a). Pub. L. 111–23, § 204(a), substituted ''may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program, or otherwise be initiated prior to Milestone B approval, or Key Decision Point B approval in the case of a space program,'' for ''may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program,'' in introductory provisions.

Subsec. (a)(3). Pub. L. 111–23, § 201(e)(1), struck out ''and'' at end.

Subsec. (a)(4). Pub. L. 111–23, § 201(e)(3), added par. (4). Former par. (4) redesignated (5).

Pub. L. 111–23, § 101(d)(3), inserted '', with the concurrence of the Director of Cost Assessment and Program Evaluation,'' after ''has been submitted''.

Subsec. (a)(5). Pub. L. 111–23, § 201(e)(2), redesignated par. (4) as (5).

Subsec. (b). Pub. L. 111–23, § 204(b), designated existing provisions as par. (1), substituted ''by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent,'' for ''by at least 25 percent,'', and added par. (2).

2008—Pub. L. 110–417, § 813(b), renumbered section 2366b of this title as this section.

Subsec. (a)(1), (2). Pub. L. 110–417, § 813(e)(1)(A), substituted ''program'' for ''system''.

Subsec. (a)(3). Pub. L. 110–417, § 813(e)(1)(B), substituted ''if the program'' for ''if the system'' and ''such program'' for ''such system''.

Subsec. (a)(4). Pub. L. 110–417, § 813(e)(1)(A), substituted ''program'' for ''system'' in two places.

Subsec. (b). Pub. L. 110–417, § 813(e)(1)(C), substituted ''major defense acquisition program'' for ''major system'', ''cost of the program'' for ''cost of the system'', ''estimate for the program'' for ''estimate for the system'', ''the program concerned'' for ''the system concerned'', and ''procure the program'' for ''procure the system''.

Subsec. (c)(1). Pub. L. 110–417, § 813(e)(1)(D), substituted '' 'major defense acquisition program' '' for '' 'major system' '' and ''2430'' for ''2302(5)''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title III, § 322(f), Jan. 2, 2013, 126 Stat. 1695, provided that: ''This section [enacting sections 2460 and 2464 of this title, amending this section and sections 2366b, 2460, and 2464 of this title, repealing sections 2460 and 2464 of this title, and amending provisions set out as a note under this section] and the amendments made by this section shall take effect on December 31, 2011, the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112–81], immediately after the enactment of that Act.''

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(10) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE DATE

Pub. L. 110–181, div. A, title IX, § 943(c), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110–417, [div. A], title VIII, § 813(e)(2)(B), Oct. 14, 2008, 122 Stat. 4528, provided that: ''Section 2366b [now 2366a] of title 10, United States Code, as added by subsection (a), shall apply to major defense acquisition programs on and after March 1, 2008. In the case of the certification required by [former] paragraph (2) of subsection (a) of such section, during the period prior to the completion of the first quadrennial roles and missions review required by [former] section 118b of title 10, United States Code, the certification required by that paragraph shall be that the system is being executed by an entity with a relevant core competency as identified by the Secretary of Defense.''

MILESTONE A DECISIONS

Pub. L. 114–92, div. A, title VIII, § 802(d)(2), Nov. 25, 2015, 129 Stat. 880, provided that: ''The Chief of the Armed Force concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief's views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in section 2366a(a)(2) of title 10, United States Code, as amended by section 823 of this Act, prior to a Milestone A decision on the program.''

REQUIREMENTS PRIOR TO LOW-RATE INITIAL PRODUCTION

Pub. L. 112–81, div. A, title VIII, § 801(c), Dec. 31, 2011, 125 Stat. 1483, as amended by Pub. L. 112–239, div. A, title III, § 322(e)(3), Jan. 2, 2013, 126 Stat. 1695, provided that: ''Prior to entering into a contract for low-rate initial production of a major defense acquisition program, the Secretary of Defense shall ensure that the detailed requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements, have been defined.''

GUIDANCE

Pub. L. 112–81, div. A, title VIII, § 801(d), Dec. 31, 2011, 125 Stat. 1483, provided that: ''Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue guidance implementing the amendments made by subsections (a) and (b) [amending this section and section 2366b of this title], and subsection (c) [set out above], in a manner that is consistent across the Department of Defense.''

APPLICATION TO ONGOING PROGRAMS

Pub. L. 111–23, title II, § 204(c), May 22, 2009, 123 Stat. 1723, as amended by Pub. L. 111–383, div. A, title VIII, § 813(c), Jan. 7, 2011, 124 Stat. 4265, which related to application of the requirements of this section to certain major defense acquisition programs initiated before May 22, 2009, was repealed by Pub. L. 112–81, div. A, title VIII, § 819(a), Dec. 31, 2011, 125 Stat. 1501.

REVIEW OF DEPARTMENT OF DEFENSE ACQUISITION DIRECTIVES

Pub. L. 110–181, div. A, title IX, § 943(b), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110–417, [div. A], title VIII, § 813(e)(2)(A), Oct. 14, 2008, 122 Stat. 4528, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall review Department of Defense Directive 5000.1 and associated guidance, and the manner in which such directive and guidance have been implemented, and take appropriate steps to ensure that the Department does not commence a technology development program for a major defense acquisition program without Milestone A approval (or Key Decision Point A approval in the case of a space program).''

§ 2366b. Major defense acquisition programs: certification required before Milestone B approval

(a) CERTIFICATIONS AND DETERMINATION REQUIRED.—A major defense acquisition program may not receive Milestone B approval until the milestone decision authority—

(1) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program

demonstrates a high likelihood of accomplishing its intended mission;

(2) further certifies that the technology in the program has been demonstrated in a relevant environment, as determined by the milestone decision authority on the basis of an independent review and assessment by the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation;

(3) determines in writing that—

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program's mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total acquisition cost in the context of the total resources available during the period covered by the future-years defense program submitted during the fiscal year in which the certification is made;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program; and[1]

(D) funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made, consistent with the estimates described in subparagraph (C) for the program;

(E) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(F) the Department of Defense has completed an analysis of alternatives with respect to the program;

(G) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(H) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(I) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(J) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production and procurement of the major defense acquisition program to be acquired;

(K) the program complies with all relevant policies, regulations, and directives of the Department of Defense; and

(L) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the trade-offs made in accordance with subparagraph (B); and

(4) in the case of a space system, performs a cost benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019.

(b) CHANGES TO CERTIFICATIONS OR DETERMINATION.—(1) The program manager for a major defense acquisition program that has received certifications or a determination under subsection (a) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the certifications or determination of the milestone decision authority relating to any component of such certifications or determination specified in paragraph (1), (2), or (3) of subsection (a); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such certifications or determination.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may withdraw the certifications or determination concerned or rescind Milestone B approval if the milestone decision authority determines that such certifications, determination, or approval are no longer valid.

(c) SUBMISSION TO CONGRESS.—(1) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

(2) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

(3) At the request of any of the congressional defense committees, the Secretary of Defense shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program. The explanation shall be submitted in unclassified form, but may include a classified annex.

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval pursuant to subsection (b)(2), waive the applicabil-

[1] So in original. The word ''and'' probably should not appear.

ity to a major defense acquisition program of one or more components (as specified in paragraph (1), (2), or (3) of subsection (a)) of the certification and determination requirements if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

(A) the waiver, the waiver determination, and the reasons for the waiver determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification and determination components specified in paragraphs (1), (2), and (3) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification and determination components.

(3) The requirement in paragraph (2)(B) shall not apply to a program for which a certification was required pursuant to section 2433a(c) of this title if the milestone decision authority—

(A) determines in writing that—

(i) the program has reached a stage in the acquisition process at which it would not be practicable to meet the certification component that was waived; and

(ii) the milestone decision authority has taken appropriate alternative actions to address the underlying purposes of such certification component; and

(B) submits the written determination, and an explanation of the basis for the determination, to the congressional defense committees.

(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all such certification requirements.

(f) NONDELEGATION.—The milestone decision authority may not delegate the certification requirement under subsection (a) or the authority to waive any component of such requirement under subsection (d).

(g) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title.

(2) The term ''designated major subprogram'' means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(3) The term ''milestone decision authority'', with respect to a major defense acquisition program, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program, including authority to approve entry of the program into the next phase of the acquisition process.

(4) The term ''Milestone B approval'' has the meaning provided that term in section 2366(e)(7) of this title.

(5) The term ''core logistics capabilities'' means the core logistics capabilities identified under section 2464(a) of this title.

(Added Pub. L. 109–163, div. A, title VIII, § 801(a), Jan. 6, 2006, 119 Stat. 3366, § 2366a; amended Pub. L. 109–364, div. A, title VIII, § 805, Oct. 17, 2006, 120 Stat. 2314; Pub. L. 110–181, div. A, title VIII, § 812, Jan. 28, 2008, 122 Stat. 219; renumbered § 2366b, Pub. L. 110–417, [div. A], title VIII, § 813(a), (b), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, § 101(d)(4), title II, §§ 201(f), 205(a), May 22, 2009, 123 Stat. 1710, 1720, 1724; Pub. L. 111–383, div. A, title VIII, §§ 813(d)(1), 814(c), title IX, § 901(j)(4), title X, § 1075(k)(1), Jan. 7, 2011, 124 Stat. 4265, 4266, 4324, 4378; Pub. L. 112–81, div. A, title VIII, §§ 801(b), (e)(2), 819(b), Dec. 31, 2011, 125 Stat. 1483, 1484, 1501; Pub. L. 112–239, div. A, title III, § 322(e)(2), title IX, § 904(e)(2), Jan. 2, 2013, 126 Stat. 1695, 1867; Pub. L. 113–66, div. A, title VIII, §§ 821(a), 822(a), title X, § 1091(b)(1), Dec. 26, 2013, 127 Stat. 809, 876; Pub. L. 114–92, div. A, title VIII, § 824(a), Nov. 25, 2015, 129 Stat. 903.)

PRIOR PROVISIONS

A prior section 2366b was renumbered section 2366a of this title.

AMENDMENTS

2015—Pub. L. 114–92 amended section generally. Prior to amendment, section related to certification required before Milestone B approval of major defense acquisition programs.

2013—Subsec. (a)(3)(D). Pub. L. 112–239, § 904(e)(2), substituted ''the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation'' for ''the Assistant Secretary of Defense for Research and Engineering''.

Subsec. (a)(3)(F). Pub. L. 112–239, § 322(e)(2), as amended by Pub. L. 113–66, § 1091(b)(1), substituted ''core logistics capabilities'' for ''core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities''.

Subsec. (a)(3)(G), (H). Pub. L. 113–66, § 821(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(4). Pub. L. 113–66, § 822(a), added par. (4).

2011—Pub. L. 112–81, § 801(e)(2)(A), struck out ''or Key Decision Point B'' after ''Milestone B'' in section catchline.

Subsec. (a). Pub. L. 112–81, § 801(e)(2)(B), struck out '', or Key Decision Point B approval in the case of a space program,'' after ''Milestone B approval'' in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 111–383, § 901(j)(4), substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

Subsec. (a)(3)(E) to (G). Pub. L. 112–81, § 801(b)(1), added subpars. (E) and (F) and redesignated former subpar. (E) as (G).

Subsec. (b)(1). Pub. L. 111–383, § 814(c)(1)(A), substituted ''any changes to the program or a designated

major subprogram of such program'' for ''any changes to the program'' in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 111–383, §814(c)(1)(B), substituted ''otherwise cause the program or subprogram'' for ''otherwise cause the program''.

Subsec. (b)(2). Pub. L. 112–81, §801(e)(2)(C), struck out ''(or Key Decision Point B approval in the case of a space program)'' after ''Milestone B approval''.

Subsec. (d)(1). Pub. L. 112–81, §801(e)(2)(C), struck out ''(or Key Decision Point B approval in the case of a space program)'' after ''Milestone B approval'' in two places.

Pub. L. 111–383, §813(d)(1)(A), substituted ''(as specified in paragraph (1), (2), or (3) of subsection (a))'' for ''(as specified in paragraph (1) or (2) of subsection (a))''.

Subsec. (d)(2)(B). Pub. L. 111–383, §1075(k)(1), which directed amendment of directory language of Pub. L. 111–23, §205(a)(1)(B), resulting in substitution of ''paragraphs (1), (2), and (3)'' for ''paragraphs (1) and (2)'' in text, was not executed because of the prior identical amendment by Pub. L. 111–383, §813(d)(1)(B). See below.

Pub. L. 111–383, §813(d)(1)(B), substituted ''specified in paragraphs (1), (2), and (3) of subsection (a)'' for ''specified in paragraphs (1) and (2) of subsection (a)''.

Subsec. (d)(3). Pub. L. 112–81, §819(b), added par. (3).

Subsec. (g)(2) to (4). Pub. L. 111–383, §814(c)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 112–81, §801(b)(2), added par. (5) and struck out former par. (5) which read as follows: ''The term 'Key Decision Point B' means the official program initiation of a National Security Space program of the Department of Defense, which triggers a formal review to determine maturity of technology and the program's readiness to begin the preliminary system design.''

Pub. L. 111–383, §814(c)(2)(A), redesignated par. (4) as (5).

2009—Subsec. (a)(1)(B). Pub. L. 111–23, §201(f), inserted ''appropriate trade-offs among cost, schedule, and performance objectives have been made to ensure that'' before ''the program is affordable''.

Subsec. (a)(1)(C). Pub. L. 111–23, §101(d)(4), inserted '', with the concurrence of the Director of Cost Assessment and Program Evaluation,'' before ''the product''.

Subsec. (a)(1)(D). Pub. L. 111–23, §205(a)(3)(A), struck out ''and'' at end.

Subsec. (a)(2), (3). Pub. L. 111–23, §205(a)(3)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3)(D). Pub. L. 111–23, §205(a)(3)(D)(i), substituted '', as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and'' for semicolon.

Subsec. (a)(3)(E), (F). Pub. L. 111–23, §205(a)(3)(D)(ii), (iii), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: ''the program demonstrates a high likelihood of accomplishing its intended mission; and''.

Subsec. (d). Pub. L. 111–23, §205(a)(1), designated existing provisions as par. (1) and substituted par. (2) for ''Whenever the milestone decision authority makes such a determination and authorizes such a waiver, the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized.''

Subsecs. (e) to (g). Pub. L. 111–23, §205(a)(2), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2008—Pub. L. 110–417, §813(a), (b), renumbered section 2366a of this title as this section.

Subsec. (a). Pub. L. 110–181, §812(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of pars. (1) to (10) relating to required certifications by milestone decision authority for major defense acquisition program to receive Milestone B approval, or Key Decision Point B approval in the case of a space program.

Subsec. (b). Pub. L. 110–181, §812(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 110–181, §812(4), designated existing provisions as par. (1) and added par. (2).

Pub. L. 110–181, §812(2), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–181, §812(5), substituted ''authority may, at the time of Milestone B approval (or Key Decision Point B approval in the case of a space program) or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval (or Key Decision Point B approval in the case of a space program) pursuant to subsection (b)(2), waive'' for ''authority may waive'' and ''paragraph (1) or (2)'' for ''paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (9)''.

Pub. L. 110–181, §812(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–181, §812(6), substituted ''subsection (d)'' for ''subsection (c)''.

Pub. L. 110–181, §812(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 110–181, §812(2), redesignated subsec. (e) as (f).

2006—Subsec. (a)(1) to (7). Pub. L. 109–364, §805(a)(1)–(3), added par. (1) and redesignated former pars. (1) to (6) as (2) to (7), respectively. Former par. (7) redesignated (10).

Subsec. (a)(8), (9). Pub. L. 109–364, §805(a)(4), (5), added pars. (8) and (9).

Subsec. (a)(10). Pub. L. 109–364, §805(a)(1), redesignated par. (7) as (10).

Subsec. (c). Pub. L. 109–364, §805(b), substituted ''(5), (6), (7), (8), or (9)'' for ''(5), or (6)''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title VIII, §821(b), Dec. 26, 2013, 127 Stat. 809, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 26, 2013], and shall apply with respect to major defense acquisition programs which are subject to Milestone B approval on or after the date occurring six months after the date of the enactment of this Act.''

Pub. L. 113–66, div. A, title X, §1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(1) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.

Amendment by section 322(e)(2) of Pub. L. 112–239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112–81, see section 322(f) of Pub. L. 112–239, set out as an note under section 2366a of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VIII, §813(d)(1), Jan. 7, 2011, 124 Stat. 4265, provided that the amendment made by section 813(d)(1) is effective as of May 22, 2009.

Amendment by section 901(j)(4) of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

Pub. L. 111–383, div. A, title X, §1075(k), Jan. 7, 2011, 124 Stat. 4378, provided that the amendment made by section 1075(k)(1) is effective as of May 22, 2009, and as if included in Pub. L. 111–23 as enacted.

MILESTONE B DECISIONS

Pub. L. 114–92, div. A, title VIII, §802(d)(3), Nov. 25, 2015, 129 Stat. 880, provided that: ''The Chief of the Armed Force concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief's views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in section 2366b(b)(3) of title 10, United States Code, as amended by section 824 of this Act, prior to a Milestone B decision on the program.''

CERTIFICATION AND REVIEW OF PROGRAMS ENTERING DEVELOPMENT PRIOR TO ENACTMENT OF SECTION 2366B OF TITLE 10

Pub. L. 111–23, title II, §205(b), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111–383, div. A, title VIII,

§ 813(d)(2), Jan. 7, 2011, 124 Stat. 4266, which related to certification and review of programs entering development prior to enactment of section 2366b of this title, was repealed by Pub. L. 112–239, div. A, title VIII, § 814, Jan. 2, 2013, 126 Stat. 1830.

FORMAL REVIEW PROCESS FOR BANDWIDTH REQUIREMENTS

Pub. L. 110–417, [div. A], title X, § 1047(d), Oct. 14, 2008, 122 Stat. 4603, as amended by Pub. L. 111–84, div. A, title X, § 1033, Oct. 28, 2009, 123 Stat. 2449, provided that:

''(1) IN GENERAL.—The Secretary of Defense and the Director of National Intelligence shall, as part of the Milestone B or Key Decision Point B approval process for any major defense acquisition program or major system acquisition program, establish a formal review process to ensure that—

''(A) the bandwidth requirements needed to support such program are or will be met; and

''(B) a determination will be made with respect to how to meet the bandwidth requirements for such program.

''(2) REPORTS.—Not later than January 1 of each year, the Secretary of Defense and the Director of National Intelligence shall each submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on any determinations made under paragraph (1) with respect to meeting the bandwidth requirements for major defense acquisition programs and major system acquisition programs during the preceding fiscal year.''

§ 2367. Use of federally funded research and development centers

(a) LIMITATION ON USE OF CENTERS.—Except as provided in subsection (b), the Secretary of Defense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement of the Department of Defense with such center.

(b) EXCEPTION FOR APPLIED SCIENTIFIC RESEARCH.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) LIMITATION ON CREATION OF NEW CENTERS.—(1) The head of an agency may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating a federally funded research center that was not in existence before June 2, 1986, until—

(A) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(B) a period of 60 days beginning on the date such report is received by Congress has elapsed.

(2) In this subsection, the term ''head of an agency'' has the meaning given such term in section 2302(1) of this title.

(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOAD EFFORT.—After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit 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 a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.

(Added Pub. L. 99–500, § 101(c) [title X, § 912(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, and Pub. L. 99–591, § 101(c) [title X, § 912(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, § 912(a)(1), Nov. 14, 1986, 100 Stat. 3925, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–190, div. A, title II, § 256(a)(1), Dec. 5, 1991, 105 Stat. 1330; Pub. L. 104–106, div. A, title XV, § 1502(a)(9), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, § 1041(a)(12), Dec. 2, 2002, 116 Stat. 2645.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314, § 1041(a)(12), struck out designations for pars. (1) and (2) and text of par. (1). Prior to amendment par. (1) read as follows: ''In the documents provided to Congress by the Secretary of Defense in support of the budget submitted by the President under section 1105 of title 31 for any fiscal year, the Secretary shall set forth the proposed amount of the man-years of effort to be funded by the Department of Defense for each federally funded research and development center for the fiscal year covered by that budget.''

1999—Subsec. (d)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (d)(2). Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and the Committees on Appropriations of the Senate and''.

1991—Subsec. (d). Pub. L. 102–190 added subsec. (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title II, § 256(a)(2), Dec. 5, 1991, 105 Stat. 1330, provided that:

''(A) Paragraph (1) of subsection (d) of section 2367 of title 10, United States Code, as added by paragraph (1), shall take effect with respect to the budget submitted for fiscal year 1994.

''(B) Paragraph (2) of such subsection shall take effect with respect to fiscal year 1992.''

GAO STUDY; REPORT

Pub. L. 99–500, § 101(c) [title X, § 912(b), (c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, Pub. L. 99–591, § 101(c) [title X, § 912(b), (c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 912(b), (c), Nov. 14, 1986, 100 Stat. 3926, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, directed Comptroller General to conduct a study of national defense role of federally funded research and development centers and submit a report to Congress not later than one year after Oct. 18, 1986.

§ 2368. Centers for Science, Technology, and Engineering Partnership

(a) DESIGNATION.—(1) The Secretary of Defense, in coordination with the Secretaries of the military departments, shall designate each science and technology reinvention laboratory

as a Center for Science, Technology, and Engineering Partnership (in this section referred to as ''Centers'') in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department to reengineer management and business processes and adopt best-business and personnel practices at the Centers of the Secretary concerned in connection with the capability requirements of the Centers, so as to serve as recognized leaders in such capabilities throughout the Department of Defense and in the national technology and industrial base.

(3) The Secretary of Defense, acting through the directors of the Centers, may conduct one or more pilot programs, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Directors determine could—

(A) improve the efficiency and effectiveness of operations at Centers;

(B) improve the support provided by the Centers for the elements of the Department of Defense who use the services of the Centers; and

(C) enhance capabilities by reducing the cost and improving the performance and efficiency of executing laboratory missions.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—(1) To achieve one or more objectives set forth in paragraph (2), the Secretary may authorize and establish incentives for the Director of a Center to enter into public-private cooperative arrangements (in this section referred to as a ''public-private partnership'') to provide for any of the following:

(A) For employees of the Center, academia, private industry, State and local governments, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the capabilities of the Center, including any work that—

(i) involves one or more capabilities of the Center; and

(ii) may be applicable to both the Department and commercial entities.

(B) For private industry or other entities outside the Department of Defense to use for either Government or commercial purposes any capabilities of the Center that are not fully used for Department of Defense activities for any period determined to be consistent with the needs of the Department of Defense.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the use of the capacity of a Center.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense.

(C) To reduce the cost of science, technology, and engineering activities of the Department of Defense.

(D) To leverage private sector investment in—

(i) such efforts as research and equipment recapitalization for a Center; and

(ii) the promotion of the undertaking of commercial business ventures based on the capabilities of a Center, as determined by the director of the Center.

(E) To foster cooperation and technology transfer between the armed forces, academia, private industry, and State and local governments.

(F) To increase access by a Center to a skilled technical workforce that can contribute to the effective and efficient execution of the missions of the Department of Defense.

(G) To increase the ability of a Center to access and use non-Department of Defense methods to develop and innovate and access capabilities that contribute to the effective and efficient execution of the missions of the Department of Defense.

(3)(A) Public-private partnerships entered into under paragraph (1) may be used for purposes relating to technology transfer and other authorities described in subparagraph (B).

(B) The authorities described in this subparagraph are provisions of law that provide for cooperation and partnership by the Department of Defense with academia, private industry, and State and local governments, including the following:

(i) Sections 3371 through 3375 of title 5.

(ii) Sections 2194, 2358, 2371, 2511, 2539b, and 2563 of this title.

(iii) Section 209 of title 35.

(iv) Sections 8, 12, and 23 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3706, 3710a, and 3715).

(c) PRIVATE SECTOR USE OF EXCESS CAPACITY.—Any capability of a Center made available to the private sector may be used to perform research and testing activities in order to make more efficient and economical use of Government-owned capabilities and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary research and technical skills to meet the needs of the armed forces.

(d) CREDITING OF AMOUNTS FOR PERFORMANCE.—Amounts received by a Center for work performed under a public-private partnership may—

(1) be credited to the appropriation or fund, including a working-capital or revolving fund, that incurs the cost of performing the work; or

(2) be used by the Director of the Center as the Director considers appropriate and consistent with section 219 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note).

(e) AVAILABILITY OF EXCESS CAPACITIES TO PRIVATE-SECTOR PARTNERS.—Capacities of a Center may be made available for use by a private-sector entity under this section only if—

(1) the use of the capacities will not have a significant adverse effect on the performance of the Center or the ability of the Center to achieve the mission of the Center, as determined by the Director of the Center; and

(2) the private-sector entity agrees—

(A) to reimburse the Department of Defense when required in accordance with the guidance of the Department for the direct and indirect costs (including any rental costs) that are attributable to the use of the capabilities by the private-sector entity, as

determined by the Secretary of the military departments; and

(B) to hold harmless and indemnify the United States from—

(i) any claim for damages or injury to any person or property arising out of the use of the capabilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary to suspend or terminate that use of capabilities during a war or national emergency.

(f) CONSTRUCTION OF PROVISION.—Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center by personnel of the Department of Defense to performance by a contractor.

(g) DEFINITIONS.—In this section:

(1) The term ''capabilities'', with respect to a Center for Science, Technology, and Engineering Partnership, means the facilities, equipment, personnel, intellectual property, and other assets that support the core competencies of the Center.

(2) The term ''national technology and industrial base'' has the meaning given that term in section 2500 of this title.

(3) The term ''science and technology reinvention laboratory'' means a science and technology reinvention laboratory designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note).

(Added Pub. L. 114–92, div. A, title II, §211(a), Nov. 25, 2015, 129 Stat. 764.)

PRIOR PROVISIONS

A prior section 2368, added Pub. L. 100–456, div. A, title VIII, §823(a)(1), Sept. 29, 1988, 102 Stat. 2018; amended Pub. L. 101–189, div. A, title VIII, §841(c)(1), Nov. 29, 1989, 103 Stat. 1514; Pub. L. 102–25, title VII, §701(g)(1), Apr. 6, 1991, 105 Stat. 115, which authorized studies in fields of research and development essential to development of critical technologies, was repealed by Pub. L. 102–190, div. A, title VIII, §821(c)(1), Dec. 5, 1991, 105 Stat. 1431.

[§ 2369. Repealed. Pub. L. 103–355, title III, § 3062(a), Oct. 13, 1994, 108 Stat. 3336]

Section, added Pub. L. 100–456, div. A, title VIII, §842(a), Sept. 29, 1988, 102 Stat. 2026; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to program for supervision and coordination of product evaluation activities within the Department of Defense.

[§ 2370. Repealed. Pub. L. 104–106, div. A, title X, § 1061(j)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 101–510, div. A, title II, §241(a), Nov. 5, 1990, 104 Stat. 1516, required annual report to Congress on Biological Defense Research Program.

[§ 2370a. Repealed. Pub. L. 108–375, div. A, title X, § 1005(a), Oct. 28, 2004, 118 Stat. 2036]

Section, added Pub. L. 103–160, div. A, title II, §214(a), Nov. 30, 1993, 107 Stat. 1586, related to medical countermeasures against biowarfare threats and allocation of funding between near-term and other threats.

§ 2371. Research projects: transactions other than contracts and grants

(a) ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) ADVANCE PAYMENTS.—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) RECOVERY OF FUNDS.—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) CONDITIONS.—(1) The Secretary of Defense shall ensure that—

(A) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) SUPPORT ACCOUNTS.—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency

for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

[(h) Repealed. Pub. L. 113–291, div. A, title X, §1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.]

(i) PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101–189, div. A, title II, §251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended Pub. L. 101–510, div. A, title XIV, §1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–190, div. A, title VIII, §826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102–484, div. A, title II, §217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103–35, title II, §201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title VIII, §827(b), title XI, §1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103–355, title I, §1301(b), Oct. 13, 1994, 108 Stat. 3285; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title II, §267(a)–(c)(1)(A), title X, §1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2468, 2658; Pub. L. 105–85, div. A, title VIII, §832, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 105–261, div. A, title VIII, §817, Oct. 17, 1998, 112 Stat. 2089; 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)(19), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 113–291, div. A, title X, §1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.)

AMENDMENTS

2014—Subsec. (h). Pub. L. 113–291 struck out subsec. (h) which related to annual report on use of certain cooperative agreements and transactions.

2003—Subsec. (h)(3). Pub. L. 108–136 added par. (3).

1999—Subsec. (h)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsec. (i)(2)(A). Pub. L. 105–261 substituted ''cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title'' for ''cooperative agreement that includes a clause described in subsection (d)''.

1997—Subsec. (i). Pub. L. 105–85 added subsec. (i).

1996—Subsec. (b). Pub. L. 104–201, §1073(e)(1)(B), inserted ''Defense'' before ''Advanced Research Projects Agency''.

Subsec. (e). Pub. L. 104–201, §267(a), inserted ''(1)'' before ''The Secretary of Defense'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted ''and'' after semicolon at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), added par. (2), and struck out par. (3) which read as follows: ''a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.''

Subsec. (f). Pub. L. 104–201, §1073(e)(1)(B), inserted ''Defense'' before ''Advanced Research Projects Agency''.

Subsec. (h). Pub. L. 104–201, §267(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

''(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

''(2) The potential military and, if any, commercial utility of such technologies.

''(3) The reasons for not using a contract or grant to provide support for such research.

''(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

''(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).''

Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (i). Pub. L. 104–201, §1073(e)(1)(B), which directed amendment of subsec. (i) by inserting ''Defense'' before ''Advanced Research Projects Agency'', could not be executed because of the renumbering of subsec. (i) as section 2371a of this title by Pub. L. 104–201, §267(c)(1)(A). See below.

Pub. L. 104–201, §267(c)(1)(A), renumbered subsec. (i) of this section as section 2371a of this title.

1994—Pub. L. 103–355 amended section generally. Prior to amendment section related to cooperative agreements and other transactions for advanced research projects.

1993—Subsec. (a). Pub. L. 103–160, §827(b)(1)(C), substituted ''section 2358 of this title'' for ''subsection (a)'' in par. (1) and ''subsection (d)'' for ''subsection (e)'' in par. (2).

Pub. L. 103–160, §827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103–160, §1182(a)(6), (h), which read as follows: ''The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and

other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.''

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Subsec. (b). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 103–160, § 827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted ''and development'' after ''research'' in two places in par. (1). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103–160, § 827(b)(1)(B), (D), (2)(B), redesignated subsec. (e), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (d) and substituted ''section 2358 of this title'' for ''subsection (a)'' and ''research and development'' for ''advanced research''. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103–160, § 827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) substituted ''research and development are'' for ''advanced research is'', in par. (3) substituted ''research and development'' for ''advanced research'', in par. (4) substituted ''subsection (a)'' for ''subsection (b)'', and in par. (5) substituted ''subsection (d)'' for ''subsection (e)''. Former subsec. (e) redesignated (d).

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Subsec. (f). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (f).

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Pub. L. 103–35 substituted ''granted by section 12'' for ''granted by section 11'' and ''provisions of sections 11 and 12'' for ''provisions of sections 10 and 11''.

1992—Subsec. (g). Pub. L. 102–484 added subsec. (g).

1991—Subsec. (a). Pub. L. 102–190, § 826(a), inserted ''and the Secretary of each military department, in carrying out advanced research projects,''.

Subsec. (b)(1). Pub. L. 102–190, § 826(b)(1)(A), struck out ''by the Secretary'' after ''transactions entered into''.

Subsec. (b)(2). Pub. L. 102–190, § 826(b)(1)(B), substituted ''to the appropriate account'' for ''to the account''.

Subsec. (d). Pub. L. 102–190, § 826(b)(2), substituted ''The Secretary of Defense'' for ''The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 102–190, § 826(b)(3), substituted ''separate accounts for each of the military departments and the Defense Advanced Research Projects Agency'' for ''an account'' and ''those accounts'' for ''such account''.

Subsec. (f)(5). Pub. L. 102–190, § 826(b)(4), substituted ''each account'' for ''the account''.

Subsec. (g). Pub. L. 102–190, § 826(c), struck out subsec. (g) which read as follows: ''The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.''

1990—Subsec. (f). Pub. L. 101–510 substituted ''Committees on'' for ''Committees of'' in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

AUTHORITY OF DEFENSE ADVANCED RESEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS

Pub. L. 103–160, div. A, title VIII, § 845, Nov. 30, 1993, 107 Stat. 1721, as amended by Pub. L. 104–201, div. A, title VIII, § 804, title X, § 1073(e)(1)(D), (2)(A), Sept. 23, 1996, 110 Stat. 2605, 2658; Pub. L. 105–261, div. A, title II, § 241, Oct. 17, 1998, 112 Stat. 1954; Pub. L. 106–65, div. A, title VIII, § 801, title X, § 1066(d)(6), Oct. 5, 1999, 113 Stat. 700, 773; Pub. L. 106–398, § 1 [[div. A], title VIII, §§ 803, 804(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–206; Pub. L. 107–107, div. A, title VIII, § 822, title X, § 1048(i)(2), Dec. 28, 2001, 115 Stat. 1182, 1229; Pub. L. 108–136, div. A, title VIII, § 847, Nov. 24, 2003, 117 Stat. 1554; Pub. L. 109–163, div. A, title VIII, § 823, Jan. 6, 2006, 119 Stat. 3387; Pub. L. 109–364, div. A, title VIII, § 855, Oct. 17, 2006, 120 Stat. 2347; Pub. L. 110–181, div. A, title VIII, § 823, title X, § 1063(h), Jan. 28, 2008, 122 Stat. 226, 324; Pub. L. 110–417, [div. A], title VIII, § 824, Oct. 14, 2008, 122 Stat. 4533; Pub. L. 111–383, div. A, title VIII, §§ 826, 866(g)(2), Jan. 7, 2011, 124 Stat. 4270, 4298; Pub. L. 112–239, div. A, title VIII, § 863, Jan. 2, 2013, 126 Stat. 1860; Pub. L. 113–291, div. A, title VIII, § 812, title X, § 1071(b)(13), Dec. 19, 2014, 128 Stat. 3429, 3507, which authorized certain officials, as designated by the Secretary of Defense, to carry out prototype projects directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by or in use by the Department of Defense, was repealed by Pub. L. 114–92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896.

[Pub. L. 114–92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896, provided that: ''Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note) [formerly set out above] is hereby repealed. Transactions entered into under the authority of such section 845 shall remain in force and effect and shall be modified as appropriate to reflect the amendments made by this section [enacting section 2371b of this title, amending section 2302 of this title, and amending provisions set out as a note under section 2358 of this title].''']

§ 2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980

The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

(Added and amended Pub. L. 104–201, div. A, title II, § 267(c)(1)(A), (B), Sept. 23, 1996, 110 Stat. 2468; Pub. L. 105–85, div. A, title X, § 1073(a)(50), Nov. 18, 1997, 111 Stat. 1903.)

CODIFICATION

The text of section 2371(i) of this title, which was transferred to this section, redesignated as text of section, and amended by Pub. L. 104–201, § 267(c)(1)(A), (B), was based on Pub. L. 103–355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3286.

AMENDMENTS

1997—Pub. L. 105–85 inserted ''Defense'' before ''Advanced Research Projects Agency''.

1996—Pub. L. 104–201 transferred section 2371(i) of this title to this section, added section catchline, and

struck out subsec. (i) designation and heading which read as follows: ''Cooperative Research and Development Agreements Under Stevenson-Wydler Technology Innovation Act of 1980''. See Codification note above.

§ 2371b. Authority of the Department of Defense to carry out certain prototype projects

(a) AUTHORITY.—(1) Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 2371 of this title, carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.

(2) The authority of this section—

(A) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of $50,000,000 but not in excess of $250,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency as designated for the purpose of section 1702(c) of title 41, or, for the Defense Advanced Research Projects Agency or the Missile Defense Agency, the director of the agency that—

(i) the requirements of subsection (d) will be met; and

(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

(B) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of $250,000,000 (including all options) only if—

(i) the Under Secretary of Defense for Acquisition, Technology, and Logistics determines in writing that—

(I) the requirements of subsection (d) will be met; and

(II) the use of the authority of this section is essential to meet critical national security objectives; and

(ii) the congressional defense committees are notified in writing at least 30 days before such authority is exercised.

(3) The authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A), and the authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)(B), may not be delegated.

(b) EXERCISE OF AUTHORITY.—

(1) Subsections (e)(1)(B) and (e)(2) of such section 2371 shall not apply to projects carried out under subsection (a).

(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under subsection (a).

(c) COMPTROLLER GENERAL ACCESS TO INFORMATION.—(1) Each agreement entered into by an official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of $5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

(3)(A) The right provided to the Comptroller General in a clause of an agreement under paragraph (1) is limited as provided in subparagraph (B) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of this title.

(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

(4) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

(5) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

(d) APPROPRIATE USE OF AUTHORITY.—(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless one of the following conditions is met:

(A) There is at least one nontraditional defense contractor participating to a significant extent in the prototype project.

(B) All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors.

(C) At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government.

(D) The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that—

(i) the party incurred the costs in anticipation of entering into the transaction; and

(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

(e) DEFINITIONS.—In this section:

(1) The term ''nontraditional defense contractor'' has the meaning given the term under section 2302(9) of this title.

(2) The term ''small business'' means a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

(f) FOLLOW-ON PRODUCTION CONTRACTS OR TRANSACTIONS.—(1) A transaction entered into under this section for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction.

(2) A follow-on production contract or transaction provided for in a transaction under paragraph (1) may be awarded to the participants in the transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of this title, if—

(A) competitive procedures were used for the selection of parties for participation in the transaction; and

(B) the participants in the transaction successfully completed the prototype project provided for in the transaction.

(3) Contracts and transactions entered into pursuant to this subsection may be awarded using the authority in subsection (a), under the authority of chapter 137 of this title, or under such procedures, terms, and conditions as the Secretary of Defense may establish by regulation.

(g) AUTHORITY TO PROVIDE PROTOTYPES AND FOLLOW-ON PRODUCTION ITEMS AS GOVERNMENT-FURNISHED EQUIPMENT.—An agreement entered into pursuant to the authority of subsection (a) or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) may provide for prototypes or follow-on production items to be provided to another contractor as Government-furnished equipment.

(h) APPLICABILITY OF PROCUREMENT ETHICS REQUIREMENTS.—An agreement entered into under the authority of this section shall be treated as a Federal agency procurement for the purposes of chapter 21 of title 41.

(Added Pub. L. 114–92, div. A, title VIII, §815(a)(1), Nov. 25, 2015, 129 Stat. 893.)

UPDATED GUIDANCE

Pub. L. 114–92, div. A, title VIII, §815(e), Nov. 25, 2015, 129 Stat. 896, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall issue updated guidance to implement the amendments made by this section [enacting this section, amending section 2302 of this title, amending provisions set out as a note under section 2358 of this title, and repealing provisions set out as a note under section 2371 of this title].''

§ 2372. Independent research and development and bid and proposal costs: payments to contractors

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment, by the Department of Defense, of expenses incurred by contractors for independent research and development and bid and proposal costs.

(b) COSTS ALLOWABLE AS INDIRECT EXPENSES.—The regulations prescribed pursuant to subsection (a) shall provide that independent research and development and bid and proposal costs shall be allowable as indirect expenses on covered contracts to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) ADDITIONAL CONTROLS.—Subject to subsection (f), the regulations prescribed pursuant to subsection (a) may include the following provisions:

(1) A limitation on the allowability of independent research and development and bid and proposal costs to work which the Secretary of Defense determines is of potential interest to the Department of Defense.

(2) For each of fiscal years 1993 through 1995, a limitation in the case of major contractors that the total amount of the independent research and development and bid and proposal costs that are allowable as expenses of the contractor's covered segments may not exceed the contractor's adjusted maximum reimbursement amount.

(3) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected Department of Defense future needs; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the contractor's independent research and development programs.

(d) ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—For purposes of subsection (c)(2), the adjusted maximum reimbursement amount for a major contractor for a fiscal year is the sum of—

(1) the total amount of the allowable independent research and development and bid and proposal costs incurred by the contractor during the preceding fiscal year;

(2) 5 percent of the amount referred to in paragraph (1); and

(3) if the projected total amount of the independent research and development and bid and proposal costs incurred by the contractor for such fiscal year is greater than the total amount of the independent research and development and bid and proposal costs incurred by the contractor for the preceding fiscal year, the amount that is determined by multiplying the amount referred to in paragraph (1) by the lesser of—

(A) the percentage by which the projected total amount of such incurred costs for such fiscal year exceeds the total amount of the incurred costs of the contractor for the preceding fiscal year; or

(B) the estimated percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed.

(e) WAIVER OF ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—The Secretary of Defense may waive the applicability of any limitation prescribed under subsection (c)(2) to any contractor for a fiscal year to the extent that the Secretary determines that allowing the contractor to exceed the contractor's adjusted maximum reimbursement amount for such year—

(1) is necessary to reimburse such contractor at least to the extent that would have been allowed under regulations as in effect on December 4, 1991; or

(2) is otherwise in the best interest of the Government.

(f) LIMITATIONS ON REGULATIONS.—Regulations prescribed pursuant to subsection (c) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program.

(g) ENCOURAGEMENT OF CERTAIN CONTRACTOR ACTIVITIES.—The regulations under subsection (a) shall encourage contractors to engage in research and development activities of potential interest to the Department of Defense, including activities intended to accomplish any of the following:

(1) Enabling superior performance of future United States weapon systems and components.

(2) Reducing acquisition costs and life-cycle costs of military systems.

(3) Strengthening the defense industrial base and the technology base of the United States.

(4) Enhancing the industrial competitiveness of the United States.

(5) Promoting the development of technologies identified as critical under section 2506 of this title.

(6) Increasing the development and promotion of efficient and effective applications of dual-use technologies.

(7) Providing efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(h) MAJOR CONTRACTORS.—A contractor shall be considered to be a major contractor for the purposes of subsection (c) for any fiscal year if for the preceding fiscal year the contractor's covered segments allocated to Department of Defense contracts a total of more than $10,000,000 in independent research and development and bid and proposal costs.

(i) DEFINITIONS.—In this section:

(1) COVERED CONTRACT.—The term ''covered contract'' has the meaning given that term in section 2324(*l*) of this title.

(2) COVERED SEGMENT.—The term ''covered segment'', with respect to a contractor, means a product division of the contractor that allocated more than $1,000,000 in independent research and development and bid and proposal costs to Department of Defense contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, such term means the contractor as a whole.

(Added Pub. L. 101–510, div. A, title VIII, § 824(a)(1), Nov. 5, 1990, 104 Stat. 1603; amended Pub. L. 102–25, title VII, § 701(c), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 802(a)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102–484, div. A, title X, § 1052(27), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–35, title II, § 201(c)(5), May 31, 1993, 107 Stat. 98; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(11), Feb. 10, 1996, 110 Stat. 672.)

AMENDMENTS

1996—Subsec. (i)(1). Pub. L. 104–106 substituted ''2324(*l*)'' for ''2324(m)''.

1993—Subsec. (g)(5). Pub. L. 103–35 substituted ''section 2506'' for ''section 2522''.

1992—Subsec. (e)(1). Pub. L. 102–484 substituted ''on December 4, 1991'' for ''on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993''.

1991—Pub. L. 102–190 substituted section catchline for one which read ''Independent research and development'' and amended text generally, substituting present provisions for provisions authorizing payment of independent research and development or bid and proposal costs, encouraging contractors to engage in research and development activities, and authorizing advance agreements regarding the manner and extent in which the Department of Defense may pay independent research and development costs or bid and proposal costs.

Subsec. (d)(2)(B). Pub. L. 102–25 substituted ''subsection (b), including'' for ''subsection (b) or''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title VIII, § 802(e), Dec. 5, 1991, 105 Stat. 1414, provided that: ''The amendments made by this section [amending this section and section 2330 of this title] shall take effect on October 1, 1992, and shall apply to independent research and development and bid and proposal costs incurred by a contractor during fiscal years of that contractor that begin on or after that date.''

REGULATIONS

Pub. L. 102–190, div. A, title VIII, § 802(b), Dec. 5, 1991, 105 Stat. 1414, provided that: ''The Secretary of Defense shall prescribe proposed regulations to implement the amendment made by subsection (a)(1) [amending this section] not later than April 1, 1992, and shall prescribe final regulations for that purpose not later than June 1, 1992.''

STUDY BY OFFICE OF TECHNOLOGY ASSESSMENT

Pub. L. 102–190, div. A, title VIII, § 802(c), Dec. 5, 1991, 105 Stat. 1414, directed Director of the Office of Technology Assessment to conduct a study to determine effect of regulations prescribed under this section on the achievement of policy stated in subsec. (g) of this section and submit a report containing results of such study to Committees on Armed Services of Senate and House of Representatives not later than Dec. 1, 1995, prior to repeal by Pub. L. 103–160, div. A, title II, § 266, Nov. 30, 1993, 107 Stat. 1611.

§ 2373. Procurement for experimental purposes

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may each buy ordnance, signal, chemical activity, transportation, energy, medical, space-flight, and aeronautical supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense.

(b) PROCEDURES.—Purchases under this section may be made inside or outside the United States and by contract or otherwise. Chapter 137 of this title applies only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability.

(Added Pub. L. 103–160, div. A, title VIII, § 822(c)(1), Nov. 30, 1993, 107 Stat. 1706; amended Pub. L. 103–337, div. A, title X, § 1070(g), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title VIII, § 812, Feb. 10, 1996, 110 Stat. 395; Pub. L. 114–92, div. A, title VIII, § 814, Nov. 25, 2015, 129 Stat. 893.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4504 and 9504 of this title, prior to repeal by Pub. L. 103–160, § 822(c)(2).

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–92, § 814(a), inserted ''transportation, energy, medical, space-flight,'' before ''and aeronautical supplies''.

Subsec. (b). Pub. L. 114–92, § 814(b), substituted ''only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability'' for ''only when such purchases are made in quantity''.

1996—Subsec. (b). Pub. L. 104–106 inserted ''only'' after ''applies'' in second sentence.

1994—Subsec. (a). Pub. L. 103–337 substituted ''chemical activity, and aeronautical supplies,'' for ''and chemical activity supplies,''.

§ 2374. Merit-based award of grants for research and development

(a) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

(1) specifically refers to this subsection;

(2) specifically identifies the particular non-Federal Government entity involved; and

(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added Pub. L. 103–355, title VII, § 7203(a)(2), Oct. 13, 1994, 108 Stat. 3380.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2374a. Prizes for advanced technology achievements

(a) AUTHORITY.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the service acquisition executive for each military department, may carry out programs to award cash prizes in recognition of outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense.

(b) COMPETITION REQUIREMENTS.—Each program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes. The process shall include the widely-advertised solicitation of submissions of research results, technology developments, and prototypes.

(c) LIMITATIONS.—(1) No prize competition may result in the award of a cash prize of more than $10,000,000.

(2) No prize competition may result in the award of more than $1,000,000 in cash prizes without the approval of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(d) RELATIONSHIP TO OTHER AUTHORITY.—A program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of an official referred to in that subsection to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

(e) ACCEPTANCE OF FUNDS.—In addition to such sums as may be appropriated or otherwise made available to the Secretary to award prizes under this section, the Secretary may accept funds from other departments and agencies of the Federal Government, and from State and local governments, to award prizes under this section.

(f) PERIOD OF AUTHORITY.—The authority to award prizes under subsection (a) shall terminate at the end of September 30, 2018.

(Added Pub. L. 106–65, div. A, title II, §244(a), Oct. 5, 1999, 113 Stat. 552; amended Pub. L. 107–314, div. A, title II, §248(a), Dec. 2, 2002, 116 Stat. 2502; Pub. L. 108–136, div. A, title X, §1031(a)(20), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 109–163, div. A, title II, §257, Jan. 6, 2006, 119 Stat. 3184; Pub. L. 109–364, div. A, title II, §212, Oct. 17, 2006, 120 Stat. 2119; Pub. L. 111–84, div. A, title II, §253, Oct. 28, 2009, 123 Stat. 2243; Pub. L. 111–383, div. A, title IX, §901(j)(4), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 113–66, div. A, title II, §263, Dec. 26, 2013, 127 Stat. 726; Pub. L. 113–291, div. A, title II, §211, Dec. 19, 2014, 128 Stat. 3324; Pub. L. 114–92, div. A, title X, §1079(a), Nov. 25, 2015, 129 Stat. 999.)

AMENDMENTS

2015—Subsecs. (f), (g). Pub. L. 114–92, §1079(a), which purported to repeal the annual reporting requirement on prizes for advanced technology achievements by directing the striking of subsec. (e) and redesignation of subsec. (f) as (e), was executed by striking subsec. (f), relating to biennial reports, and redesignating subsec. (g) as (f) to reflect the probable intent of Congress and the intervening amendments made by Pub. L. 113–291, §211(b)(1), (c), which had redesignated subsec. (e) as (f) and changed the reporting requirement from annual to biennial. See 2014 Amendment notes below.

2014—Subsec. (c)(1). Pub. L. 113–291, §211(a), substituted ''No prize competition may result in the award of a cash prize of more than $10,000,000.'' for ''The total amount made available for award of cash prizes in a fiscal year may not exceed $10,000,000.''

Subsec. (e). Pub. L. 113–291, §211(b)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 113–291, §211(c)(3), substituted ''BIENNIAL'' for ''ANNUAL'' in heading.

Pub. L. 113–291, §211(b)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 113–291, §211(c)(1), substituted ''every other year'' for ''each year'' and ''two fiscal years'' for ''fiscal year''.

Subsec. (f)(2). Pub. L. 113–291, §211(c)(2), substituted ''a period of two fiscal years'' for ''a fiscal year'' in introductory provisions.

Subsec. (g). Pub. L. 113–291, §211(b)(1), redesignated subsec. (f) as (g).

2013—Subsec. (f). Pub. L. 113–66 substituted ''September 30, 2018'' for ''September 30, 2013''.

2011—Subsec. (a). Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

2009—Subsec. (f). Pub. L. 111–84 substituted ''2013'' for ''2010''.

2006—Subsec. (a). Pub. L. 109–364, §212(a)(1), substituted ''Director of Defense Research and Engineering and the service acquisition executive for each military department'' for ''Director of the Defense Advanced Research Projects Agency'' and ''programs'' for ''a program''.

Subsec. (b). Pub. L. 109–364, §212(a)(2)(A), substituted ''Each program'' for ''The program''.

Subsec. (d). Pub. L. 109–364, §212(a)(2)(B), substituted ''A program'' for ''The program'' and ''an official referred to in that subsection'' for ''the Director''.

Subsec. (e). Pub. L. 109–364, §212(c), reenacted heading without change and amended text generally. Prior to amendment, subsec. (e) required an annual report, which included the results of consultations between the Director and officials of the military departments, a description of goals, cash prizes, methods used for submissions, a description of resources, and a description of transition plans.

Pub. L. 109–163 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Promptly after the end of each fiscal year during which one or more prizes are awarded under the program under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the program for that fiscal year. The report shall include the following:

''(1) The military applications of the research, technology, or prototypes for which prizes were awarded.

''(2) The total amount of the prizes awarded.

''(3) The methods used for solicitation and evaluation of submissions, together with an assessment of the effectiveness of those methods.''

Subsec. (f). Pub. L. 109–364, §212(b), substituted ''2010'' for ''2007''.

2003—Subsec. (e). Pub. L. 108–136 inserted ''during which one or more prizes are awarded under the program under subsection (a)'' after ''each fiscal year'' in introductory provisions.

2002—Subsec. (f). Pub. L. 107–314 substituted ''September 30, 2007'' for ''September 30, 2003''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

[§ 2374b. Repealed. Pub. L. 112–239, div. A, title X, § 1076(g)(4), Jan. 2, 2013, 126 Stat. 1955]

Section, added Pub. L. 107–314, div. A, title II, §248(c)(1), Dec. 2, 2002, 116 Stat. 2502, related to prizes for achievements in promoting science, mathematics, engineering, or technology education.

CHAPTER 140—PROCUREMENT OF COMMERCIAL ITEMS

Sec.
2375. Relationship of commercial item provisions to other provisions of law.
2376. Definitions.
2377. Preference for acquisition of commercial items.
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AMENDMENTS

2015—Pub. L. 114–92, div. A, title VIII, §§ 851(a)(2), 857(b), Nov. 25, 2015, 129 Stat. 916, 921, added items 2380 and 2380A.

2006—Pub. L. 109–163, div. A, title VIII, § 803(a)(2), Jan. 6, 2006, 119 Stat. 3371, added item 2379.

1997—Pub. L. 105–85, div. A, title III, § 350(b), Nov. 18, 1997, 111 Stat. 1692, added item 2378.

§ 2375. Relationship of commercial item provisions to other provisions of law

(a) APPLICABILITY OF TITLE.—Unless otherwise specifically provided, nothing in this chapter shall be construed as providing that any other provision of this title relating to procurement is inapplicable to the procurement of commercial items.

(b) LIST OF LAWS INAPPLICABLE TO CONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.—No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation (pursuant to section 1906 of title 41).

(c) CROSS REFERENCE TO EXCEPTION TO COST OR PRICING DATA REQUIREMENTS FOR COMMERCIAL ITEMS.—For a provision relating to an exception for requirements for cost or pricing data for contracts for the procurement of commercial items, see section 2306a(b) of this title.

(Added Pub. L. 103–355, title VIII, § 8102, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 105–85, div. A, title X, § 1073(a)(51), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107–107, div. A, title X, § 1048(a)(18), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 111–350, § 5(b)(21), Jan. 4, 2011, 124 Stat. 3844.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350 substituted ''section 1906 of title 41'' for ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)''.

2001—Subsec. (b). Pub. L. 107–107 inserted ''(41 U.S.C. 430)'' after ''section 34 of the Office of Federal Procurement Policy Act''.

1997—Subsec. (c). Pub. L. 105–85 substituted ''a provision relating to an exception'' for ''provisions relating to exceptions'' and ''section 2306a(b)'' for ''section 2306a(d)''.

EFFECTIVE DATE

For effective date and applicability of chapter, see section 10001 of Pub. L. 103–355 set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

PROVISIONS NOT AFFECTED BY TITLE VIII OF PUB. L. 103–355

Pub. L. 103–355, title VIII, § 8304, Oct. 13, 1994, 108 Stat. 3398, provided that: ''Nothing in this title [see Tables for classification] shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

''(1) section 2323 of title 10, United States Code, or section 7102 of the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, 15 U.S.C. 644 note];

''(2) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759));

''(3) Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 541 et seq.) [now 40 U.S.C. 1101–1104]);

''(4) subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637(a) and (d)); or

''(5) the Javits-Wagner-O'Day Act ([former] 41 U.S.C. 46–48c) [now 41 U.S.C. 8501 et seq.].''

§ 2376. Definitions

In this chapter:

(1) The terms ''commercial item'', ''nondevelopmental item'', ''component'', and ''commercial component'' have the meanings provided in chapter 1 of title 41.

(2) The term ''head of an agency'' means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 103–355, title VIII, § 8103, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 107–107, div. A, title X, § 1048(a)(19), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–350, § 5(b)(22), Jan. 4, 2011, 124 Stat. 3844.)

AMENDMENTS

2011—Par. (1). Pub. L. 111–350 substituted ''chapter 1 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

2002—Par. (2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Par. (1). Pub. L. 107–107 inserted ''(41 U.S.C. 403)'' after ''section 4 of the Office of Federal Procurement Policy Act''.

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.

§ 2377. Preference for acquisition of commercial items

(a) PREFERENCE.—The head of an agency shall ensure that, to the maximum extent practicable—

(1) requirements of the agency with respect to a procurement of supplies or services are stated in terms of—

(A) functions to be performed;

(B) performance required; or

(C) essential physical characteristics;

(2) such requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items, may be procured to fulfill such requirements; and

(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill such requirements.

(b) IMPLEMENTATION.—The head of an agency shall ensure that procurement officials in that agency, to the maximum extent practicable—

(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the agency;

(2) require prime contractors and subcontractors at all levels under the agency contracts to incorporate commercial items or nondevelopmental items other than commer-

cial items as components of items supplied to the agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items in response to the agency solicitations;

(5) revise the agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

(6) require training of appropriate personnel in the acquisition of commercial items.

(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that agency;

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold; and

(C) before awarding a task order or delivery order in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items available that—

(A) meet the agency's requirements;

(B) could be modified to meet the agency's requirements; or

(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(4) The head of an agency shall take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of $5,000,000 for the procurement of items other than commercial items engages in such market research as may be necessary to carry out the requirements of subsection (b)(2) before making purchases for or on behalf of the Department of Defense.

(d) MARKET RESEARCH TRAINING REQUIRED.—The Secretary of Defense shall provide mandatory training for members of the armed forces and employees of the Department of Defense responsible for the conduct of market research required under subsection (c). Such mandatory training shall, at a minimum—

(1) provide comprehensive information on the subject of market research and the function of market research in the acquisition of commercial items;

(2) teach best practices for conducting and documenting market research; and

(3) provide methodologies for establishing standard processes and reports for collecting and sharing market research across the Department.

(Added Pub. L. 103–355, title VIII, § 8104(a), Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 110–181, div. A, title VIII, § 826(a), Jan. 28, 2008, 122 Stat. 227; Pub. L. 114–92, div. A, title VIII, § 844(a), Nov. 25, 2015, 129 Stat. 915.)

AMENDMENTS

2015—Subsec. (d). Pub. L. 114–92 added subsec. (d).

2008—Subsec. (c)(1)(C). Pub. L. 110–181, § 826(a)(1), added subpar. (C).

Subsec. (c)(4). Pub. L. 110–181, § 826(a)(2), added par. (4).

INCORPORATION INTO MANAGEMENT CERTIFICATION TRAINING MANDATE

Pub. L. 114–92, div. A, title VIII, § 844(b), Nov. 25, 2015, 129 Stat. 915, provided that: ''The Chairman of the Joint Chiefs of Staff shall ensure that the requirements of section 2377(d) of title 10, United States Code, as added by subsection (a), are incorporated into the requirements management certification training mandate of the Joint Capabilities Integration Development System.''

MARKET RESEARCH AND PREFERENCE FOR COMMERCIAL ITEMS

Pub. L. 114–92, div. A, title VIII, § 855, Nov. 25, 2015, 129 Stat. 919, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue guidance to ensure that acquisition officials of the Department of Defense fully comply with the requirements of section 2377 of title 10, United States Code, regarding market research and commercial items. The guidance issued pursuant to this subsection shall, at a minimum—

''(1) provide that the head of an agency may not enter into a contract in excess of the simplified acquisition threshold for information technology products or services that are not commercial items unless the head of the agency determines in writing that no commercial items are suitable to meet the agency's needs as provided in subsection (c)(2) of such section; and

''(2) ensure that market research conducted in accordance with subsection (c) of such section is used, where appropriate, to inform price reasonableness determinations.

''(b) REVIEW REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Chairman and the Vice Chairman of the Joint Chiefs of Staff, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall review Chairman of the Joint Chiefs of Staff Instruction 3170.01, the Manual for the Operation of the Joint Capabilities Integration and Development System, and other documents governing the requirements development process and revise these documents as necessary to ensure that the Department of Defense fully complies with the requirement in section 2377(c) of title 10, United States Code, and section 10.001 of the Federal Acquisition Regulation for Federal agencies to conduct appropriate market research before developing new requirements.

''(c) MARKET RESEARCH DEFINED.—For the purposes of this section, the term 'market research' means a review of existing systems, subsystems, capabilities, and technologies that are available or could be made available to meet the needs of the Department of Defense in whole or in part. The review may include any of the

techniques for conducting market research provided in section 10.002(b)(2) of the Federal Acquisition Regulation and shall include, at a minimum, contacting knowledgeable individuals in Government and industry regarding existing market capabilities.''

LIMITATION ON CONVERSION OF PROCUREMENTS FROM COMMERCIAL ACQUISITION PROCEDURES

Pub. L. 114–92, div. A, title VIII, § 856, Nov. 25, 2015, 129 Stat. 920, provided that:

''(a) LIMITATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), prior to converting the procurement of commercial items or services valued at more than $1,000,000 from commercial acquisition procedures under part 12 of the Federal Acquisition Regulation to noncommercial acquisition procedures under part 15 of the Federal Acquisition Regulation, the contracting officer for the procurement shall determine in writing that—

''(A) the earlier use of commercial acquisition procedures under part 12 of the Federal Acquisition Regulation was in error or based on inadequate information; and

''(B) the Department of Defense will realize a cost savings compared to the cost of procuring a similar quantity or level of such item or service using commercial acquisition procedures.

''(2) REQUIREMENT FOR APPROVAL OF DETERMINATION BY HEAD OF CONTRACTING ACTIVITY.—In the case of a procurement valued at more than $100,000,000, a contract may not be awarded pursuant to a conversion of the procurement described in paragraph (1) until—

''(A) the head of the contracting activity approves the determination made under paragraph (1); and

''(B) a copy of the determination so approved is provided to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(b) FACTORS TO BE CONSIDERED.—In making a determination under paragraph (1), the determining official shall, at a minimum, consider the following factors:

''(1) The estimated cost of research and development to be performed by the existing contractor to improve future products or services.

''(2) The transaction costs for the Department of Defense and the contractor in assessing and responding to data requests to support a conversion to noncommercial acquisition procedures.

''(3) Changes in purchase quantities.

''(4) Costs associated with potential procurement delays resulting from the conversion.

''(c) PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall develop procedures to track conversions of future contracts and subcontracts for improved analysis and reporting and shall revise the Defense Federal Acquisition Regulation Supplement to reflect the requirement in subsection (a).

''(d) REPORTING REQUIREMENT.—Not later than one year after the date of the enactment of this Act, 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 the implementation of subsection (a), including any procurements converted as described in that subsection.

''(e) SUNSET.—The requirements of this section shall terminate 5 years after the date of the enactment of this Act [Nov. 25, 2015].''

COMMERCIAL SOFTWARE REUSE PREFERENCE

Pub. L. 110–417, [div. A], title VIII, § 803, Oct. 14, 2008, 122 Stat. 4519, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall ensure that contracting officials identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software.

''(b) REPORT.—Not later than 270 days after the date of enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on actions taken to implement subsection (a), including a description of any relevant regulations and policy guidance.''

REQUIREMENT TO DEVELOP TRAINING AND TOOLS

Pub. L. 110–181, div. A, title VIII, § 826(b), Jan. 28, 2008, 122 Stat. 228, provided that: ''The Secretary of Defense shall develop training to assist contracting officers, and market research tools to assist such officers and prime contractors, in performing appropriate market research as required by subsection (c) of section 2377 of title 10, United States Code, as amended by this section.''

§ 2378. Procurement of copier paper containing specified percentages of post-consumer recycled content

(a) PROCUREMENT REQUIREMENT.—(1) Except as provided in subsections (b) and (c), a department or agency of the Department of Defense may not procure copying machine paper after the applicable date specified in paragraph (2) unless the percentage of post-consumer recycled content of the paper meets the percentage then in effect under such paragraph.

(2) The percentage of post-consumer recycled content of paper required under paragraph (1) is as follows:

(A) 20 percent as of January 1, 1998.

(B) 30 percent as of January 1, 1999.

(C) 50 percent as of January 1, 2004.

(b) EXCEPTIONS.—A department or agency of the Department of Defense is not required to procure copying machine paper containing a percentage of post-consumer recycled content that meets the applicable requirement in subsection (a) if the Secretary concerned determines that one or more of the following circumstances apply with respect to that procurement:

(1) The cost of procuring copying machine paper satisfying the applicable requirement significantly exceeds the cost of procuring copying machine paper containing a percentage of post-consumer recycled content that does not meet such requirement. The Secretary concerned shall establish the cost differential to be applied under this paragraph.

(2) Copying machine paper containing a percentage of post-consumer recycled content meeting such requirement is not reasonably available within a reasonable period of time.

(3) Copying machine paper containing a percentage of post-consumer recycled content meeting such requirement does not meet performance standards of the department or agency for copying machine paper.

(c) EFFECT OF INABILITY TO MEET GOAL IN 2004.—(1) In the case of the requirement that will take effect on January 1, 2004, pursuant to subsection (a)(2)(C), the requirement shall not take effect with respect to a military department or Defense Agency if the Secretary of Defense determines that the department or agency will be unable to meet such requirement by that date.

(2) The Secretary shall submit to Congress written notice of any determination made under

paragraph (1) and the reasons for the determination. The Secretary shall submit such notice, if at all, not later than January 1, 2003.

(d) SECRETARY CONCERNED DEFINED.—In this section, the term ''Secretary concerned'' means the Secretary of each military department and the Secretary of Defense with respect to the Defense Agencies.

(Added Pub. L. 105–85, div. A, title III, § 350(a), Nov. 18, 1997, 111 Stat. 1691.)

§ 2379. Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items

(a) REQUIREMENT FOR DETERMINATION AND NOTIFICATION.—A major weapon system of the Department of Defense may be treated as a commercial item, or purchased under procedures established for the procurement of commercial items, only if—

(1) the Secretary of Defense determines that—

(A) the major weapon system is a commercial item, as defined in section 103 of title 41; and

(B) such treatment is necessary to meet national security objectives; and

(2) the congressional defense committees are notified at least 30 days before such treatment or purchase occurs.

(b) TREATMENT OF SUBSYSTEMS AS COMMERCIAL ITEMS.—A subsystem of a major weapon system (other than a commercially available off-the-shelf item as defined in section 104 of title 41) shall be treated as a commercial item and purchased under procedures established for the procurement of commercial items if either—

(1) the subsystem is intended for a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial items in accordance with the requirements of subsection (a); or

(2) the contracting officer determines in writing that the subsystem is a commercial item, as defined in section 103 of title 41.

(c) TREATMENT OF COMPONENTS AND SPARE PARTS AS COMMERCIAL ITEMS.—(1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item as defined in section 104 of title 41) may be treated as a commercial item for the purposes of section 2306a of this title if either—

(A) the component or spare part is intended for—

(i) a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial items in accordance with the requirements of subsection (a); or

(ii) a subsystem of a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial items in accordance with the requirements of subsection (b); or

(B) the contracting officer determines in writing that the component or spare part is a commercial item, as defined in section 103 of title 41.

(2) This subsection shall apply only to components and spare parts that are acquired by the Department of Defense through a prime contract or a modification to a prime contract (or through a subcontract under a prime contract or modification to a prime contract on which the prime contractor adds no, or negligible, value).

(d) INFORMATION SUBMITTED.—(1) To the extent necessary to determine the reasonableness of the price for items acquired under this section, the contracting officer shall require the offeror to submit—

(A) prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers;

(B) if the contracting officer determines that the offeror does not have access to and cannot provide sufficient information described in subparagraph (A) to determine the reasonableness of price, information on—

(i) prices for the same or similar items sold under different terms and conditions;

(ii) prices for similar levels of work or effort on related products or services;

(iii) prices for alternative solutions or approaches; and

(iv) other relevant information that can serve as the basis for a price assessment; and

(C) if the contracting officer determines that the information submitted pursuant to subparagraphs (A) and (B) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

(2) An offeror may not be required to submit information described in paragraph (1)(C) with regard to a commercially available off-the-shelf item and may be required to submit such information with regard to any other item that was developed exclusively at private expense only after the head of the contracting activity determines in writing that the information submitted pursuant to paragraphs (1)(A) and (1)(B) is not sufficient to determine the reasonableness of price.

(e) DELEGATION.—The authority of the Secretary of Defense to make a determination under subsection (a) may be delegated only to the Deputy Secretary of Defense, without further redelegation.

(f) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term ''major weapon system'' means a weapon system acquired pursuant to a major defense acquisition program (as that term is defined in section 2430 of this title).

(Added Pub. L. 109–163, div. A, title VIII, § 803(a)(1), Jan. 6, 2006, 119 Stat. 3370; amended Pub. L. 110–181, div. A, title VIII, § 815(a)(1), Jan. 28, 2008, 122 Stat. 222; Pub. L. 113–291, div. A, title X, § 1071(a)(7), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, § 852(a)–(d), Nov. 25, 2015, 129 Stat. 917, 918.)

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–92, § 852(a), inserted ''and'' at end of par. (1)(B), redesignated par. (3) as (2),

and struck out former par. (2) which read as follows: ''the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such system; and''.

Subsec. (b). Pub. L. 114–92, § 852(b)(1), substituted ''if either'' for ''only if'' in introductory provisions.

Subsec. (b)(2). Pub. L. 114–92, § 852(b)(2), substituted ''writing that'' for ''writing that—'', struck out subpar. (A) designation before ''the subsystem is a'', substituted ''title 41.'' for ''title 41; and'', and struck out subpar. (B) which read as follows: ''the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such subsystem.''

Subsec. (c)(1). Pub. L. 114–92, § 852(c)(1), substituted ''title if either'' for ''title only if'' in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 114–92, § 852(c)(2), substituted ''writing that'' for ''writing that—'', struck out cl. (i) designation before ''the component or'', substituted ''title 41.'' for ''title 41; and'', and struck out cl. (ii) which read as follows: ''the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such component or spare part.''

Subsec. (d). Pub. L. 114–92, § 852(d), amended subsec. (d) generally. Prior to amendment, text read as follows: ''To the extent necessary to make a determination under subsection (a)(2), (b)(2), or (c)(1)(B), the contracting officer may request the offeror to submit—

''(1) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

''(2) if the contracting officer determines that the information described in paragraph (1) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.''

2014—Subsec. (a)(1)(A). Pub. L. 113–291, § 1071(a)(7)(A), substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

Subsec. (b). Pub. L. 113–291, § 1071(a)(7)(B), substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 113–291, § 1071(a)(7)(A), substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

Subsec. (c)(1). Pub. L. 113–291, § 1071(a)(7)(B), substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))'' in introductory provisions.

Subsec. (c)(1)(B)(i). Pub. L. 113–291, § 1071(a)(7)(A), substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

2008—Subsec. (a)(2), (3). Pub. L. 110–181, § 815(a)(1)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 110–181, § 815(a)(1)(B), added subsec. (b) and struck out former subsec. (b). Former text read as follows: ''A subsystem or component of a major weapon system shall be treated as a commercial item and purchased under procedures established for the procurement of commercial items if such subsystem or component otherwise meets the requirements (other than requirements under subsection (a)) for treatment as a commercial item.''

Subsecs. (c) to (f). Pub. L. 110–181, § 815(a)(1)(C), (D), added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively.

EFFECTIVE DATE

Pub. L. 109–163, div. A, title VIII, § 803(b), Jan. 6, 2006, 119 Stat. 3371, provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Jan. 6, 2006], and shall apply to contracts entered into on or after such date.''

§ 2380. Commercial item determinations by Department of Defense

The Secretary of Defense shall—

(1) establish and maintain a centralized capability with necessary expertise and resources to oversee the making of commercial item determinations for the purposes of procurements by the Department of Defense; and

(2) provide public access to Department of Defense commercial item determinations for the purposes of procurements by the Department of Defense.

(Added Pub. L. 114–92, div. A, title VIII, § 851(a)(1), Nov. 25, 2015, 129 Stat. 916.)

§ 2380A. Treatment of goods and services provided by nontraditional defense contractors as commercial items

Notwithstanding section 2376(1) of this title, items and services provided by nontraditional defense contractors (as that term is defined in section 2302(9) of this title) may be treated by the head of an agency as commercial items for purposes of this chapter.

(Added Pub. L. 114–92, div. A, title VIII, § 857(a), Nov. 25, 2015, 129 Stat. 921.)

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.
2381. Contracts: regulations for bids.
[2382. Repealed.]
2383. Contractor performance of acquisition functions closely associated with inherently governmental functions.
2384. Supplies: identification of supplier and sources.
2384a. Supplies: economic order quantities.
2385. Arms and ammunition: immunity from taxation.
2386. Copyrights, patents, designs, etc.; acquisition.
2387. Procurement of table and kitchen equipment for officers' quarters: limitation on.
[2388. Renumbered.]
2389. Ensuring safety regarding insensitive munitions.
2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.
2391. Military base reuse studies and community planning assistance.
2392. Prohibition on use of funds to relieve economic dislocations.
2393. Prohibition against doing business with certain offerors or contractors.
[2394, 2394a. Renumbered.]
2395. Availability of appropriations for procurement of technical military equipment and supplies.
2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries.
[2397 to 2398a. Repealed or Renumbered.]
2399. Operational test and evaluation of defense acquisition programs.
2400. Low-rate initial production of new systems.
2401. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles.
2401a. Lease of vehicles, equipment, vessels, and aircraft.

Sec.
2402. Prohibition of contractors limiting subcontractor sales directly to the United States.
[2403 to 2407. Repealed or Renumbered.]
2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors.
2409. Contractor employees: protection from reprisal for disclosure of certain information.
[2409a. Repealed.]
2410. Requests for equitable adjustment or other relief: certification.
2410a. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property.
2410b. Contractor inventory accounting systems: standards.
[2410c. Renumbered.]
2410d. Subcontracting plans: credit for certain purchases.
[2410e. Repealed.]
2410f. Debarment of persons convicted of fraudulent use of ''Made in America'' labels.
2410g. Advance notification of contract performance outside the United States.
[2410h. Renumbered.]
2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel.
2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides.
2410k. Defense contractors: listing of suitable employment openings with local employment service office.
2410*l*. Contracts for advisory and assistance services: cost comparison studies.
2410m. Retention of amounts collected from contractor during the pendency of contract dispute.
2410n. Products of Federal Prison Industries: procedural requirements.
2410*o*. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products.
2410p. Contracts: limitations on lead system integrators.
2410q. Multiyear contracts: purchase of electricity from renewable energy sources.

AMENDMENTS

2013—Pub. L. 112–239, div. A, title XVI, §1671(c)(1), Jan. 2, 2013, 126 Stat. 2084, struck out item 2382 ''Consolidation of contract requirements: policy and restrictions''.

2008—Pub. L. 110–181, div. A, title VIII, §828(b), title X, §1063(a)(11), Jan. 28, 2008, 122 Stat. 229, 322, inserted period at end of item 2410p and added item 2410q.

2006—Pub. L. 109–364, div. A, title VIII, §807(a)(2), div. B, title XXVIII, §2851(c)(2), Oct. 17, 2006, 120 Stat. 2315, 2495, added item 2410p and struck out items 2388 ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'', 2394 ''Contracts for energy or fuel for military installations'', 2394a ''Procurement of energy systems using renewable forms of energy'', 2398 ''Procurement of gasohol as motor vehicle fuel'', 2398a ''Procurement of fuel derived from coal, oil shale, and tar sands'', 2404 ''Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority'', and 2410c ''Preference for energy efficient electric equipment''.

Pub. L. 109–163, div. A, title VIII, §815(d)(2), Jan. 6, 2006, 119 Stat. 3382, substituted ''Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles'' for ''Requirement for authorization by law of certain contracts relating to vessels and aircraft'' in item 2401.

2005—Pub. L. 109–58, title III, §369(q)(2), Aug. 8, 2005, 119 Stat. 733, added item 2398a.

2004—Pub. L. 108–375, div. A, title VIII, §804(a)(2), Oct. 28, 2004, 118 Stat. 2008, added item 2383.

2003—Pub. L. 108–136, div. A, title VIII, §801(a)(2), title X, §1005(b)(2), Nov. 24, 2003, 117 Stat. 1540, 1585, added item 2382 and substituted ''Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property'' for ''Severable service contracts for periods crossing fiscal years'' in item 2410a.

2002—Pub. L. 107–314, div. A, title VIII, §826(b), title X, §1062(a)(10)(B), Dec. 2, 2002, 116 Stat. 2617, 2650, transferred item 2410h ''Acquisition fellowship program'' to subchapter IV of chapter 87 as item 1747 and added item 2410*o*.

2001—Pub. L. 107–107, div. A, title VIII, §§811(a)(2), 834(a)(2), Dec. 28, 2001, 115 Stat. 1181, 1191, added items 2389 and 2410n.

1999—Pub. L. 106–65, div. A, title VIII, §803(b)(2), Oct. 5, 1999, 113 Stat. 704, substituted ''Acquisition of certain fuel sources'' for ''Acquisition of petroleum and natural gas'' in item 2404.

1997—Pub. L. 105–85, div. A, title VIII, §§801(b), 810(a)(2), 831(b), 847(b)(1), title X, §1014(b)(2), Nov. 18, 1997, 111 Stat. 1831, 1839, 1842, 1845, 1875, inserted ''public utility services,'' after ''tuition,'' in item 2396, struck out items 2403 ''Major weapon systems: contractor guarantees'' and 2405 ''Limitation on adjustment of shipbuilding contracts'', substituted ''Severable service contracts for periods crossing fiscal years'' for ''Appropriated funds: availability for certain contracts for 12 months'' in item 2410a, and added item 2410m.

1996—Pub. L. 104–106, div. A, title VIII, §§803(b), 807(a)(2), div. D, title XLIII, §4304(c)(1), Feb. 10, 1996, 110 Stat. 390, 392, 664, struck out items 2383 ''Procurement of critical aircraft and ship spare parts: quality control'', 2397 ''Employees or former employees of defense contractors: reports'', 2397a ''Requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors'', 2397b ''Certain former Department of Defense procurement officials: limitations on employment by contractors'', and 2397c ''Defense contractors: requirements concerning former Department of Defense officials'' and substituted ''Lease of vehicles, equipment, vessels, and aircraft'' for ''Lease of vessels, aircraft, and vehicles'' in item 2401a.

1994—Pub. L. 103–355, title II, §§2102(b), 2201(b)(2), 2301(c), title III, §3065(a)(2), title VI, §6005(b)(2), Oct. 13, 1994, 108 Stat. 3309, 3318, 3321, 3337, 3365, added item 2401a, struck out items 2382 ''Contract profit controls during emergency periods'', 2406 ''Availability of cost and pricing records'', 2409a ''Communicating with Government officials: defense contractor requirement to prohibit retaliatory personnel actions'', and 2410e ''Contract claims: certification regulations'', and substituted in item 2410 ''Requests for equitable adjustment or other relief: certification'' for ''Contract claims: certification''.

Pub. L. 103–337, div. A, title III, §363(a)(2), Oct. 5, 1994, 108 Stat. 2734, added item 2410*l*.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(3), (c)(3), (4), Nov. 30, 1993, 107 Stat. 1713, 1714, substituted ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'' for ''Liquid fuels: contracts for storage, handling, and distribution'' in item 2388, struck out item 2389 ''Contracts for the procurement of milk: price adjustments; purchases from the Commodity Credit Corporation'', and inserted ''and natural gas'' and ''; acquisition by exchange; sales authority'' in item 2404.

Pub. L. 103–35, title II, §202(a)(18)(B), May 31, 1993, 107 Stat. 102, made technical amendment to directory language of Pub. L. 102–484, §4470(a)(2). See 1992 Amendment note below.

Pub. L. 103–35, title II, §201(b)(1)(B), May 31, 1993, 107 Stat. 97, renumbered item 2410c relating to displaced contractor employees as item 2410j and item 2410d relating to defense contractors as item 2410k.

1992—Pub. L. 102–484, div. D, title XLIV, §4470(a)(2), Oct. 23, 1992, 106 Stat. 2753, as amended by Pub. L. 103–35, title II, §202(a)(18)(B), May 31, 1993, 107 Stat. 102, added item 2410d relating to defense contractors.

Pub. L. 102–484, div. D, title XLIV, §4443(b), Oct. 23, 1992, 106 Stat. 2735, 2753, added item 2410c relating to displaced contractor employees.

Pub. L. 102–484, div. A, title III, §384(a)(1)(B), title VIII, §§808(b)(2), 813(a)(2), 834(a)(2), 840(a)(2), 841(b), title XIII, §1332(b), Oct. 23, 1992, 106 Stat. 2393, 2450, 2453, 2461, 2467, 2468, 2555, added items 2410c to 2410i.

1990—Pub. L. 101–510, div. A, title VIII, §837(a)(2), title XIV, §1484(i)(8), Nov. 5, 1990, 104 Stat. 1619, 1718, struck out item 2407 ''Acquisition of defense equipment under cooperative projects'' and added item 2409a.

1989—Pub. L. 101–189, div. A, title VIII, §§802(a)(2), 803(b), title IX, §933(e), title XVI, §1622(b)(2), Nov. 29, 1989, 103 Stat. 1486, 1488, 1538, 1604, added items 2390, 2399, and 2400 and struck out item 2401a ''Procurement of communications support and related supplies and services''.

1988—Pub. L. 100–456, div. A, title VIII, §§805(a)(2), 834(a)(2), Sept. 29, 1988, 102 Stat. 2010, 2025, added items 2383 and 2410b.

Pub. L. 100–370, §§1(h)(3), 3(b)(2), July 19, 1988, 102 Stat. 848, 855, in item 2389 substituted ''milk: price adjustments; purchases from the Commodity Credit Corporation'' for ''milk; price adjustment'', struck out items 2399 ''Limitation on availability of appropriations to reimburse a contractor for cost of commercial insurance'', and 2400 ''Miscellaneous procurement limitations'', and added items 2410 and 2410a.

1987—Pub. L. 100–180, div. A, title I, §124(b)(2), Dec. 4, 1987, 101 Stat. 1043, substituted ''Miscellaneous procurement limitations'' for ''Limitation on procurement of buses'' in item 2400.

1986—Pub. L. 99–661, div. A, title XI, §1103(b)(2)(B), Nov. 14, 1986, 100 Stat. 3963, struck out ''North Atlantic Treaty Organization'' before ''cooperative projects'' in item 2407.

Pub. L. 99–500, §101(c) [title X, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–160, 1783–162, 1783–164, and Pub. L. 99–591, §101(c) [title X, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–160, 3341–162, 3341–164; Pub. L. 99–661, div. A, title IX, formerly title IV, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2), Nov. 14, 1986, 100 Stat. 3939, 3941–3943, 3963, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically, substituting ''Availability of cost and pricing records'' for ''Cost and price management'' in item 2406 and adding items 2397b, 2397c, 2408, and 2409.

1985—Pub. L. 99–145, title IX, §§917(b), 923(a)(2), title XI, §1102(b)(2), Nov. 8, 1985, 99 Stat. 690, 697, 712, added items 2397a, 2406, and 2407.

1984—Pub. L. 98–525, title X, §1005(b), title XII, §1235(1), (2), Oct. 19, 1984, 98 Stat. 2579, 2604, substituted in item 2384 ''identification of supplier and sources'' for ''marking with name of contractor'' and added items 2401a, 2384a, and 2402 to 2405.

1983—Pub. L. 98–94, title XII, §§1202(a)(2), 1259(b), Sept. 24, 1983, 97 Stat. 681, 703, struck out item 2390 ''Suggestions for improving procurement policies'', and added item 2401.

1982—Pub. L. 97–321, title VIII, §801(a)(2), Oct. 15, 1982, 96 Stat. 1570, added item 2394a.

Pub. L. 97–295, §1(29)(B), Oct. 12, 1982, 96 Stat. 1294, struck out item 2394 ''Availability of appropriations for procurement of technical military equipment and supplies and the construction of military public works'', added item 2395 ''Availability of appropriations for procurement of technical military equipment and supplies'', redesignated former item 2395 as 2396, and added items 2397, 2398, 2399, and 2400.

Pub. L. 97–258, §2(b)(4)(A), Sept. 13, 1982, 96 Stat. 1052, added items 2394 and 2395.

Pub. L. 97–214, §6(a)(2), July 12, 1982, 96 Stat. 172, added item 2394.

1981—Pub. L. 97–86, title IX, §§911(a)(2), 912(a)(2), 913(a)(2), 914(b), Dec. 1, 1981, 95 Stat. 1122, 1123, 1125, substituted ''Contract profit controls during emergency periods'' for ''Aircraft: contract requirements'' in item 2382 and added items 2391, 2392, and 2393.

1980—Pub. L. 96–513, title V, §511(79), Dec. 12, 1980, 94 Stat. 2927, struck out item 2383 ''Emergency purchases: war material abroad''.

1977—Pub. L. 95–79, title VIII, §815(b), July 30, 1977, 91 Stat. 338, added item 2390.

1966—Pub. L. 89–696, §1(2), Oct. 19, 1966, 80 Stat. 1057, added item 2389.

1958—Pub. L. 85–861, §1(47), Sept. 2, 1958, 72 Stat. 1458, added items 2387 and 2388.

PROHIBITION ON RELIANCE ON CHINA AND RUSSIA FOR SPACE-BASED WEATHER DATA

Pub. L. 114–92, div. A, title XVI, §1614, Nov. 25, 2015, 129 Stat. 1105, provided that:

''(a) PROHIBITION.—The Secretary of Defense shall ensure that the Department of Defense does not rely on, or in the future plan to rely on, space-based weather data provided by the Government of the People's Republic of China, the Government of the Russian Federation, or an entity owned or controlled by either such government for national security purposes.

''(b) CERTIFICATION.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a certification that the Secretary is in compliance with the prohibition under subsection (a).''

§ 2381. Contracts: regulations for bids

(a) The Secretary of Defense may—

(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and

(2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.

(b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a)(2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—

(1) contract with another person; and

(2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.

(c) Proceedings under this section are subject to regulations under section 121 of title 40, unless exempted therefrom under section 501(a)(2) of title 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 136; Pub. L. 98–525, title XIV, §1405(35), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 103–355, title I, §1507, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 107–217, §3(b)(6), Aug. 21, 2002, 116 Stat. 1295.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2381(a)	5:218 (1st sentence, less 1st 16 words; and 2d sentence).	Apr. 10, 1878, ch. 58, 20 Stat. 36; Mar. 3, 1883, ch. 120, 22 Stat. 487;
2381(b)	5:218 (less 1st and 2d sentences).	Oct. 31, 1951, ch. 654, §2(4), 65 Stat. 706.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2381(c)	5:218 (1st 16 words of 1st sentence) [applicability of 5:218 extended to Navy by 5:412b and 41:161 (1st sentence)].	Feb. 19, 1948, ch. 65, §12 (1st sentence), 62 Stat. 26.

In subsection (a)(1), the word ''may'' is substituted for the words ''is authorized to''. The words ''rules and * * * to be observed'' are omitted as surplusage.

In subsection (a)(2), the word ''undertaking'' is substituted for the words ''to the effect that he or they undertake''. The words ''make a contract'' are inserted for clarity. The words ''in the premises'' are omitted as surplusage. The words ''for the performance of the contract'' are substituted for the words ''to furnish the supplies proposed or to perform the service required''.

In subsection (b), the word ''duly'' is omitted as surplusage. The words ''with good and sufficient security for the proper fulfillment of its terms'' are omitted as covered by subsection (a)(2). The words ''the prescribed'' are inserted before the word ''bond''.

Subsection (b)(1) is substituted for the words ''proceed to contract with some other person to furnish the supplies or perform the services required''.

In subsection (b)(2) the word ''charge'' is substituted for the words ''forthwith cause * * * to be charged''. The words ''a contract is made with the other person'' are substituted for the words ''he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal''. The words ''guarantor or'' are omitted as surplusage. The words ''this difference being'' are substituted for the words ''and the sum may be''. The words ''of debt'' are omitted, since that action no longer exists. The words ''the bidder and his guarantors, jointly or severally'' are substituted for the words ''either or all of such persons''.

In subsection (c), the words ''Proceedings under this section are'' are inserted for clarity. The words ''unless exempted therefrom under section 481(a) of that title'' are inserted to preserve the possibility of exemption of proceedings under the revised section from the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' and ''section 501(a)(2) of title 40'' for ''section 201(a) of that Act (40 U.S.C. 481(a))''.

1994—Subsec. (a). Pub. L. 103–355 substituted ''The Secretary of Defense may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and''

for ''The Secretary of a military department may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and''.

1984—Subsec. (c). Pub. L. 98–525 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40'' and ''section 201(a) of that Act (40 U.S.C. 481(a))'' for ''section 481(a) of this title''.

[§ 2382. Repealed. Pub. L. 112–239, div. A, title XVI, § 1671(c)(1), Jan. 2, 2013, 126 Stat. 2084]

Section, added Pub. L. 108–136, div. A, title VIII, § 801(a)(1), Nov. 24, 2003, 117 Stat. 1538; amended Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111–240, title I, § 1313(b), Sept. 27, 2010, 124 Stat. 2539; Pub. L. 112–239, div. A, title X, § 1076(d)(3), Jan. 2, 2013, 126 Stat. 1951, related to policy and restrictions regarding consolidation of contract requirements.

A prior section 2382, acts Aug. 10, 1956, ch. 1041, 70A Stat. 136; Dec. 1, 1981, Pub. L. 97–86, title IX, § 911(a)(1), 95 Stat. 1120; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIV, § 1484(b)(3), (f)(2), (g)(2), (h)(3), 104 Stat. 1716, 1717; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516, authorized the President, upon declaration of war by Congress or declaration of national emergency by the President or by Congress, to prescribe regulations to control excessive profits on defense contracts during period of such war or national emergency, prior to repeal by Pub. L. 103–355, title II, § 2102(a), Oct. 13, 1994, 108 Stat. 3309.

§ 2383. Contractor performance of acquisition functions closely associated with inherently governmental functions

(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

(2) appropriate military or civilian personnel of the Department of Defense are—

(A) to supervise contractor performance of the contract; and

(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

(b) DEFINITIONS.—In this section:

(1) The term ''head of an agency'' has the meaning given such term in section 2302(1) of this title, except that such term does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term ''inherently governmental functions'' has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

(3) The term ''functions closely associated with inherently governmental functions'' means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(4) The term ''organizational conflict of interest'' has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.

(Added Pub. L. 108–375, div. A, title VIII, § 804(a)(1), Oct. 28, 2004, 118 Stat. 2007.)

PRIOR PROVISIONS

A prior section 2383, added Pub. L. 100–456, div. A, title VIII, § 805(a)(1), Sept. 29, 1988, 102 Stat. 2010; amended Pub. L. 102–190, div. A, title X, § 1061(a)(13), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title II, § 2401, Oct. 13, 1994, 108 Stat. 3324, related to quality control in procurement of critical aircraft and ship spare or repair parts, prior to repeal by Pub. L. 104–106, div. A, title VIII, § 803(a), Feb. 10, 1996, 110 Stat. 390.

Another prior section 2383, act Aug. 10, 1956, ch. 1041, 70A Stat. 137, permitted Secretary of a military department to make emergency purchases of war material

abroad, and provided that such material may be admitted free of duty, prior to repeal by Pub. L. 87–456, title III, § 303(c), May 24, 1962, 76 Stat. 78.

EFFECTIVE DATE

Pub. L. 108–375, div. A, title VIII, § 804(b), Oct. 28, 2004, 118 Stat. 2008, provided that: ''Section 2383 of title 10, United States Code (as added by subsection (a)), shall apply to contracts entered into on or after the date of the enactment of this Act [Oct. 28, 2004].''

§ 2384. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor's identification number for the supplies.

(b)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract requiring the delivery of supplies (other than a contract described in paragraph (2)) shall require that the contractor identify—

(A) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(B) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(C) the source of any technical data delivered under the contract.

(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items (as defined in section 103 of title 41).

(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 98–525, title XII, § 1231(a), Oct. 19, 1984, 98 Stat. 2599; Pub. L. 99–500, § 101(c) [title X, § 928(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, § 101(c) [title X, § 928(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, § 928(a), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–355, title IV, § 4102(d), title VIII, § 8105(b), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(12), Feb. 10, 1996, 110 Stat. 672; Pub. L. 111–350, § 5(b)(23), Jan. 4, 2011, 124 Stat. 3844.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2384	10:1207. 34:583.	R.S. 3731.

The words ''Each contractor'' are substituted for the words ''Every person''. The word ''his'' is substituted for the words ''the name of the contractor furnishing such supplies''. The words ''of any kind'' and ''and distinguish [distinguished]'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2011—Subsec. (b)(2). Pub. L. 111–350, § 5(b)(23)(A), substituted ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

Subsec. (b)(3). Pub. L. 111–350, § 5(b)(23)(B), substituted ''section 134 of title 41)'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

1996—Subsec. (b)(2). Pub. L. 104–106, § 4321(b)(12)(A), substituted ''items (as'' for ''items, as'' and inserted a closing parenthesis after ''403(12))''.

Subsec. (b)(3). Pub. L. 104–106, § 4321(b)(12)(B), inserted a closing parenthesis after ''403(11))''.

1994—Subsec. (b)(2). Pub. L. 103–355, § 8105(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) does not apply to a contract that requires the delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

''(A) provides for the acquisition of such supplies by the Department of Defense at established catalog or market prices; or

''(B) is awarded through the use of competitive procedures.''

Subsec. (b)(3). Pub. L. 103–355, § 4102(d), added par. (3).

1986—Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (b) identically, designating existing provision as par. (1), redesignating former pars. (1) to (3) as subpars. (A) to (C), respectively, and inserting in provision preceding subpar. (A) ''(other than a contract described in paragraph (2))'', and adding par. (2).

1984—Pub. L. 98–525 amended section generally, substituting ''identification of supplier and sources'' for ''marking with name of contractor'' in section catchline, and, in text, substituting provisions designated subsec. (a) and relating to the marking of supplies, providing the national stock number for the supplies furnished, and the contractor's identification number for requirement that each contractor furnishing supplies to a military department mark the supplies with his name in the manner directed by the Secretary of the Department and prohibition of receipt of supplies unless so marked and adding subsecs. (b) and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 928(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, Pub. L. 99–591, § 101(c) [title X, § 928(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156, and Pub. L. 99–661, Pub. L. 99–661, div. A, title IX, formerly title IV, § 928(b), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title XII, § 1231(b), Oct. 19, 1984, 98 Stat. 2600, provided that: ''The amendment made by sub-

section (a) [amending this section] shall take effect at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2384a. Supplies: economic order quantities

(a)(1) An agency referred to in section 2303(a) of this title shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(Added Pub. L. 98–525, title XII, § 1233(a), Oct. 19, 1984, 98 Stat. 2600.)

EFFECTIVE DATE

Pub. L. 98–525, title XII, § 1233(b), Oct. 19, 1984, 98 Stat. 2601, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2385. Arms and ammunition: immunity from taxation

No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2385	5:171w.	Jan. 6, 1951, ch. 1213, subch. VII, § 706, 64 Stat. 1236.

The words ''No * * * may be'' are substituted for the words ''None * * * shall be subject to any''. The words ''by any Act'' are omitted as surplusage.

§ 2386. Copyrights, patents, designs, etc.; acquisition

Funds appropriated for a military department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department:

(1) Copyrights, patents, and applications for patents.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Design and process data, technical data, and computer software.

(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 86–726, § 3, Sept. 8, 1960, 74 Stat. 855; Pub. L. 103–355, title III, § 3063, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. A, title VIII, § 813, Feb. 10, 1996, 110 Stat. 395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2386	31:649b.	Aug. 1, 1953, ch. 305, § 609, 67 Stat. 350.

The words ''equipment, and materials'' are omitted as covered by the word ''supplies''. The word ''hereafter'' is omitted as executed. The words ''may be used'' are substituted for the words ''shall * * * be available''. The words ''if the acquisition relates to'' are substituted for 31:649b (1st 8 words of last sentence). In clauses (1), (2), and (4), the word ''patents'' is substituted for the words ''letters patent''.

AMENDMENTS

1996—Par. (3). Pub. L. 104–106 amended par. (3) generally, substituting ''Design and process data, technical data, and computer software'' for ''Technical data and computer software''.

1994—Pars. (3), (4). Pub. L. 103–355 added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

''(3) Designs, processes, and manufacturing data.

''(4) Releases, before suit is brought, for past infringement of patents or copyrights.''

1960—Pub. L. 86–726 inserted ''or copyrights'' after ''patents'' in cl. (4).

§ 2387. Procurement of table and kitchen equipment for officers' quarters: limitation on

(a) Except under regulations approved by the Secretary of Defense and providing for uniform practices among the armed forces under his jurisdiction, no part of any appropriation of the Department of Defense may be used to supply or replace table linen, dishes, glassware, silver, and kitchen utensils for use in the residences on shore, or quarters on shore, of officers of those armed forces.

(b) This section does not apply to—

(1) field messes;

(2) messes temporarily set up on shore for bachelor officers and officers attached to seagoing or district defense vessels;

(3) aviation units based on seagoing vessels;

(4) fleet air bases;

(5) submarine bases; and

(6) landing forces and expeditions.

(Added Pub. L. 85–861, § 1(45), Sept. 2, 1958, 72 Stat. 1458.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2387(a)	5:174e (less words within parentheses).	July 13, 1955, ch. 358, § 614, 69 Stat. 317.
2387(b)	5:174e (words within parentheses).	

In subsection (a), the words ''may be used'' are substituted for the words ''shall be available''. The words ''on account of'' are omitted as surplusage. The words ''under his jurisdiction'' are inserted for clarity, since the Secretary of Defense has no jurisdiction over the

Coast Guard when it is not operating as a service in the Navy.

[§ 2388. Renumbered § 2922]

§ 2389. Ensuring safety regarding insensitive munitions

The Secretary of Defense shall ensure, to the extent practicable, that insensitive munitions under development or procurement are safe throughout development and fielding when subject to unplanned stimuli.

(Added Pub. L. 107–107, div. A, title VIII, § 834(a)(1), Dec. 28, 2001, 115 Stat. 1191.)

PRIOR PROVISIONS

A prior section 2389, added Pub. L. 89–696, § 1(1), Oct. 19, 1966, 80 Stat. 1056; amended Pub. L. 100–370, § 1(h)(1), July 19, 1988, 102 Stat. 847, related to purchases from Commodity Credit Corporation and price adjustments for contracts for procurement of milk, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(4), Nov. 30, 1993, 107 Stat. 1704.

REPORT REQUIREMENT

Pub. L. 107–107, div. A, title VIII, § 834(b), Dec. 28, 2001, 115 Stat. 1191, directed the Secretary of Defense to submit to committees of Congress a report on insensitive munitions at the same time that the budgets for fiscal years 2003 through 2005 were submitted.

§ 2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense

(a)(1) Except as provided in subsections (b) and (c), the sale outside the Department of Defense of any defense article designated or otherwise classified as Prepositioned Material Configured to Unit Sets, as decrement stock, or as Prepositioned War Reserve Stocks for United States Forces is prohibited.

(2) In this section, the term ''decrement stock'' means such stock as is needed to bring the armed forces from a peacetime level of readiness to a combat level of readiness.

(b) The President may authorize the sale outside the Department of Defense of a defense article described in subsection (a) if—

(1) he determines that there is an international crisis affecting the national security of the United States and the sale of such article is in the best interests of the United States; and

(2) he reports to the Congress not later than 60 days after the transfer of such article a plan for the prompt replenishment of the stocks of such article and the planned budget request to begin implementation of that plan.

(c)(1) Nothing in this section shall preclude the sale of stocks which have been designated for replacement, substitution, or elimination or which have been designated for sale to provide funds to procure higher priority stocks.

(2) Nothing in this section shall preclude the transfer or sale of equipment to other members of the North Atlantic Treaty Organization.

(Added Pub. L. 95–485, title VIII, § 815(a), Oct. 20, 1978, 92 Stat. 1625, § 975; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2390, Pub. L. 101–189, div. A, title XVI, § 1622(b)(1), Nov. 29, 1989, 103 Stat. 1604.)

PRIOR PROVISIONS

A prior section 2390, added Pub. L. 95–79, title VIII, § 815(a), July 30, 1977, 91 Stat. 337; amended Pub. L. 96–470, title I, § 104(a), Oct. 19, 1980, 94 Stat. 2238; Pub. L. 96–513, title V, § 511(80), Dec. 12, 1980, 94 Stat. 2927, directed Secretary of Defense to request each commissioned officer, and each civilian employee above grade GS–12, who was scheduled for retirement and who was or had been at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies, prior to repeal by Pub. L. 98–94, title XII, § 1259(a), Sept. 24, 1983, 97 Stat. 703.

AMENDMENTS

1989—Pub. L. 101–189 renumbered section 975 of this title as this section.

1987—Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2391. Military base reuse studies and community planning assistance

(a) REUSE STUDIES.—Whenever the Secretary of Defense or the Secretary of the military department concerned publicly announces that a military installation is a candidate for closure or that a final decision has been made to close a military installation and the Secretary of Defense determines, because of the location, facilities, or other particular characteristics of the installation, that the installation may be suitable for some specific Federal, State, or local use potentially beneficial to the Nation, the Secretary of Defense may conduct such studies, including the preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), in connection with such installation and such potential use as may be necessary to provide information sufficient to make sound conclusions and recommendations regarding the possible use of the installation.

(b) ADJUSTMENT AND DIVERSIFICATION ASSISTANCE.—(1) The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments in planning community adjustments and economic diversification required (A) by the proposed or actual establishment, realignment, or closure of a military installation, (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, (C) by a publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect a community, (D) by the encroachment of a civilian community on a military installation, or (E) by the closure or the significantly reduced operations of a defense facility as the result of the merger, acquisition, or consolidation of the defense contractor operating the defense facility, if the Secretary determines that an action described in clause (A), (B), (C), or (E) is likely to have a direct and significantly adverse consequence on the affected community or, in the case of an action described in clause (D), if the Secretary determines that the encroachment of the civilian community is like-

ly to impair the continued operational utility of the military installation.

(2) In the case of the establishment or expansion of a military installation, assistance may be made under paragraph (1) only if (A) community impact assistance or special impact assistance is not otherwise available, and (B) the establishment or expansion involves the assignment to the installation of (i) more than 2,000 military, civilian, and contractor Department of Defense personnel, or (ii) more military, civilian, and contractor Department of Defense personnel than the number equal to 10 percent of the number of persons employed in counties or independent municipalities within fifteen miles of the installation, whichever is lesser.

(3) In the case of a publicly announced planned reduction in Department of Defense spending, the closure or realignment of a military installation, the cancellation or termination of a Department of Defense contract, or the failure to proceed with a previously approved major defense acquisition program, assistance may be made under paragraph (1) only if the reduction, closure or realignment, cancellation or termination, or failure will have a direct and significant adverse impact on a community or its residents.

(4)(A) In the case of a State or local government eligible for assistance under paragraph (1), the Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist the State or local government to carry out a community adjustment and economic diversification program (including State industrial extension or modernization efforts to facilitate the economic diversification of defense contractors and subcontractors) in addition to planning such a program.

(B) The Secretary shall establish criteria for the selection of community adjustment and economic diversification programs to receive assistance under subparagraph (A). Such criteria shall include a requirement that the State or local government agree—

(i) to provide not less than 10 percent of the funding for the program from non-Federal sources;

(ii) to provide business planning and market exploration services under the program to defense contractors and subcontractors that seek modernization or diversification assistance; and

(iii) to provide training, counseling, and placement services for members of the armed forces and dislocated defense workers.

(C) The Secretary shall carry out this paragraph in coordination with the Secretary of Commerce.

(5)(A) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in planning community adjustments and economic diversification even though the State or local government is not currently eligible for assistance under paragraph (1) if the Secretary determines that a substantial portion of the economic activity or population of the geographic area to be subject to the advance planning is dependent on defense expenditures.

(B) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State in enhancing its capacities—

(i) to assist communities, businesses, and workers adversely affected by an action described in paragraph (1);

(ii) to support local adjustment and diversification initiatives; and

(iii) to stimulate cooperation between statewide and local adjustment and diversification efforts.

(C) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in enhancing the capabilities of the government to support efforts of the Department of Defense to privatize, contract for, or diversify the performance of military family support services in cases in which the capability of the Department to provide such services is adversely affected by an action described in paragraph (1).

(6) Funds provided to State and local governments and regional organizations under this section may be used as part or all of any required non-Federal contribution to a Federal grant-in-aid program for the purposes stated in paragraph (1).

(7) To the extent practicable, the Secretary of Defense shall inform a State or local government applying for assistance under this subsection of the approval or rejection by the Secretary of the application for such assistance as follows:

(A) Before the end of the 7-day period beginning on the date on which the Secretary receives the application, in the case of an application for a planning grant.

(B) Before the end of the 30-day period beginning on such date, in the case of an application for assistance to carry out a community adjustments and economic diversifications program.

(8)(A) In attempting to complete consideration of applications within the time period specified in paragraph (7), the Secretary of Defense shall give priority to those applications requesting assistance for a community described in subsection (f)(1).

(B) If an application under paragraph (7) is rejected by the Secretary, the Secretary shall promptly inform the State or local government of the reasons for the rejection of the application.

(c) RESEARCH AND TECHNICAL ASSISTANCE.—The Secretary of Defense may make grants to, or conclude cooperative agreements or enter into contracts with, another Federal agency, a State or local government, or any private entity to conduct research and provide technical assistance in support of activities under this section or Executive Order 12788 (57 Fed. Reg. 2213), as amended by section 33 of Executive Order 13286 (68 Fed. Reg. 10625) and Executive Order 13378 (70 Fed. Reg. 28413).

(d) DEFINITIONS.—In this section:

(1) The terms ''military installation'' and ''realignment'' have the meanings given those terms in section 2687 of this title. For purposes

of subsection (b)(1)(D), the term ''military installation'' includes a military facility owned and operated by any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, even though the facility is not under the jurisdiction of the Department of Defense, if the Secretary of Defense determines that the military facility is subject to significant use for training by the armed forces.

(2) The term ''defense facility'' means any private facility producing goods or services pursuant to a defense contract.

(3) The terms ''community adjustment'' and ''economic diversification'' include the development of feasibility studies and business plans for market diversification within a community adversely affected by an action described in clause (A), (B), (C), or (E) of subsection (b)(1) by adversely affected businesses and labor organizations located in the community.

(e) ASSISTANCE SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to make grants under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 97–86, title IX, §912(a)(1), Dec. 1, 1981, 95 Stat. 1122; amended Pub. L. 98–115, title VIII, §808, Oct. 11, 1983, 97 Stat. 789; Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–456, div. B, title XXVIII, §2805, Sept. 29, 1988, 102 Stat. 2116; Pub. L. 101–510, div. D, title XLI, §4102(b), Nov. 5, 1990, 104 Stat. 1851; Pub. L. 102–25, title VII, §701(j)(3), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(28), div. D, title XLIII, §4301(a)–(c), Oct. 23, 1992, 106 Stat. 2500, 2696, 2697; Pub. L. 103–35, title II, §202(a)(15), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. B, title XXIX, §2913, Nov. 30, 1993, 107 Stat. 1925; Pub. L. 103–337, div. A, title XI, §§1122(a), 1123(a), (b), Oct. 5, 1994, 108 Stat. 2870, 2871; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. B, title XXVIII, §2814, Sept. 23, 1996, 110 Stat. 2790; Pub. L. 105–85, div. B, title XXVIII, §2822, Nov. 18, 1997, 111 Stat. 1997; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, §1041(a)(13), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 109–163, div. B, title XXVIII, §2832, Jan. 6, 2006, 119 Stat. 3520; Pub. L. 109–364, div. B, title XXVIII, §§2861, 2862, Oct. 17, 2006, 120 Stat. 2498; Pub. L. 110–417, div. B, title XXVIII, §2823(b), Oct. 14, 2008, 122 Stat. 4730; Pub. L. 112–239, div. B, title XXVII, §2712(c)(1), Jan. 2, 2013, 126 Stat. 2145.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Executive Order 12788, referred to in subsec. (c), is set out below.

AMENDMENTS

2013—Subsec. (d)(1). Pub. L. 112–239 substituted ''section 2687'' for ''section 2687(e)''.

2008—Subsec. (d)(1). Pub. L. 110–417 inserted ''the Commonwealth of the Northern Mariana Islands,'' after ''Guam,''.

2006—Subsec. (b)(3). Pub. L. 109–163, §2832(a), substituted ''realignment of a military installation'' for ''significantly reduced operations of a defense facility'', ''closure or realignment, cancellation or'' for ''cancellation,'', and ''community or its residents.'' for ''community and will result in the loss of—

''(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

''(B) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

''(C) one percent of the total number of civilian jobs in that area.''

Subsec. (c). Pub. L. 109–364, §2861, added subsec. (c).

Subsec. (d)(1). Pub. L. 109–364, §2862, inserted at end ''For purposes of subsection (b)(1)(D), the term 'military installation' includes a military facility owned and operated by any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, or the Virgin Islands, even though the facility is not under the jurisdiction of the Department of Defense, if the Secretary of Defense determines that the military facility is subject to significant use for training by the armed forces.''

Pub. L. 109–163, §2832(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'military installation' means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.''

2002—Subsec. (c). Pub. L. 107–314 struck out heading and text of subsec. (c). Text read as follows: ''The Secretary of Defense shall submit a report not later than December 1 of each year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives concerning the operation of this section during the preceding fiscal year. Each such report shall identify each State, unit of local government, and regional organization that received a grant under this section during such fiscal year and the total amount granted under this section during such year to each such State, unit of local government, and regional organization.''

1999—Subsec. (c). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (b)(5)(C). Pub. L. 105–85 added subpar. (C).

1996—Subsec. (b)(5). Pub. L. 104–201 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (b)(5) to (7). Pub. L. 103–337, §1123(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 103–337, §1123(a)(1), (b), redesignated par. (7) as (8) and substituted ''paragraph (7)'' for ''paragraph (6)'' in subpars. (A) and (B).

Subsec. (d)(3). Pub. L. 103–337, §1122(a), added par. (3).

1993—Subsec. (b)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, §4301(b)(1)(C). See 1992 Amendment note below.

Subsec. (b)(6), (7). Pub. L. 103–160 added pars. (6) and (7).

1992—Subsec. (a). Pub. L. 102–484, §4301(c)(1), inserted heading.

Subsec. (b). Pub. L. 102–484, §4301(c)(2), inserted heading.

Subsec. (b)(1). Pub. L. 102–484, §4301(b)(1), as amended by Pub. L. 103–35, substituted '', (D)'' for '', or (D)'',

substituted ''(C), or (E)'' for ''or (C)'', and inserted cl. (E) before first reference to ''if the Secretary''.

Pub. L. 102–484, § 1052(28), substituted ''publicly announced'' for ''publicly-announced''.

Subsec. (b)(3). Pub. L. 102–484, § 4301(b)(2), inserted ''the closure or significantly reduced operations of a defense facility,'' after ''Defense spending,'' in introductory provisions.

Subsec. (b)(4), (5). Pub. L. 102–484, § 4301(a)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 102–484, § 4301(c)(3), inserted heading.

Subsec. (d). Pub. L. 102–484, § 4301(b)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In this section, the term 'military installation' means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.''

Subsec. (e). Pub. L. 102–484, § 4301(c)(4), inserted heading.

1991—Subsec. (b)(3). Pub. L. 102–25 substituted ''publicly announced'' for ''publicly-announced'' and inserted a comma after ''only if the reduction''.

1990—Subsec. (b)(3) to (6). Pub. L. 101–510 added par. (3), redesignated par. (5) as (4), and struck out former pars. (3), (4), and (6), which read as follows:

''(3) In the case of the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, assistance may be made under paragraph (1) only if the cancellation, termination, or failure to proceed involves the loss of 2,500 or more full-time Department of Defense and contractor employee positions in the locality of the affected community.

''(4) In the case of a publicly-announced planned major reduction in Department of Defense spending that will directly and adversely affect a community, assistance may be made under paragraph (1) only if the publicly-announced planned major reduction will result in the loss of 1,000 or more full-time Department of Defense and contractor employee positions over a five-year period in the locality of the affected community.

''(6) Not more than $2,000,000 in assistance may be provided under this subsection in any fiscal year.''

1988—Subsec. (b)(1). Pub. L. 100–456, § 2805(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds made available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments, and regional organizations composed of State and local governments, in planning community adjustments required (A) by the proposed or actual establishment, realignment, or closure of a military installation, or (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, if the Secretary of Defense determines that the action is likely to impose a significant impact on the affected community.''

Subsec. (b)(4) to (6). Pub. L. 100–456, § 2805(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

1987—Subsec. (d). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1983—Subsec. (b)(2). Pub. L. 98–115 substituted ''2,000'' for ''2,500''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. B, title XXVII, § 2702, Sept. 29, 1988, 102 Stat. 2115, provided that: ''Except as otherwise specifically provided, this division [amending this section and sections 2662, 2672, 2809, and 2828 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1988, or the date of enactment of this Act [Sept. 29, 1988], whichever is later.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–115, title VIII, § 808, Oct. 11, 1983, 97 Stat. 789, provided that the amendment made by that section is effective Oct. 1, 1983.

ADVANCE ADJUSTMENT PLANNING

Pub. L. 102–484, div. D, title XLIII, § 4301(d), Oct. 23, 1992, 106 Stat. 2697, authorized Secretary of Defense, during fiscal year 1993, to make grants and other assistance available under 10 U.S.C. 2391(b) to assist a State or local government in planning community adjustments and economic diversification even though the State or local government currently failed to meet the criteria for assistance under such section if the Secretary determined that a substantial portion of the economic activity or population of the geographic area to be subjected to the adjustment or diversification planning was dependent on Department of Defense expenditures.

EFFECT OF 1992 AMENDMENTS ON EFFORTS OF ECONOMIC DEVELOPMENT ADMINISTRATION

Pub. L. 102–484, div. D, title XLIII, § 4301(f), Oct. 23, 1992, 106 Stat. 2698, provided that: ''Nothing in this section [amending this section and enacting provisions set out as a note above] is intended to replace the efforts of the economic development program administered by the Economic Development Administration of the Department of Commerce.''

PILOT PROJECT TO IMPROVE ECONOMIC ADJUSTMENT PLANNING

Pub. L. 102–484, div. D, title XLIII, § 4302, Oct. 23, 1992, 106 Stat. 2698, as amended by Pub. L. 103–160, div. A, title XIII, § 1323(a), Nov. 30, 1993, 107 Stat. 1790, authorized Secretary of Defense, during fiscal years 1993 and 1994, to conduct a pilot project to examine methods to improve the provision of economic adjustment and diversification assistance under 10 U.S.C. 2391(b)(1) to State and local governments adversely affected by the closure of military installations, the cancellation or completion of defense contracts, or reductions in defense spending.

DONATION OF REAL PROPERTY TO NONPROFIT ENTITIES PROVIDING SUPPORT TO CHILDREN WITH LIFE-THREATENING DISEASES

Pub. L. 102–172, title VIII, § 8149, Nov. 26, 1991, 105 Stat. 1214, provided that:

''(a) The Secretary of Defense, during the current fiscal year or at any time thereafter, may make a donation to an entity described in subsection (b) of a parcel of real property (including structures on such property) under the jurisdiction of the Secretary that is not currently required for the needs of the Department and that the Secretary determines is needed and appropriate for the activities of that entity.

''(b) A donation under subsection (a) may be made to a nonprofit entity which provides medical, educational, and emotional support in a recreational setting to children with life-threatening diseases and their families.''

DEFENSE ECONOMIC ADJUSTMENT, DIVERSIFICATION, CONVERSION, AND STABILIZATION

Pub. L. 101–510, div. D, Nov. 5, 1990, 104 Stat. 1848, as amended by Pub. L. 102–190, div. A, title X, § 1062(c), Dec. 5, 1991, 105 Stat. 1475; Pub. L. 102–484, div. D, title XLII, § 4212(b), Oct. 23, 1992, 106 Stat. 2664; Pub. L. 104–201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(6)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419; Pub.

L. 108–136, div. A, title IX, §932, Nov. 24, 2003, 117 Stat. 1581; Pub. L. 113–66, div. B, title XXVIII, §2841, Dec. 26, 2013, 127 Stat. 1024, provided that:

''SEC. 4001. SHORT TITLE

''This division may be cited as the 'Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990'.

''SEC. 4002. FINDINGS AND POLICY

''(a) FINDINGS.—Congress makes the following findings:

''(1) There are likely to be significant reductions in the programs, projects, and activities of the Department of Defense during the first several fiscal years following fiscal year 1990.

''(2) Such reductions will adversely affect the economies of many communities in the United States and small businesses and civilian workers throughout the United States.

''(b) POLICY.—In view of the findings expressed in subsection (a), it is the policy of the United States that—

''(1) assistance be provided under existing planning assistance programs and economic adjustment assistance programs of the Federal Government to substantially and seriously affected communities, businesses, and workers to the extent necessary to facilitate an orderly transition for such communities, small businesses, and workers from economic reliance on Department of Defense spending to economic reliance on other sources of business, employment, and revenue; and

''(2) funding for such programs be increased by amounts necessary to meet the needs of such communities, small businesses, and workers without reducing the funding that would otherwise be available under those programs by reason of causes unrelated to the reductions referred to in subsection (a)(1).

''SEC. 4003. DEFINITIONS

''For purposes of this division:

''(1) The term 'major defense contract or subcontract' means—

''(A) any defense contract in an amount not less than $5,000,000 (without regard to the date on which the contract was awarded); and

''(B) any subcontract which—

''(i) is entered into in connection with a contract (without regard to the effective date of the subcontract); and

''(ii) involves not less than $500,000.

''(2) The term 'Economic Adjustment Committee' or 'Committee' means the Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note).

''(3) The term 'defense facility' means any private or government facility producing goods or services pursuant to a defense contract.

''(4) The term 'military installation' means a base, camp, post, station, yard, center, or homeport facility for any ship in the United States, or any other facility under the jurisdiction of a military department located in the United States.

''(5) The term 'substantially and seriously affected' means—

''(A) when such term is used in conjunction with the term 'community', a community—

''(i) which has within its administrative and political jurisdiction one or more military installations or defense facilities or which is economically affected by proximity to a military installation or defense facility;

''(ii) in which the actual or threatened curtailment, completion, elimination, or realignment of a defense contract results in a workforce reduction of—

''(I) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

''(II) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

''(III) one percent of the total number of civilian jobs in that area; and

''(iii) which establishes, by evidence, that any workforce reduction referred to in clause (ii) occurred as a direct result of changes in Department of Defense requirements or programs;

''(B) when such term is used in conjunction with the term 'businesses' any business which—

''(i) holds a major defense contract or subcontract (or held such contract or subcontract before a reduction in the defense budget);

''(ii) experiences a reduction, or the threat of a reduction, of—

''(I) 25 percent or more in sales or production; or

''(II) 80 percent or more of the workforce of such business in any division of such business or at any plant or other facility of such business; and

''(iii) establishes, by evidence, that the reductions referred to in clause (ii) occurred as a direct result of a reduction in the defense budget; and

''(C) when such term is used in conjunction with the term 'group of workers', any group of 100 or more workers at a defense facility who are (or who are threatened to be), eligible to participate in the defense conversion adjustment program under section 325 of the Job Training Partnership Act [29 U.S.C. 1662d] (as added by section 4202 of this division), as in effect on the day before the date of enactment of the Workforce Investment Act of 1998 [Aug. 7, 1998].

''SEC. 4004. CONTINUATION OF ECONOMIC ADJUSTMENT COMMITTEE

''(a) TERMINATION OR ALTERATION PROHIBITED.—The Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note) may not be terminated and the duties of the Committee may not be significantly altered unless specifically authorized by a law.

''(b) CHAIRMAN.—The Secretary of Defense shall be the chairman of the Committee.

''(c) EXECUTIVE COUNCIL.—Until October 1, 1997, the National Defense Technology and Industrial Base Council shall function as an Executive Council of the Committee. Under the direction of the chairman of the Committee, the Executive Council shall develop policies and procedures to ensure that communities, businesses, and workers substantially and seriously affected by reductions in defense expenditures are advised of the assistance available to such communities, businesses, and workers under programs administered by the departments and agency comprising the Council.

''(d) DUTIES OF COMMITTEE.—The Economic Adjustment Committee shall—

''(1) coordinate and facilitate cooperative efforts among Federal agencies represented on the Committee to implement defense economic adjustment programs; and

''(2) serve as an information clearinghouse for and between Federal, State, and local entities regarding their defense economic adjustment efforts.

''TITLE XLI—ECONOMIC ADJUSTMENT PLANNING

''[SEC. 4101. Repealed. Pub. L. 104–201, div. A, title VIII, §825, Sept. 23, 1996, 110 Stat. 2611.]

''SEC. 4102. ECONOMIC ADJUSTMENT PLANNING ASSISTANCE THROUGH THE DEPARTMENT OF DEFENSE

''(a) IN GENERAL.—Any substantially and seriously affected community shall be eligible for economic adjustment planning assistance through the Office of Economic Adjustment in the Department of Defense under subsection (b) of section 2391 of title 10, United States Code, subject to subsection (e) of such section. Such assistance shall be provided in accordance with the standards, procedures, and priorities established by the Committee under this division.

''(b) [Amended section 2391(b) of this title.]

''SEC. 4103. COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE THROUGH THE ECONOMIC DEVELOPMENT ADMINISTRATION

''(a) IN GENERAL.—A community that has been determined by the Economic Development Administration of the Department of Commerce or the Office of Economic Adjustment of the Department of Defense, in accordance with the standards and procedures established by the Economic Adjustment Committee, to be a substantially and seriously affected community shall be eligible for economic adjustment assistance authorized under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], subject to the availability of appropriations for such purpose and subject to meeting the eligibility requirements of such title.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for fiscal year 1991 $50,000,000 for purposes of carrying out subsection (a). Any amount appropriated pursuant to this subsection shall remain available until expended.

''TITLE XLII—ADJUSTMENT ASSISTANCE FOR EMPLOYEES

''[SEC. 4201. Repealed. Pub. L. 104–201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611.]

''SEC. 4202. DEFENSE CONVERSION ADJUSTMENT PROGRAM

''[Enacted section 1662d of Title 29, Labor.]

''SEC. 4203. AUTHORIZATION OF APPROPRIATIONS

''(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Defense $150,000,000 for fiscal year 1991 to carry out section 4201 and the amendment made by section 4202. Amounts appropriated pursuant to this subsection shall remain available until expended.

''(b) ADMINISTRATIVE EXPENSES.—Of amounts appropriated pursuant to this section, not more than five percent may be retained by the Secretary of Labor for the administration of the activities authorized by the amendment made by section 4202.

''TITLE XLIII—EXPANSION OF BUSINESS CAPITAL ASSISTANCE PROGRAMS

''SEC. 4301. EXPANSION OF SMALL BUSINESS LOAN PROGRAM

''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the President, acting with the assistance of the Committee and after consulting experts in government and the private sector, shall transmit to the Congress recommendations regarding ways that assistance provided pursuant to the business loan program under section 7(a) of the Small Business Act of 1958 [15 U.S.C. 636(a)] may be used to respond to the consequences of defense budget reductions.

''SEC. 4302. ECONOMIC PLANNING ASSISTANCE FOR EXCEPTIONAL PROJECTS

''(a) ASSISTANCE AUTHORIZED.—The Economic Development Administration, in the case of assistance under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], and the Office of Economic Adjustment, in the case of planning assistance under section 2391(b) of title 10, United States Code, may award planning assistance under those programs to any substantially and seriously affected community, on behalf of a business, group of businesses, or group of workers, if such planning funds are determined by the agency concerned to be necessary and appropriate as a catalyst for projects which the agency determines, on a case-by-case basis, have exceptional promise for achieving the objectives of this division.

''(b) CONDITIONS ON ASSISTANCE.—Awards under this section shall be subject to the availability of appropriations for such purpose and shall be made in accordance with any other applicable provisions of law.

''SEC. 4303. EXPANSION OF EXPORT FINANCING FOR GOODS AND SERVICES PRODUCED BY FIRMS AND EMPLOYEES FORMERLY ENGAGED IN DEFENSE PRODUCTION

''(a) EXPORT-IMPORT BANK.—

''(1) SENSE OF CONGRESS ON PLAN FOR EXPANSION.—It is the sense of Congress that the United States businesses undergoing transition from defense production to nondefense production will need assistance in seizing export markets overseas. Therefore, in order to provide financial support for such businesses, as well as meeting other normal demands on its resources, the annual direct lending authority of the Export-Import Bank of the United States should be increased by at least 150 percent from the fiscal year 1990 level over the five-year period beginning October 1, 1990.

''(2) REPORT OF FEASIBILITY.—Before September 30, 1990, the President, acting with the assistance of the Committee and after consulting the Board of Directors of the Export-Import Bank of the United States and other experts in government and the private sector, shall transmit to the Congress a report assessing the feasibility and desirability of a program for increasing the amount of direct loan authority in the manner described in paragraph (1) and the factors considered in making such assessment.

''(3) TRANSITION TO NONDEFENSE PRODUCTION REQUIRED TO BE CONSIDERED.—In determining whether to provide financial support for an export transaction, the Export-Import Bank of the United States shall take into account, to the extent feasible and in accordance with applicable standards and procedures established by the bank in consultation with the Committee, the fact that the product or service is produced or provided by any business or group of workers which—

''(A) was substantially and seriously affected by defense budget reductions; and

''(B) is in transition from defense to nondefense production.

''(b) SBA USE OF AUTHORITY FOR EXPORT FINANCING ASSISTANCE.—In determining whether to provide financial or other assistance under the Small Business Act [15 U.S.C. 631 et seq.], title VIII of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418, see Short Title of 1988 Amendments note set out under section 631 of Title 15, Commerce and Trade], or any program referred to in section 4301 to any small business involved in, or attempting to become involved in, the export of any product or service, the Administrator of the Small Business Administration shall take into account the fact that such product or service is produced or provided by any business or group of workers which—

''(1) has been substantially and seriously affected by defense budget reductions; and

''(2) is in transition from defense to nondefense production.

''(c) COORDINATION AND INTEGRATION OF ACTIVITIES AND ASSISTANCE WITH OTHER AGENCIES.—In providing additional financial assistance pursuant to any increase in loan authority under this division—

''(1) Federal agencies concerned with international trade shall participate in the process of coordination conducted by the Committee pursuant to section 4004(c)(1); and

''(2) such Federal agencies shall attempt, to the maximum extent practicable, to coordinate and integrate the activities and assistance of the agencies in support of exports, including financial assistance in the form of direct loans, loan guarantees, and insurance, general trade promotion, marketing assistance, and marketing and commercial information, in a manner consistent with the purposes of this division (and the amendments made by this division to other provisions of law).

''(d) REPORTING.—The annual reports made by the Export-Import Bank of the United States and the Administrator of the Small Business Administration and the annual economic stabilization and adjustment report

under section 4004(c)(3) of this division shall include a description of the extent to which the bank and the Administrator are—

''(1) providing financing described in subsections (a)(2) and (b), respectively, to businesses or groups of workers which were substantially and seriously affected by defense budget reductions; and

''(2) coordinating and integrating export support and financing activities with other Federal agencies.

''SEC. 4304. BENEFIT INFORMATION FOR BUSINESSES

''(a) INFORMATION REQUIRED TO BE PROVIDED.—The Secretary of Commerce and the Administrator of the Small Business Administration shall provide any business affected by defense budget reductions with a complete description of available programs which provide any business, whether on an industrywide or an individual basis, with any planning assistance, financial, technical, or managerial assistance, worker retraining assistance, or other assistance authorized under this division.

''(b) EFFECTIVE NOTIFICATION SYSTEM.—The Secretary of Commerce and the Administrator of the Small Business Administration shall take such action as may be appropriate to ensure, to the maximum extent practicable, that each business affected by defense budget reductions receives the information required to be provided under subsection (a) on a timely basis.''

COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Section 2819 of Pub. L. 100–456, as amended by Pub. L. 101–510, div. B, title XXIX, §2922(a), Nov. 5, 1990, 104 Stat. 1820, established Commission on Alternative Utilization of Military Facilities and required Commission to submit reports to President and Congress not later than Sept. 1 of every second year through fiscal year 1996, prior to repeal by Pub. L. 105–261, div. A, title X, §1031(b), Oct. 17, 1998, 112 Stat. 2123.

SUBMISSION DATE FOR FIRST REPORT

Pub. L. 97–86, title IX, §912(c), Dec. 1, 1981, 95 Stat. 1123, required the first report under subsec. (c) of this section to be submitted not later than Dec. 1, 1982.

EX. ORD. NO. 12682. COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Ex. Ord. No. 12682, July 7, 1989, 54 F.R. 29315, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2819 of the Military Construction Authorization Act, 1989 (Public Law 100–456) [10 U.S.C. 2391 note], it is hereby ordered as follows:

SECTION 1. (a) I hereby establish the Commission on Alternative Utilization of Military Facilities (''Commission'').

(b) The Commission shall consist of a representative of the Department of Defense designated by the Secretary of Defense, a representative of the Federal Bureau of Prisons designated by the Attorney General, a representative of the National Institute on Drug Abuse designated by the Secretary of Health and Human Services, a representative of the General Services Administration designated by the Administrator of General Services, a representative of the Department of Housing and Urban Development designated by the Secretary of Housing and Urban Development, and a representative of the Office of National Drug Control Policy designated by the Director of the Office of National Drug Control Policy. The representative of the Department of Defense shall chair the Commission.

(c) The Secretary of Defense shall provide such personnel and support to the Commission as the Secretary determines is necessary to accomplish its mission.

SEC. 2. (a) Subject to subsection (b), the Secretary of Defense shall prepare and submit to the Commission reports listing active and nonactive military facilities that are underutilized in whole or in part or otherwise excess to the needs of the Department of Defense.

(b) The first such report shall be prepared and submitted as soon as possible for inclusion in the first report of the Commission. The second report shall be prepared and submitted on January 30, 1990, and succeeding reports shall be prepared and submitted every other year commencing on January 30, 1992, and continuing until January 30, 1996.

SEC. 3. (a) Subject to subsection (b), the Commission shall submit a report to the President and then to the Congress that identifies those facilities, or parts of facilities, from the list submitted by the Secretary of Defense under Section 2 that could be effectively utilized or renovated to serve as:

(1) minimum security facilities for nonviolent prisoners,

(2) drug treatment facilities for nonviolent drug abusers, and

(3) facilities to assist the homeless.

(b) The first report of the Commission shall be submitted to the President and then to the Congress by September 1, 1989. The second, and succeeding reports of the Commission, shall be submitted to the President and then to the Congress no later than September 1, 1990, and every second year through September 1, 1996.

GEORGE BUSH.

EX. ORD. NO. 12788. DEFENSE ECONOMIC ADJUSTMENT PROGRAM

Ex. Ord. No. 12788, Jan. 15, 1992, 57 F.R. 2213, as amended by Ex. Ord. No. 13286, §33, Feb. 28, 2003, 68 F.R. 10625; Ex. Ord. No. 13378, May 12, 2005, 70 F.R. 28413, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 10 U.S.C. 2391 and the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, enacted as Division D, section 4001 *et seq.*, of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510 [set out above], and to provide coordinated Federal economic adjustment assistance necessitated by changes in Department of Defense activities, it is hereby ordered as follows:

SECTION 1. *Function of the Secretary of Defense.* The Secretary of Defense shall, through the Economic Adjustment Committee, design and establish a Defense Economic Adjustment Program.

SEC. 2. *Purpose of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall (1) assist substantially and seriously affected communities, businesses, and workers from the effects of major Defense base closures, realignments, and Defense contract-related adjustments, and (2) assist State and local governments in preventing the encroachment of civilian communities from impairing the operational utility of military installations.

SEC. 3. *Functions of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall:

(a) Identify problems of States, regions, metropolitan areas, or communities that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations and that require Federal assistance;

(b) Use and maintain a uniform socioeconomic impact analysis to justify the use of Federal economic adjustment resources, prior to particular realignments;

(c) Apply consistent policies, practices, and procedures in the administration of Federal programs that are used to assist Defense-affected States, regions, metropolitan areas, communities, and businesses;

(d) Identify and strengthen existing agency mechanisms to coordinate employment opportunities for displaced agency personnel;

(e) Identify and strengthen existing agency mechanisms to improve reemployment opportunities for dislocated Defense industry personnel;

(f) Assure timely consultation and cooperation with Federal, State, regional, metropolitan, and community

officials concerning Defense-related impacts on Defense-affected communities' problems;

(g) Assure coordinated interagency and intergovernmental adjustment assistance concerning Defense impact problems;

(h) Prepare, facilitate, and implement cost-effective strategies and action plans to coordinate interagency and intergovernmental economic adjustment efforts;

(i) Encourage effective Federal, State, regional, metropolitan, and community cooperation and concerted involvement of public interest groups and private sector organizations in Defense economic adjustment activities;

(j) Serve as a clearinghouse to exchange information among Federal, State, regional, metropolitan, and community officials involved in the resolution of community economic adjustment problems. Such information may include, for example, previous studies, technical information, and sources of public and private financing;

(k) Assist in the diversification of local economies to lessen dependence on Defense activities;

(*l*) Encourage and facilitate private sector interim use of lands and buildings to generate jobs as military activities diminish;, [sic]

(m) Develop ways to streamline property disposal procedures to enable Defense-impacted communities to acquire base property to generate jobs as military activities diminish; and

(n) Encourage resolution of regulatory issues that impede encroachment prevention and local economic adjustment efforts.

SEC. 4. *Economic Adjustment Committee.*

(a) *Membership.* The Economic Adjustment Committee (''Committee'') shall be composed of the following individuals, or a designated principal deputy of these individuals, and such other individuals from the executive branch as the President may designate. Such individuals shall include the:

(1) Secretary of Agriculture;
(2) Attorney General;
(3) Secretary of Commerce;
(4) Secretary of Defense;
(5) Secretary of Education;
(6) Secretary of Energy;
(7) Secretary of Health and Human Services;
(8) Secretary of Housing and Urban Development;
(9) Secretary of the Interior;
(10) Secretary of Labor;
(11) Secretary of State;
(12) Secretary of Transportation;
(13) Secretary of the Treasury;
(14) Secretary of Veterans Affairs;
(15) Secretary of Homeland Security;
(16) Chairman, Council of Economic Advisers;
(17) Director of the Office of Management and Budget;
(18) Director of the Office of Personnel Management;
(19) Administrator of the Environmental Protection Agency;
(20) Administrator of General Services;
(21) Administrator of the Small Business Administration; and,
(22) Postmaster General.

(b) *Chairman.* The Secretary of Defense, or the Secretary's designee, shall chair the Committee.

(c) *Vice Chairman.* The Secretaries of Labor and Commerce shall serve as Vice Chairmen of the Committee. The Vice Chairmen shall co-chair the Committee in the absence of both the Chairman and the Chairman's designee and may also preside over meetings of designated representatives of the concerned executive agencies.

(d) *Executive Director.* The head of the Department of Defense's Office of Economic Adjustment shall provide all necessary policy and administrative support for the Committee and shall be responsible for coordinating the application of the Defense Economic Adjustment Program to Department of Defense activities.

(e) *Duties.* The Committee shall:

(1) Advise, assist, and support the Defense Economic Adjustment Program;

(2) Develop procedures for ensuring that State, regional, and community officials and representatives of organized labor in those States, municipalities, localities, or labor organizations that are substantially and seriously affected by changes in Defense expenditures, realignments or closures, or cancellation or curtailment of major Defense contracts, are notified of available Federal economic adjustment programs; and,

(3) Report annually to the President and then to the Congress on the work of the Economic Adjustment Committee during the preceding fiscal year.

SEC. 5. *Responsibilities of Executive Agencies.*

(a) The head of each agency represented on the Committee shall designate an agency representative to:

(1) Serve as a liaison with the Secretary of Defense's economic adjustment staff;

(2) Coordinate agency support and participation in economic adjustment assistance projects; and,

(3) Assist in resolving Defense-related impacts on Defense-affected communities.

(b) All executive agencies shall:

(1) Support, to the extent permitted by law, the economic adjustment assistance activities of the Secretary of Defense. Such support may include the use and application of personnel, technical expertise, legal authorities, and available financial resources. This support may be used, to the extent permitted by law, to provide a coordinated Federal response to the needs of individual States, regions, municipalities, and communities adversely affected by necessary Defense changes;

(2) Afford priority consideration to requests from Defense-affected communities for Federal technical assistance, financial resources, excess or surplus property, or other requirements, that are part of a comprehensive plan used by the Committee.

SEC. 6. *Judicial Review.* This order shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, its agents, or any person.

SEC. 7. *Construction.* (a) Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

(b) This order shall be effective immediately and shall supersede Executive Order No. 12049.

[Amendment by Ex. Ord. 13378 directing insertion of ''and'' after ''diminish;'' in section 3(m) of Ex. Ord. 12788, was executed by substituting ''; and'' for the comma after ''diminish''.]

§ 2392. Prohibition on use of funds to relieve economic dislocations

(a) In order to help avoid the uneconomic use of Department of Defense funds in the procurement of goods and services, the Congress finds that it is necessary to prohibit the use of such funds for certain purposes.

(b) No funds appropriated to or for the use of the Department of Defense may be used to pay, in connection with any contract awarded by the Department of Defense, a price differential for the purpose of relieving economic dislocations.

(Added Pub. L. 97–86, title IX, § 913(a)(1), Dec. 1, 1981, 95 Stat. 1123.)

CONTRACTS MADE BY DEFENSE LOGISTICS AGENCY; PAYMENTS OF PRICE DIFFERENTIALS TO RELIEVE ECONOMIC DISLOCATIONS; TEST PROGRAM; INTERIM REPORTS

Pub. L. 97–252, title XI, § 1109, Sept. 8, 1982, 96 Stat. 746, as amended by Pub. L. 98–94, title XII, § 1205, Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title XII, § 1254, Oct. 19, 1984, 98 Stat. 2611, authorized the Secretary of Defense to conduct a test program during fiscal years

1983, 1984, and 1985 to test the effect of exempting certain contracts of the Department of Defense from the provisions of this section and paying a price differential under such contracts for the purpose of relieving economic dislocations, provided that the Secretary could exempt any contract (other than a contract for the purchase of fuel) made by the Defense Logistics Agency during fiscal years 1983, 1984, and 1985 if the contract was to be awarded to an individual or firm located in a Labor Surplus Area, and directed the President to submit a report to Congress not later than Apr. 15, 1983, Apr. 15, 1984, and Apr. 15, 1985, on the implementation and results to that date of the program. Similar provisions were contained in Pub. L. 97–86, title IX, § 913(b), (c), Dec. 1, 1981, 95 Stat. 1124.

§ 2393. Prohibition against doing business with certain offerors or contractors

(a)(1) Except as provided in paragraph (2), the Secretary of a military department may not solicit an offer from, award a contract to, extend an existing contract with, or, when approval by the Secretary of the award of a subcontract is required, approve the award of a subcontract to, an offeror or contractor which to the Secretary's knowledge has been debarred or suspended by another Federal agency unless—

(A) in the case of debarment, the debarment of the offeror or contractor by all other agencies has been terminated or the period of time specified for such debarment has expired; and

(B) in the case of a suspension, the period of time specified by all other agencies for the suspension of the offeror or contractor has expired.

(2) Paragraph (1) does not apply in any case in which the Secretary concerned determines that there is a compelling reason to solicit an offer from, award a contract to, extend a contract with, or approve a subcontract with such offeror or contractor.

(b) Whenever the Secretary concerned makes a determination described in subsection (a)(2), he shall, at the time of the determination, transmit a notice to the Administrator of General Services describing the determination. The Administrator of General Services shall maintain each such notice on a publicly accessible website to the maximum extent practicable.

(c) In this section:

(1) The term ''debar'' means to exclude, pursuant to established administrative procedures, from Government contracting and subcontracting for a specified period of time commensurate with the seriousness of the failure or offense or the inadequacy of performance.

(2) The term ''suspend'' means to disqualify, pursuant to established administrative procedures, from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct.

(d) The Secretary of Defense shall prescribe in regulations a requirement that each contractor under contract with the Department of Defense shall require each contractor to whom it awards a contract (in this section referred to as a subcontractor) to disclose to the contractor whether the subcontractor is or is not, as of the time of the award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The requirement shall apply to any subcontractor whose subcontract is in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41). The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 103 of title 41).

(Added Pub. L. 97–86, title IX, § 914(a), Dec. 1, 1981, 95 Stat. 1124; amended Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title VIII, § 813, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title IV, § 4102(e), title VIII, § 8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111–350, § 5(b)(24), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 113–66, div. A, title VIII, § 813, Dec. 26, 2013, 127 Stat. 808.)

AMENDMENTS

2013—Subsec. (b). Pub. L. 113–66 substituted ''on a publicly accessible website to the maximum extent practicable'' for ''in a file available for public inspection''.

2011—Subsec. (d). Pub. L. 111–350 substituted ''section 134 of title 41)'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))'' and ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

1994—Subsec. (d). Pub. L. 103–355 substituted ''greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).'' for ''above the small purchase amount established in section 2304(g) of this title.'' in second sentence and inserted at end ''The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''

1991—Subsec. (d). Pub. L. 102–190 substituted ''Federal Government'' for ''Federal government''.

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

1987—Subsec. (c). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

[§ 2394. Renumbered § 2922a]

CODIFICATION

Another section 2394 was renumbered section 2395 of this title.

[§ 2394a. Renumbered § 2922b]

§ 2395. Availability of appropriations for procurement of technical military equipment and supplies

Funds appropriated to the Department of Defense for the procurement of technical military equipment and supplies remain available until spent.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1052, § 2394; renumbered § 2395 and amended Pub. L. 97–295, § 1(28)(A), Oct. 12, 1982, 96 Stat. 1291.)

HISTORICAL AND REVISION NOTES
1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2394	31:649c(1).	Aug. 10, 1956, ch. 1041, § 40(1), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, § 201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10. The word ''military'' is added before ''public'' for clarity. The words ''including moneys appropriated to the Department of the Navy for the procurement and construction of guided missiles'' are omitted as included in ''technical military equipment''.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395	10:2394.	Sept. 13, 1982, Pub. L. 97–258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2394 (enacted by Pub. L. 97–258) as 10:2395 because of the enactment of another 10:2394 by Pub. L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171, and amends the section generally to eliminate the words ''and the construction of military public works'' because of section 10(b)(5) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 176) which struck corresponding words from the source statute for 10:2394 subsequent to Apr. 15, 1982, the cutoff date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(4)(B) of which enacted 10:2394.

CODIFICATION

Another section 2395 was renumbered section 2396 of this title.

AMENDMENTS

1982—Pub. L. 97–295 struck out ''and the construction of military public works'' after ''supplies''.

§ 2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries

(a) An advance under an appropriation to the Department of Defense may be made to pay for—

(1) compliance with laws and ministerial regulations of a foreign country;

(2) rent in a foreign country for periods of time determined by local custom;

(3) tuition; and

(4) public service utilities.

(b)(1) Under regulations prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service of the Navy, an officer of an armed force of the United States accountable for public money may advance amounts to a disbursing official of a friendly foreign country or members of an armed force of a friendly foreign country for—

(A) pay and allowances to members of the armed force of that country; and

(B) necessary supplies and services.

(2) An advance may be made under this subsection only if the President has made an agreement with the foreign country—

(A) requiring reimbursement to the United States for amounts advanced;

(B) requiring the appropriate authority of the country to advance amounts reciprocally to members of the armed forces of the United States; and

(C) containing any other provision the President considers necessary to carry out this subsection and to safeguard the interests of the United States.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1053, § 2395; renumbered § 2396 and amended Pub. L. 97–295, § 1(28)(B), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 105–85, div. A, title X, § 1014(a), (b)(1), Nov. 18, 1997, 111 Stat. 1875; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES
1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395(a)	31:529i.	July 13, 1955, ch. 358, § 602, 69 Stat. 314.
2395(b)	31:529j.	Oct. 19, 1965, Pub. L. 89–265, 79 Stat. 989.

In subsection (a), the words ''On and after July 13, 1955'' are omitted as executed. The words ''An advance'' are substituted for ''section 529 of this title shall not apply in the case of payments'' because of the restatement.

In subsection (b), the words ''armed force of the United States'' are substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard'' because of 10:101(4) and to avoid confusion with the phrase ''armed force of a friendly foreign country''.

In subsection (b)(1), before clause (A), the words ''the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy'' are substituted for ''the Secretary of the Treasury in their respective areas of responsibility'' because of 14:3 and 49:1655(b)(1) and (2). The words ''disbursing official'' are substituted for ''cashiers, disbursing officers'' for consistency with other titles of the United States Code and to eliminate unnecessary words.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2396	10:2395.	Sept. 13, 1982, Pub. L. 97–258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2395 as 10:2396 because of the redesignation of 10:2394 (enacted by Pub. L. 97–258) as 10:2395, and substitutes ''any other'' for ''another'' in subsec. (b)(2)(C).

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

1997—Pub. L. 105–85, § 1014(b)(1), inserted ''public utility services,'' after ''tuition,'' in section catchline.

Subsec. (a)(4). Pub. L. 105–85, § 1014(a), added par. (4).

1982—Subsec. (b)(2)(C). Pub. L. 97–295 substituted ''any other'' for ''another''.

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.

[§§ 2397 to 2397c. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(1), Feb. 10, 1996, 110 Stat. 664]

Section 2397, added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1291; amended Pub. L. 99–145, title IX, § 922, Nov. 8, 1985, 99 Stat. 693; Pub. L. 100–26, § 7(j)(5), (k)(2), Apr. 21, 1987, 101 Stat. 283, 284; Pub. L. 102–25, title VII, § 701(d)(6), Apr. 6, 1991, 105 Stat. 114; Pub. L. 102–484, div. A, title X, § 1052(29), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title IV, § 4401(d), title VIII, § 8105(d), Oct. 13, 1994, 108 Stat. 3348, 3392, related to filing of certain reports by employees or former employees of defense contractors.

Section 2397a, added Pub. L. 99–145, title IX, § 923(a)(1), Nov. 8, 1985, 99 Stat. 695; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–280, § 10(b), May 4, 1990, 104 Stat. 162, related to requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors.

Section 2397b, added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 821, Dec. 4, 1987, 101 Stat. 1132; Pub. L. 103–355, title VIII, § 8105(e), Oct. 13, 1994, 108 Stat. 3392, related to limitations on employment by contractors of certain former Department of Defense procurement officials.

Section 2397c, added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–159, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–159; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3938, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 103–355, title VIII, § 8105(f), Oct. 13, 1994, 108 Stat. 3392, related to requirements for defense contractors concerning former Department of Defense officials.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2302 of this title.

[§ 2398. Renumbered § 2922c]

[§ 2398a. Renumbered § 2922d]

§ 2399. Operational test and evaluation of defense acquisition programs

(a) CONDITION FOR PROCEEDING BEYOND LOW-RATE INITIAL PRODUCTION.—(1) The Secretary of Defense shall provide that a covered major defense acquisition program or a covered designated major subprogram may not proceed beyond low-rate initial production until initial operational test and evaluation of the program or subprogram is completed.

(2) In this subsection:

(A) The term ''covered major defense acquisition program'' means a major defense acquisition program that involves the acquisition of a weapon system that is a major system within the meaning of that term in section 2302(5) of this title.

(B) The term ''covered designated major subprogram'' means a major subprogram designated under section 2430a(a)(1) of this title that is a major subprogram of a covered major defense acquisition program.

(b) OPERATIONAL TEST AND EVALUATION.—(1) Operational testing of a major defense acquisition program may not be conducted until the Director of Operational Test and Evaluation of the Department of Defense approves (in writing) the adequacy of the plans (including the projected level of funding) for operational test and evaluation to be conducted in connection with that program.

(2) The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating—

(A) the opinion of the Director as to—

(i) whether the test and evaluation performed were adequate; and

(ii) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat; and

(B) additional information on the operational capabilities of the items or components that the Director considers appropriate based on the testing conducted.

(3) The Director shall submit each report under paragraph (2) to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the congressional defense committees. Each such report shall be submitted to those committees in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary and Under Secretary and shall be accompanied by such comments as the Secretary may wish to make on the report.

(4) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program under paragraph (2) and the congressional defense committees have received that report.

(5) If, before a final decision described in paragraph (4) is made for a major defense acquisition program, a decision is made within the Department of Defense to proceed to operational use of that program or to make procurement funds available for that program, the Director shall submit to the Secretary of Defense and the congressional defense committees the report with respect to that program under paragraph (2) as soon as practicable after the decision described in this paragraph is made.

(6) In this subsection, the term ''major defense acquisition program'' has the meaning given that term in section 139(a)(2)(B) of this title.

(c) DETERMINATION OF QUANTITY OF ARTICLES REQUIRED FOR OPERATIONAL TESTING.—The quantity of articles of a new system that are to be procured for operational testing shall be determined by—

(1) the Director of Operational Test and Evaluation of the Department of Defense, in the case of a new system that is a major defense acquisition program (as defined in section 139(a)(2)(B) of this title); or

(2) the operational test and evaluation agency of the military department concerned, in the case of a new system that is not a major defense acquisition program.

(d) IMPARTIALITY OF CONTRACTOR TESTING PERSONNEL.—In the case of a major defense acquisition program (as defined in subsection (a)(2)), no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.

(e) IMPARTIAL CONTRACTED ADVISORY AND ASSISTANCE SERVICES.—(1) The Director may not contract with any person for advisory and assistance services with regard to the test and evaluation of a system if that person participated in (or is participating in) the development, production, or testing of such system for a military department or Defense Agency (or for another contractor of the Department of Defense).

(2) The Director may waive the limitation under paragraph (1) in any case if the Director determines in writing that sufficient steps have been taken to ensure the impartiality of the contractor in providing the services. The Inspector General of the Department of Defense shall review each such waiver and shall include in the Inspector General's semi-annual report an assessment of those waivers made since the last such report.

(3)(A) A contractor that has participated in (or is participating in) the development, production, or testing of a system for a military department or Defense Agency (or for another contractor of the Department of Defense) may not be involved (in any way) in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation.

(B) The limitation in subparagraph (A) does not apply to a contractor that has participated in such development, production, or testing solely in testing for the Federal Government.

(f) SOURCE OF FUNDS FOR TESTING.—The costs for all tests required under subsection (a) shall be paid from funds available for the system being tested.

(g) DIRECTOR'S ANNUAL REPORT.—As part of the annual report of the Director under section 139 of this title, the Director shall describe for each program covered in the report the status of test and evaluation activities in comparison with the test and evaluation master plan for that program, as approved by the Director. The Director shall include in such annual report a description of each waiver granted under subsection (e)(2) since the last such report.

(h) OPERATIONAL TEST AND EVALUATION DEFINED.—In this section, the term ''operational test and evaluation'' has the meaning given that term in section 139(a)(2)(A) of this title. For purposes of subsection (a), that term does not include an operational assessment based exclusively on—

(1) computer modeling;

(2) simulation; or

(3) an analysis of system requirements, engineering proposals, design specifications, or any other information contained in program documents.

(Added Pub. L. 101–189, div. A, title VIII, § 802(a)(1), Nov. 29, 1989, 103 Stat. 1484; amended Pub. L. 102–484, div. A, title VIII, § 819, Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, § 1070(a)(11), (f), Oct. 5, 1994, 108 Stat. 2856, 2859; Pub. L. 104–106, div. A, title XV, § 1502(a)(19), Feb. 10, 1996, 110 Stat. 504; 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(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title X, § 1062(a)(9), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, § 1043(b)(14), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 109–364, div. A, title II, § 231(a), Oct. 17, 2006, 120 Stat. 2131; Pub. L. 111–383, div. A, title VIII, § 814(d), Jan. 7, 2011, 124 Stat. 4267.)

PRIOR PROVISIONS

A prior section 2399, added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293, which related to limitation on availability of appropriations to reimburse a contractor for the cost of commercial insurance, was repealed by Pub. L. 100–370, § 1(f)(2)(B), July 19, 1988, 102 Stat. 846, and was restated in section 2324(e)(1)(L) of this title by section 1(f)(2)(A) of Pub. L. 100–370.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 amended subsec. (a) generally. Prior to amendment, text read as follows:

''(1) The Secretary of Defense shall provide that a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed.

''(2) In this subsection, the term 'major defense acquisition program' means a conventional weapons system that—

''(A) is a major system within the meaning of that term in section 2302(5) of this title; and

''(B) is designed for use in combat.''

2006—Subsec. (b)(2). Pub. L. 109–364, § 231(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating the opinion of the Director as to—

''(A) whether the test and evaluation performed were adequate; and

''(B) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat.''

Subsec. (b)(5), (6). Pub. L. 109–364, § 231(a)(2), (3), added par. (5) and redesignated former par. (5) as (6).

2003—Subsec. (h). Pub. L. 108–136 substituted ''Operational Test and Evaluation Defined'' for ''Definitions'' in heading, struck out introductory provisions which read ''In this section:'', substituted ''In this section, the term'' for ''(1) The term'', redesignated subpars. (A) to (C) of former par. (1) as pars. (1) to (3), respectively, realigned margins, and struck out former par. (2) which defined ''congressional defense committees'' to mean the Committees on Armed Services and Appropriations of the Senate and the House of Representatives.

2002—Subsec. (a)(2). Pub. L. 107–314 substituted ''means a conventional weapons system that'' for ''means'' in introductory provisions and struck out ''a conventional weapons system that'' before ''is a major system'' in subpar. (A).

2001—Subsec. (b)(3). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1999—Subsec. (h)(2)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (h)(2). Pub. L. 104–106 substituted ''means—'' and subpars. (A) and (B) for ''means the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.''

1994—Subsecs. (b)(5), (c)(1). Pub. L. 103–337, §1070(a)(11)(A), substituted ''139(a)(2)(B)'' for ''138(a)(2)(B)''.

Subsec. (e)(3)(B). Pub. L. 103–337, §1070(f), substituted ''solely in testing for'' for ''solely as a representative of''.

Subsec. (g). Pub. L. 103–337, §1070(a)(11)(B), substituted ''139'' for ''138''.

Subsec. (h)(1). Pub. L. 103–337, §1070(a)(11)(C), substituted ''139(a)(2)(A)'' for ''138(a)(2)(A)''.

1993—Subsec. (b)(3). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (e)(3). Pub. L. 102–484 designated existing provisions as subpar. (A) and added subpar. (B).

ASSESSMENT OF RISK IN CONCURRENT DEVELOPMENT OF MAJOR DEFENSE ACQUISITION SYSTEMS

Pub. L. 101–189, div. A, title VIII, §801, Nov. 29, 1989, 103 Stat. 1483, provided that:

''(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish guidelines for—

''(1) determining the degree of concurrency that is appropriate for the development of major defense acquisition systems; and

''(2) assessing the degree of risk associated with various degrees of concurrency.

''(b) REPORT ON GUIDELINES.—The Secretary shall submit to Congress a report that describes the guidelines established under subsection (a) and the method used for assessing risk associated with concurrency.

''(c) REPORT ON CONCURRENCY IN MAJOR ACQUISITION PROGRAMS.—(1) The Secretary shall also submit to Congress a report outlining the risk associated with concurrency for each major defense acquisition program that is in either full-scale development or low-rate initial production as of January 1, 1990.

''(2) The report shall include consideration of the following matters with respect to each such program:

''(A) The degree of confidence in the enemy threat assessment for establishing the system's requirements.

''(B) The type of contract involved.

''(C) The degree of stability in program funding.

''(D) The level of maturity of technology involved in the system.

''(E) The availability of adequate test assets, including facilities and ranges.

''(F) The plans for transition from development to production.

''(d) SUBMISSION OF REPORTS.—The reports under subsections (b) and (c) shall be submitted to Congress not later than March 1, 1990.

''(e) DEFINITION.—For purposes of this section, the term 'concurrency' means the degree of overlap between the development and production processes of an acquisition program.''

§ 2400. Low-rate initial production of new systems

(a) DETERMINATION OF QUANTITIES TO BE PROCURED FOR LOW-RATE INITIAL PRODUCTION.—(1) In the course of the development of a major system, the determination of what quantity of articles of that system should be procured for low-rate initial production (including the quantity to be procured for preproduction verification articles) shall be made—

(A) when the milestone B decision with respect to that system is made; and

(B) by the official of the Department of Defense who makes that decision.

(2) In this section, the term ''milestone B decision'' means the decision to approve the system development and demonstration of a major system by the official of the Department of Defense designated to have the authority to make that decision.

(3) Any increase from a quantity determined under paragraph (1) may only be made with the approval of the official making the determination.

(4) The quantity of articles of a major system that may be procured for low-rate initial production may not be less than one operationally configured production unit unless another quantity is established at the milestone B decision.

(5) The Secretary of Defense shall include a statement of the quantity determined under paragraph (1) in the first SAR submitted with respect to the program concerned after that quantity is determined. If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone B decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity. For purposes of this paragraph, the term ''SAR'' means a Selected Acquisition Report submitted under section 2432 of this title.

(b) LOW-RATE INITIAL PRODUCTION OF WEAPON SYSTEMS.—Except as provided in subsection (c), low-rate initial production with respect to a new system is production of the system in the minimum quantity necessary—

(1) to provide production-configured or representative articles for operational tests pursuant to section 2399 of this title;

(2) to establish an initial production base for the system; and

(3) to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing.

(c) LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL AND SATELLITE PROGRAMS.—With respect to naval vessel programs and military satellite programs, low-rate initial production is production of items at the minimum quantity and rate that (1) preserves the mobilization production base for that system, and (2) is feasible, as determined pursuant to regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–189, div. A, title VIII, §803(a), Nov. 29, 1989, 103 Stat. 1487; amended Pub. L. 103–355, title III, §3015, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104–106, div. A, title X, §1062(d), div. D, title XLIII, §4321(b)(13), Feb. 10, 1996, 110 Stat. 444, 673; Pub. L. 107–107, div. A, title VIII, §821(c), Dec. 28, 2001, 115 Stat. 1182.)

PRIOR PROVISIONS

A prior section 2400 was renumbered section 2534 of this title.

AMENDMENTS

2001—Subsec. (a)(1)(A). Pub. L. 107–107, §821(c)(1), substituted ''milestone B'' for ''milestone II''.

Subsec. (a)(2). Pub. L. 107–107 substituted ''milestone B'' for ''milestone II'' and ''system development and demonstration'' for ''engineering and manufacturing development''.

Subsec. (a)(4), (5). Pub. L. 107–107, § 821(c)(1), substituted ''milestone B'' for ''milestone II''.

1996—Subsec. (a)(5). Pub. L. 104–106, § 4321(b)(13), substituted ''this paragraph'' for ''the preceding sentence''.

Subsec. (c). Pub. L. 104–106, § 1062(d), struck out ''(1)'' before ''With respect to'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows: ''For each naval vessel program and military satellite program, the Secretary of Defense shall submit to Congress a report providing—

''(A) an explanation of the rate and quantity prescribed for low-rate initial production and the considerations in establishing that rate and quantity;

''(B) a test and evaluation master plan for that program; and

''(C) an acquisition strategy for that program that has been approved by the Secretary, to include the procurement objectives in terms of total quantity of articles to be procured and annual production rates.''

1994—Subsec. (a)(2). Pub. L. 103–355, § 3015(1), substituted ''this section'' for ''paragraph (1)'' and ''engineering and manufacturing development'' for ''full-scale engineering development''.

Subsec. (a)(4). Pub. L. 103–355, § 3015(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(5). Pub. L. 103–355, § 3015(2), redesignated par. (4) as (5) and inserted after first sentence ''If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(13) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

§ 2401. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel, aircraft, or combat vehicle or for the provision of a service through use by a contractor of a vessel, aircraft, or combat vehicle only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter, or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the congressional defense committees of the Secretary's intention to issue such a solicitation;

(C) the Secretary has notified those committees of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel, aircraft, or combat vehicle to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on which notice was received by such committees; and

(D) the Secretary has certified to those committees—

(i) that entering into the proposed contract as a means of obtaining the vessel, aircraft, or combat vehicle is the most cost-effective means of obtaining such vessel, aircraft, or combat vehicle; and

(ii) that the Secretary has determined that the lease complies with all applicable laws, Office of Management and Budget circulars, and Department of Defense regulations.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(3) Upon receipt of a notice under paragraph (1)(C), a committee identified in paragraph (1)(B) may request the Inspector General of the Department of Defense or the Comptroller General of the United States to conduct a review of the proposed contract to determine whether or not such contract meets the requirements of this section.

(4) If a review is requested under paragraph (3), the Inspector General of the Department of Defense or the Comptroller General of the United States, as the case may be, shall submit to the Secretary and the congressional defense committees a report on such review before the expiration of the period specified in paragraph (1)(C).

(5) In the case of a contract described in subsection (a)(1)(B), the commander of the special operations command may make a contract without regard to this subsection if—

(A) funds are available and obligated for the full cost of the contract (including termination costs) on or before the date the contract is awarded;

(B) the Secretary of Defense submits to the congressional defense committees a certification that there is no alternative for meeting urgent operational requirements other than making the contract; and

(C) a period of 30 days of continuous session of Congress has expired following the date on which the certification was received by such committees.

(c)(1) Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(A) the long-term lease or charter of any aircraft, naval vessel, or combat vehicle; or

(B) for the lease or charter of any aircraft, naval vessel, or combat vehicle the terms of which provide for a substantial termination liability on the part of the United States,

unless funds for that purpose have been specifically authorized by law.

(2) Funds appropriated to the Department of Defense may not be used to indemnify any person under the terms of a contract entered into under this section—

(A) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986; or

(B) to pay any attorneys' fees in connection with such contract.

(d)(1)(A) In this section, the term ''long-term lease or charter'' (except as provided in subparagraph (B)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel, aircraft, or combat vehicle; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(B) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1986 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term ''long-term lease or charter'' means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is three years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(2) For the purposes of this section, the United States shall be considered to have a substantial termination liability under a contract—

(A) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel, aircraft, or combat vehicle under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(B) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(i) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(ii) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel, aircraft, or combat vehicle involved.

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft, naval vessels, or combat vehicles or for the authorization of a lease or charter of aircraft, naval vessels, or combat vehicles which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft, naval vessels, or combat vehicles by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to subsection (f) and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft, naval vessels, or combat vehicles authorized under this section, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(f)(1) If a lease or charter covered by this section is a capital lease or a lease-purchase—

(A) the lease or charter shall be treated as an acquisition and shall be subject to all applicable statutory and regulatory requirements for the acquisition of aircraft, naval vessels, or combat vehicles; and

(B) funds appropriated to the Department of Defense for operation and maintenance may not be obligated or expended for the lease or charter.

(2) In this subsection, the terms ''capital lease'' and ''lease-purchase'' have the meanings given those terms in Appendix B to Office of Management and Budget Circular A–11, as in effect on January 6, 2006.

(g) The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft, naval vessels, and combat vehicles rather than directly procuring such aircraft, vessels, and combat vehicles.

(h) The Secretary of a military department may make a contract for the lease of a vessel or for the provision of a service through use by a contractor of a vessel, the term of which is for a period of greater than two years, but less than five years, only if—

(1) the Secretary has notified the congressional defense committees of the proposed contract and included in such notification—

(A) a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than obtaining the capability provided for by the lease, charter, or services involved through purchase of the vessel;

(B) a determination that entering into the proposed contract as a means of obtaining the vessel is the most cost-effective means of obtaining such vessel; and

(C) a plan for meeting the requirement provided by the proposed contract upon completion of the term of the lease contract; and

(2) a period of 60 days has expired following the date on which notice was received by such committees.

(Added Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; amended Pub. L. 98–525, title XII, § 1232(a), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 100–26, § 7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 103–35, title II, § 201(c)(6), May 31, 1993, 107 Stat. 98; Pub. L. 104–106, div. A, title XV, §§ 1502(a)(20), 1503(a)(21), Feb. 10, 1996, 110 Stat. 504, 512; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(13)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 109–163, div. A, title VIII, § 815(a)–(d)(1), Jan. 6, 2006, 119 Stat. 3381, 3382; Pub. L. 110–181, div. A, title VIII, § 824, title X, § 1011, Jan. 28, 2008, 122 Stat. 227, 303; Pub. L. 111–84, div. A, title X, § 1073(a)(24), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 112–239, div. A, title VIII, § 821, title X, § 1076(f)(26), Jan. 2, 2013, 126 Stat. 1830, 1953.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (c)(2)(A) and (d)(1)(B), is classified generally to Title 26, Internal Revenue Code. Section 168 of the Internal Revenue Code of 1986 is classified to section 168 of Title 26.

AMENDMENTS

2013—Subsecs. (b)(1)(B), (h)(1). Pub. L. 112–239, § 1076(f)(26), substituted ''the congressional defense committees'' for ''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''.

Subsec. (h)(2). Pub. L. 112–239, § 821, substituted ''60 days'' for ''30 days of continuous session of Congress''.

2009—Subsec. (f)(2). Pub. L. 111–84 substituted ''January 6, 2006'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 2006''.

2008—Subsec. (b)(5). Pub. L. 110–181, § 824, added par. (5).

Subsec. (h). Pub. L. 110–181, § 1011, added subsec. (h).

2006—Pub. L. 109–163, § 815(d)(1), substituted ''Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles'' for ''Requirement for authorization by law of certain contracts relating to vessels and aircraft'' in section catchline.

Subsec. (a)(1). Pub. L. 109–163, § 815(a)(1), substituted ''vessel, aircraft, or combat vehicle'' for ''vessel or aircraft'' in two places in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 109–163, § 815(a)(1), substituted ''vessel, aircraft, or combat vehicle'' for ''vessel or aircraft''.

Subsec. (b)(1)(D). Pub. L. 109–163, § 815(b)(1), added subpar. (D).

Subsec. (b)(3), (4). Pub. L. 109–163, § 815(b)(2), added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 109–163, § 815(a)(2), substituted ''aircraft, naval vessel, or combat vehicle'' for ''aircraft or naval vessel'' in subpars. (A) and (B).

Subsec. (d)(1)(A)(i), (2)(A), (B). Pub. L. 109–163, § 815(a)(1), substituted ''vessel, aircraft, or combat vehicle'' for ''vessel or aircraft''.

Subsec. (e)(1), (3). Pub. L. 109–163, § 815(a)(3), substituted ''aircraft, naval vessels, or combat vehicles'' for ''aircraft or naval vessels'' wherever appearing.

Subsec. (f). Pub. L. 109–163, § 815(c)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109–163, § 815(a)(4), substituted ''aircraft, naval vessels, and combat vehicles'' for ''aircraft and naval vessels'' and ''such aircraft, vessels, and combat vehicles'' for ''such aircraft and vessels''.

Subsec. (g). Pub. L. 109–163, § 815(c)(1), redesignated subsec. (f) as (g).

2000—Subsec. (b)(1)(B). Pub. L. 106–398 substituted ''Committee on Appropriations of the House'' for ''Committees on Appropriations of the House''.

1999—Subsec. (b)(1)(B). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(1)(B). Pub. L. 104–106, § 1502(a)(20)(A), substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committees on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

Subsec. (b)(1)(C). Pub. L. 104–106, § 1502(a)(20)(B), substituted ''those committees'' for ''the Committees on Armed Services and on Appropriations of the Senate and House of Representatives''.

Subsec. (c)(2). Pub. L. 104–106, § 1503(a)(21), struck out ''pursuant to an authorization contained in the Department of Defense Authorization Act, 1984 (Public Law 98–94), or in any other law enacted after September 24, 1983,'' before ''may not be used''.

1993—Subsec. (c)(2)(A). Pub. L. 103–35 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1987—Subsec. (d)(1)(B). Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (c). Pub. L. 98–525, § 1232(a)(1), designated existing provisions as par. (1), redesignated as cls. (A) and (B) former cls. (1) and (2), respectively, and added par. (2).

Subsec. (f). Pub. L. 98–525, § 1232(a)(2), struck out at end ''Such guidelines shall be issued not later than 90 days after the date of enactment of this section [Sept. 24, 1983].''

EFFECTIVE DATE

Pub. L. 98–94, title XII, § 1202(a)(3), Sept. 24, 1983, 97 Stat. 681, provided that: ''Section 2401 of title 10, United States Code, as added by paragraph (1), shall not apply in the case of any lease or charter agreement entered into by the Department of Defense before December 1, 1983.''

RIDING GANG MEMBER REQUIREMENTS

Pub. L. 109–364, div. A, title X, §1018, Oct. 17, 2006, 120 Stat. 2380, as amended by Pub. L. 110–417, div. C, title XXXV, §3504, Oct. 14, 2008, 122 Stat. 4762, provided that:

''(a) IN GENERAL.—The Secretary of Defense may not award, renew, extend, or exercise an option to extend any charter of a vessel documented under chapter 121 of title 46, United States Code, for the Department of Defense, or any contract for the carriage of cargo by a vessel documented under that chapter for the Department of Defense, unless the charter or contract, respectively, includes provisions that—

''(1) subject to paragraph (2), allow riding gang members to perform work on the vessel during the effective period of the charter or contract only under terms, conditions, restrictions, and requirements as provided in section 8106 of title 46, United States Code; and

''(2) require that riding gang members hold a merchant mariner's document issued under chapter 73 of title 46, United States Code, or a transportation security card issued under section 70105 of such title.

''(b) EXEMPTION.—

''(1) IN GENERAL.—In accordance with regulations issued by the Secretary of Defense, an individual shall not be treated as a riding gang member for the purposes of section 8106 of title 46, United States Code, and this section if—

''(A) the individual is aboard a vessel that is under charter or contract for the carriage of cargo for the Department of Defense, for purposes other than engaging in the operation or maintenance of the vessel; and

''(B) the individual—

''(i) accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

''(ii) is one of the force protection personnel of the vessel;

''(iii) is a specialized repair technician; or

''(iv) is otherwise required by the Secretary of Defense to be aboard the vessel.

''(2) BACKGROUND CHECK.—

''(A) IN GENERAL.—This section shall not apply to an individual unless—

''(i) the name and other necessary identifying information for the individual is submitted to the Secretary for a background check; and

''(ii) except as provided in subparagraph (B), the individual successfully passes a background check by the Secretary prior to going aboard the vessel.

''(B) WAIVER.—The Secretary may waive the application of subparagraph (A)(ii) for an individual who holds a merchant mariner's document issued under chapter 73 of title 46, United States Code, or a transportation security card issued under section 70105 of such title.

''(3) EXEMPTED INDIVIDUAL NOT TREATED AS IN ADDITION TO THE CREW.—An individual who, under paragraph (1), is not treated as a riding gang member shall not be counted as an individual in addition to the crew for the purposes of section 3304 of title 46, United States Code.''

LONG-TERM LEASE OR CHARTER AUTHORITY FOR CERTAIN DOUBLE-HULL TANKERS AND OCEANOGRAPHIC VESSELS

Pub. L. 103–160, div. A, title I, §126, Nov. 30, 1993, 107 Stat. 1567, as amended by Pub. L. 104–106, div. D, title XLIII, §4321(i)(1)(A), Feb. 10, 1996, 110 Stat. 676, provided that:

''(a) AUTHORITY.—The Secretary of the Navy may enter into a long-term lease or charter for any double-hull tanker or oceanographic vessel constructed in a United States shipyard after the date of the enactment of this Act [Nov. 30, 1993] using assistance provided under the National Shipbuilding Initiative.

''(b) CONDITIONS ON OBLIGATION OF FUNDS.—Unless budget authority is specifically provided in an appropriations Act for the lease or charter of vessels pursuant to subsection (a), the Secretary may not enter into a contract for a lease or charter pursuant to that subsection unless the contract includes the following provisions:

''(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that lease or charter or that kind of vessel lease or charter.

''(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that lease or charter, or that kind of lease or charter, for that fiscal year.

''(3) A statement that such a commitment given under paragraph (2) does not constitute an obligation of the United States.

''(c) INAPPLICABILITY OF CERTAIN LAWS.—A long-term lease or charter authorized by subsection (a) may be entered into without regard to the provisions of section 2401 or 2401a of title 10, United States Code.

''(d) DEFINITION.—For purposes of subsection (a), the term 'long-term lease or charter' has the meaning given that term in subparagraph (A) of section 2401(d)(1) of title 10, United States Code.''

LIMITATION ON USE OF FUNDS FOR CONTRACTS FOR LEASE OR CHARTER OF ANY VESSEL, AIRCRAFT, OR VEHICLES

Pub. L. 101–165, title IX, §9081, Nov. 21, 1989, 103 Stat. 1147, directed that no funds available to Department of Defense could be used to enter into any contract with term of eighteen months or more or to extend or renew any contract for term of eighteen months or more, for any vessel, aircraft, or vehicle, through lease, charter, or similar agreement without previously having been submitted to Committees on Appropriations, with further requirement with respect to contractual agreements which imposed certain termination liability on Government, prior to repeal by Pub. L. 103–355, title III, §3065(b), Oct. 13, 1994, 108 Stat. 3337. See section 2401a of this title.

ISSUANCE OF GUIDELINES

Pub. L. 98–525, title XII, §1232(a)(2), Oct. 19, 1984, 98 Stat. 2600, provided in part that guidelines required to be issued under subsec. (f) of this section shall be issued not later than Oct. 31, 1984.

LIMITATION ON FUNDS AVAILABLE TO DEPARTMENT OF DEFENSE TO ENTER INTO CONTRACTS DURING FISCAL YEAR 1984

Pub. L. 98–94, title XII, §1202(d), Sept. 24, 1983, 97 Stat. 682, provided that: ''Funds available to the Department of Defense may not be used to enter into any contract during fiscal year 1984 under section 2401 of title 10, United States Code, as added by subsection (a), the term of which is for 3 years or more, inclusive of any option for contract extension or renewal, for any vessels, aircraft, or vehicles, through a lease, charter, or similar agreement, that imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the United States exceeding 50 percent of the original purchase value of the vessel, aircraft, or vehicle involved for which the Congress has not specifically provided budget authority for the obligation of 10 percent of such termination liability.''

LIMITATION ON USE OF FUNDS APPROPRIATED PURSUANT TO AUTHORIZATIONS CONTAINED IN DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1984

Pub. L. 98–94, title XII, §1202(b), Sept. 24, 1983, 97 Stat. 681, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Funds appropriated pursuant to an authorization contained in this Act may not be used to indemnify any person under the terms of a con-

tract entered into with the United States under section 2401 of title 10, United States Code (as added by subsection (a))—

''(1) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986 [Title 26, Internal Revenue Code]; or

''(2) to pay any attorneys' fees in connection with such contract.''

§ 2401a. Lease of vehicles, equipment, vessels, and aircraft

(a) LEASING OF COMMERCIAL VEHICLES AND EQUIPMENT.—The Secretary of Defense may use leasing in the acquisition of commercial vehicles and equipment whenever the Secretary determines that such leasing is practicable and efficient.

(b) LIMITATION ON CONTRACTS WITH TERMS OF 18 MONTHS OR MORE.—The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

(Added Pub. L. 103–355, title III, § 3065(a)(1), Oct. 13, 1994, 108 Stat. 3337; amended Pub. L. 104–106, div. A, title VIII, § 807(a)(1), Feb. 10, 1996, 110 Stat. 391; Pub. L. 105–85, div. A, title X, § 1073(a)(52), Nov. 18, 1997, 111 Stat. 1903.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) were contained in Pub. L. 101–165, title IX, § 9081, Nov. 21, 1989, 103 Stat. 1147, which was set out as a note under section 2401 of this title, prior to repeal by Pub. L. 103–355, § 3065(b).

A prior section 2401a was renumbered section 2350f of this title.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 substituted ''such leasing'' for ''leasing of such vehicles''.

1996—Pub. L. 104–106 substituted ''Lease of vehicles, equipment, vessels, and aircraft'' for ''Lease of vessels, aircraft, and vehicles'' as section catchline, designated existing text as subsec. (b), inserted subsec. (b) heading, and added subsec. (a).

LEASES FOR TANKER AIRCRAFT UNDER MULTIYEAR AIRCRAFT-LEASE PILOT PROGRAM

Pub. L. 107–314, div. A, title I, § 133, Dec. 2, 2002, 116 Stat. 2477, provided that: ''The Secretary of the Air Force may not enter into a lease for the acquisition of tanker aircraft for the Air Force under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284; 10 U.S.C. 2401a note) until—

''(1) the Secretary submits the report specified in subsection (c)(6) of such section; and

''(2) either—

''(A) authorization and appropriation of funds necessary to enter into such lease are provided by law; or

''(B) a new start reprogramming notification for the funds necessary to enter into such lease has been submitted in accordance with established procedures.''

MULTI-YEAR AIRCRAFT LEASE PILOT PROGRAM

Pub. L. 108–136, div. A, title I, § 135, Nov. 24, 2003, 117 Stat. 1413, as amended by Pub. L. 108–375, div. A, title I, § 133, Oct. 28, 2004, 118 Stat. 1829, which prohibited the leasing of tanker aircraft pursuant to the multiyear aircraft lease pilot program under Pub. L. 107–117, § 8159, set out below, and authorized the Secretary of the Air Force to enter into a multiyear contract for the purchase of such aircraft, was repealed by Pub. L. 110–417, [div. A], title I, § 132, Oct. 14, 2008, 122 Stat. 4377.

Pub. L. 107–206, title I, § 308, Aug. 2, 2002, 116 Stat. 841, provided that: ''During the current fiscal year and hereafter, section 2533a of title 10, United States Code, shall not apply to any transaction entered into to acquire or sustain aircraft under the authority of section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284) [set out below].''

Pub. L. 107–117, div. A, title VIII, § 8159, Jan. 10, 2002, 115 Stat. 2284, as amended by Pub. L. 107–248, title VIII, § 8117, Oct. 23, 2002, 116 Stat. 1564; Pub. L. 113–76, div. C, title VIII, § 8122, Jan. 17, 2014, 128 Stat. 133, provided that:

''(a) The Secretary of the Air Force may, from funds provided in this Act [see Tables for classification] or any future appropriations Act, establish and make payments on a multi-year pilot program for leasing general purpose Boeing 767 aircraft and Boeing 737 aircraft in commercial configuration.

''(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

''(c) Under the aircraft lease Pilot Program authorized by this section:

''(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee, but only those that are not inconsistent with any of the terms and conditions mandated herein. Notwithstanding the provisions of Section 3324 of Title 31, United States Code, payment for the acquisition of leasehold interests under this section may be made for each annual term up to one year in advance.

''(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years, inclusive of any options to renew or extend the initial lease term.

''(3) The Secretary may provide for special payments in a lessor if the Secretary terminates or cancels the lease prior to the expiration of its term. Such special payments shall not exceed an amount equal to the value of 1 year's lease payment under the lease.

''(4) Subchapter IV of chapter 15 of title 31, United States Code shall apply to the lease transactions under this section, except that the limitation in section 1553(b)(2) shall not apply.

''(5) The Secretary shall lease aircraft under terms and conditions consistent with this section and consistent with the criteria for an operating lease as defined in OMB Circular A–11, as in effect at the time of the lease.

''(6) Lease arrangements authorized by this section may not commence until:

''(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services of the Senate and House of Representatives and Subcommittees on Defense of the Committees on Appropriations of the Senate and House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and describe the expected savings, if any, comparing total costs, including operation, support, acquisition, and financing, of the lease, including modification, with the outright purchase of the aircraft as modified.

''(B) A period of not less than 30 calendar days has elapsed after submitting the report.

''[(7) Repealed. Pub. L. 113–76, div. C, title VIII, § 8122, Jan. 17, 2014, 128 Stat. 133.]

''(8) The Air Force shall accept delivery of the aircraft in a general purpose configuration.

''(9) At the conclusion of the lease term, each aircraft obtained under that lease may be returned to the contractor in the same configuration in which the aircraft was delivered.

''(10) The present value of the total payments over the duration of each lease entered into under this authority shall not exceed 90 percent of the fair market value of the aircraft obtained under that lease.

''(d) No lease entered into under this authority shall provide for—

''(1) the modification of the general purpose aircraft from the commercial configuration, unless and until separate authority for such conversion is enacted and only to the extent budget authority is provided in advance in appropriations Acts for that purpose; or

''(2) the purchase of the aircraft by, or the transfer of ownership to, the Air Force.

''(e) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

''(f) The authority provided under this section may be used to lease not more than a total of 100 Boeing 767 aircraft and 4 Boeing 737 aircraft for the purposes specified herein.

''(g) Notwithstanding any other provision of law, any payments required for a lease entered into under this Section, or any payments made pursuant to subsection (c)(3) above, may be made from appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the lease takes effect; appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the payment is due; or funds appropriated for those payments.''

Pub. L. 106–79, title VIII, §8133, Oct. 25, 1999, 113 Stat. 1267, provided that:

''(a) The Secretary of the Air Force may establish a multi-year pilot program for leasing aircraft for operational support purposes, including transportation for the combatant Commanders in Chief, on such terms and conditions as the Secretary may deem appropriate, consistent with this section.

''(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

''(c) Under the aircraft lease Pilot Program authorized by this section:

''(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee.

''(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years.

''(3) The Secretary may provide for special payments to a lessor if either the Secretary terminates or cancels the lease prior to the expiration of its term or aircraft are damaged or destroyed prior to the expiration of the term of the lease. Such special payments shall not exceed an amount equal to the value of one year's lease payment under the lease. The amount of special payments shall be subject to negotiation between the Air Force and lessors.

''(4) Notwithstanding any other provision of law, any payments required under a lease under this section, and any payments made pursuant to subsection (3) above may be made from:

''(A) appropriations available for the performance of the lease at the time the lease takes effect;

''(B) appropriations for the operation and maintenance available at the time which the payment is due; and

''(C) funds appropriated for those payments.

''(5) The Secretary may lease aircraft, on such terms and conditions as the Secretary may deem appropriate, consistent with this section, through an operating lease consistent with OMB Circular A–11.

''(6) The Secretary may exchange or sell existing aircraft and apply the exchange allowance or sale proceeds in whole or in part toward the cost of leasing replacement aircraft under this section.

''(7) Lease arrangements authorized by this section may not commence until:

''(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services and Subcommittees on Defense of the Committees on Appropriations of the Senate and the House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and the savings in operations and support costs expected to be derived from retiring older aircraft as compared to the expected cost of leasing newer replacement aircraft.

''(B) A period of not less than 30 calendar days has elapsed after submitting the report.

''(8) Not later than 1 year after the date on which the first aircraft is delivered under this Pilot Program, and yearly thereafter on the anniversary of the first delivery, the Secretary shall submit a report to the congressional defense committees describing the status of the Pilot Program. The Report will be based on at least 6 months of experience in operating the Pilot Program.

''(9) No lease of operational support aircraft may be entered into under this section after September 30, 2004.

''(d) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

''(e) The authority provided under this section may be used to lease not more than a total of six aircraft for the purposes of providing operational support.''

Lease of Firefighting, Crash Rescue, and Snow Removal Equipment

Pub. L. 105–262, title VIII, §8126, Oct. 17, 1998, 112 Stat. 2333, provided that:

''(a) The Secretary of the Army and the Secretary of the Air Force may each enter into one or more multiyear leases of nontactical firefighting equipment, nontactical crash rescue equipment, or nontactical snow removal equipment. The period of a lease entered into under this section shall be for any period not in excess of 10 years. Any such lease shall provide that performance under the lease during the second and subsequent years of the contract is contingent upon the appropriation of funds and shall provide for a cancellation payment to be made to the lessor if such appropriations are not made.

''(b) Lease payments made under subsection (a) shall be made from amounts provided in this or future appropriations Acts.

''(c) This section is effective for all fiscal years beginning after September 30, 1998.''

Pilot Program for Leasing Commercial Utility Cargo Vehicles

Pub. L. 104–106, div. A, title VIII, §807(c), Feb. 10, 1996, 110 Stat. 392, as amended by Pub. L. 106–65, div. A, title X, §1067(6), Oct. 5, 1999, 113 Stat. 774, authorized the Secretary of the Army to conduct a pilot program for leasing commercial utility cargo vehicles, directed the Secretary to submit to committees of Congress a report prior to commencement of the program containing plans for its implementation and setting forth the savings in operating and support costs expected to be derived from retiring older commercial utility cargo vehicles, as compared to the expected costs of leasing newer commercial utility cargo vehicles, directed the Secretary to submit to committees of Congress a report on the status of the program not later than one year after the date on which the first lease under the pro-

gram had been entered into, and provided that no lease could be entered into under the program after Sept. 30, 2000.

§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.

(2) In paragraph (1), the term ''commercial item'' has the meaning given such term in section 103 of title 41.

(Added Pub. L. 98–525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 103–355, title IV, §4102(f), title VIII, §8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111–350, §5(b)(25), Jan. 4, 2011, 124 Stat. 3844.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–350, §5(b)(25)(A), substituted ''section 134 of title 41)'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

Subsec. (d)(2). Pub. L. 111–350, §5(b)(25)(B), substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

1994—Subsecs. (c), (d). Pub. L. 103–355 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE

Pub. L. 98–525, title XII, §1234(c), Oct. 19, 1984, 98 Stat. 2604, provided that: ''Section 2402 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

[§ 2403. Repealed. Pub. L. 105–85, div. A, title VIII, § 847(a), Nov. 18, 1997, 111 Stat. 1845]

Section, added Pub. L. 98–525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 99–433, title I, §110(g)(5), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–355, title II, §2402, Oct. 13, 1994, 108 Stat. 3324; Pub. L. 104–106, div. A, title XV, §1502(a)(21), Feb. 10, 1996, 110 Stat. 505, related to major weapon systems and contractor guarantees.

[§ 2404. Renumbered § 2922e]

[§ 2405. Repealed. Pub. L. 105–85, div. A, title VIII, § 810(a)(1), Nov. 18, 1997, 111 Stat. 1839]

Section, added Pub. L. 98–525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2604; amended Pub. L. 102–484, div. A, title VIII, §813(c), Oct. 23, 1992, 106 Stat. 2453; Pub. L. 103–355, title II, §2302(a), (b), Oct. 13, 1994, 108 Stat. 3321; Pub. L. 104–106, div. D, title XLIII, §4321(b)(14), Feb. 10, 1996, 110 Stat. 673, related to limitation on adjustment of shipbuilding contracts.

EFFECTIVE DATE OF REPEAL

Pub. L. 105–85, div. A, title VIII, §810(b), Nov. 18, 1997, 111 Stat. 1839, provided that:

''(1) Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall be effective with respect to claims, requests for equitable adjustment, and demands for payment under shipbuilding contracts that have been or are submitted before, on, or after the date of the enactment of this Act [Nov. 18, 1997].

''(2) Section 2405 of title 10, United States Code, as in effect immediately before the date of the enactment of this Act, shall continue to apply to a contractor's claim, request for equitable adjustment, or demand for payment under a shipbuilding contract that was submitted before such date if—

''(A) a contracting officer denied the claim, request, or demand, and the period for appealing the decision to a court or board under the Contract Disputes Act of 1978 [see 41 U.S.C. 7101 et seq.] expired before such date;

''(B) a court or board of contract appeals considering the claim, request, or demand (including any appeal of a decision of a contracting officer to deny the claim, request, or demand) denied or dismissed the claim, request, or demand (or the appeal), and the action of the court or board became final and unappealable before such date; or

''(C) the contractor released or releases the claim, request, or demand.''

[§ 2406. Repealed. Pub. L. 103–355, title II, § 2201(b)(1), Oct. 13, 1994, 108 Stat. 3318]

Section, added Pub. L. 99–145, title IX, §917(a), Nov. 8, 1985, 99 Stat. 689; amended Pub. L. 99–500, §101(c) [title X, §943(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, §101(c) [title X, §943(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, §943(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title XII, §1231(13), Dec. 4, 1987, 101 Stat. 1160, required contractor under covered contract with an agency to make cost and pricing data available to agency in timely manner.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

[§ 2407. Renumbered § 2350b]

NATO COOPERATIVE LOGISTIC SUPPORT AGREEMENTS

Pub. L. 99–661, div. A, title XI, § 1102, Nov. 14, 1986, 100 Stat. 3961, which authorized Secretary of Defense to enter Weapon System Partnership Agreements with one or more governments of other member countries of NATO, was repealed by Pub. L. 101–189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535. See section 2350d of this title.

NATO COOPERATIVE RESEARCH AND DEVELOPMENT

Pub. L. 99–145, title XI, § 1103, Nov. 8, 1985, 99 Stat. 712, which urged and requested member nations of NATO to cooperate in research and development of defense equipment and munitions and in the production of defense equipment, was repealed by Pub. L. 101–189, div. A, title IX, § 931(d)(1), Nov. 29, 1989, 103 Stat. 1535. See section 2350a of this title.

AUTHORITY OF SECRETARY OF DEFENSE IN CONNECTION WITH NATO AWACS PROGRAM

Pub. L. 97–86, title I, § 103, Dec. 1, 1981, 95 Stat. 1100, as amended by Pub. L. 97–252, title I, § 106, Sept. 8, 1982, 96 Stat. 720; Pub. L. 98–94, title I, § 105, Sept. 24, 1983, 97 Stat. 620; Pub. L. 98–525, title I, § 106, Oct. 19, 1984, 98 Stat. 2503; Pub. L. 99–145, title I, § 106(b), Nov. 8, 1985, 99 Stat. 596; Pub. L. 99–661, title I, § 106, Nov. 14, 1986, 100 Stat. 3827; Pub. L. 100–180, title I, § 109, Dec. 4, 1987, 101 Stat. 1036, which set forth authority of Secretary of Defense in connection with NATO AWACS Program, was repealed by Pub. L. 101–189, div. A, title IX, § 932(b), Nov. 29, 1989, 103 Stat. 1537. See section 2350e of this title. Similar provisions were contained in the following prior authorization acts:

Pub. L. 96–342, title I, § 103, Sept. 8, 1980, 94 Stat. 1078.

Pub. L. 96–107, title I, § 104, Nov. 9, 1979, 93 Stat. 804.

§ 2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) PROHIBITION.—(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial items (as defined in section 103 of title 41).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

(b) CRIMINAL PENALTY.—A defense contractor or subcontractor shall be subject to a criminal penalty of not more than $500,000 if such contractor or subcontractor is convicted of knowingly—

(1) employing a person under a prohibition under subsection (a); or

(2) allowing such a person to serve on the board of directors of such contractor or subcontractor.

(c) SINGLE POINT OF CONTACT FOR INFORMATION.—(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

(Added Pub. L. 99–500, § 101(c) [title X, § 941(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161, and Pub. L. 99–591, § 101(c) [title X, § 941(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161; Pub. L. 99–661, div. A, title IX, formerly title IV, § 941(a)(1), Nov. 14, 1986, 100 Stat. 3941, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–456, div. A, title VIII, § 831(a), Sept. 29, 1988, 102 Stat. 2023; Pub. L. 101–510, div. A, title VIII, § 812, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–484, div. A, title VIII, § 815(a), Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103–355, title IV, § 4102(g), title VIII, § 8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393; Pub. L. 104–106, div. A, title X, § 1062(e), Feb. 10, 1996, 110 Stat. 444; Pub. L. 111–350, § 5(b)(26), Jan. 4, 2011, 124 Stat. 3844.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2011—Subsec. (a)(4)(A). Pub. L. 111–350, § 5(b)(26)(A), substituted ''section 134 of title 41)'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

Subsec. (a)(4)(B). Pub. L. 111–350, § 5(b)(26)(B), substituted ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

1996—Subsec. (a)(3). Pub. L. 104–106 struck out at end ''If the five-year period is waived, the Secretary shall submit to Congress a report stating the reasons for the waiver.''

1994—Subsec. (a)(4). Pub. L. 103–355, § 4102(g), added introductory provisions and subpar. (A).

Subsec. (a)(4)(B). Pub. L. 103–355, § 8105(h)(1), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 103–355, § 8105(h)(2), inserted ''or (B)'' before period at end.

Pub. L. 103–355, § 4102(g), added subpar. (C).

1992—Subsec. (c). Pub. L. 102–484 added subsec. (c).

1990—Subsec. (a)(1)(A). Pub. L. 101–510, § 812(a)(1), inserted before period at end ''or any first tier subcontract of a defense contract''.

Subsec. (a)(1)(B). Pub. L. 101–510, § 812(a)(2), inserted before period at end ''or any subcontractor awarded a contract directly by a defense contractor''.

Subsec. (a)(1)(C). Pub. L. 101–510, § 812(a)(3), inserted before period at end ''or any subcontractor awarded a contract directly by a defense contractor''.

Subsec. (a)(1)(D). Pub. L. 101–510, § 812(a)(4), inserted before period at end ''or first tier subcontract of a defense contract''.

Subsec. (b). Pub. L. 101–510, § 812(b), inserted ''or subcontractor'' after ''contractor'' wherever appearing.

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from working in a management or supervisory capacity on any defense contract, or serving on the board of directors of any defense contractor, for a period, as determined by the Secretary of Defense, of not less than one year from the date of the conviction.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VIII, § 831(b), Sept. 29, 1988, 102 Stat. 2023, provided that: ''Section 2408(a) of title 10, United States Code, as amended by subsection (a), shall apply with respect to individuals convicted after the date of the enactment of this Act [Sept. 29, 1988].''

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 941(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, Pub. L. 99–591, § 101(c) [title X, § 941(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 941(c), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2408 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to employment or service on a board of directors after the date of the enactment of this Act [Oct. 18, 1986].''

DEADLINE FOR SINGLE POINT OF CONTACT

Pub. L. 102–484, div. A, title VIII, § 815(b), Oct. 23, 1992, 106 Stat. 2454, directed that the single point of contact required by subsec. (c) of this section be established not later than 120 days after Oct. 23, 1992.

§ 2409. Contractor employees: protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—(1) An employee of a contractor, subcontractor, grantee, or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of the following:

(A) Gross mismanagement of a Department of Defense contract or grant, a gross waste of Department funds, an abuse of authority relating to a Department contract or grant, or a violation of law, rule, or regulation related to a Department contract (including the competition for or negotiation of a contract) or grant.

(B) Gross mismanagement of a National Aeronautics and Space Administration contract or grant, a gross waste of Administration funds, an abuse of authority relating to an Administration contract or grant, or a violation of law, rule, or regulation related to an Administration contract (including the competition for or negotiation of a contract) or grant.

(C) A substantial and specific danger to public health or safety.

(2) The persons and bodies described in this paragraph are the persons and bodies as follows:

(A) A Member of Congress or a representative of a committee of Congress.

(B) An Inspector General.

(C) The Government Accountability Office.

(D) An employee of the Department of Defense or the National Aeronautics and Space Administration, as applicable, responsible for contract oversight or management.

(E) An authorized official of the Department of Justice or other law enforcement agency.

(F) A court or grand jury.

(G) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(3) For the purposes of paragraph (1)—

(A) an employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Department of Defense or National Aeronautics and Space Administration contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of a Department or Administration official, unless the request takes the form of a nondiscretionary directive and is within the authority of the Department or Administration official making the request.

(b) INVESTIGATION OF COMPLAINTS.—(1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the Department of Defense, or the Inspector General of the National Aeronautics and Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency.

(2)(A) Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) If the Inspector General is unable to complete an investigation in time to submit a report

within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3) The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(A) made with the consent of the person alleging the reprisal;

(B) made in accordance with the provisions of section 552a of title 5 or as required by any other applicable Federal law; or

(C) necessary to conduct an investigation of the alleged reprisal.

(4) A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:

(A) Order the contractor to take affirmative action to abate the reprisal.

(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) If the head of an executive agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under paragraph (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this paragraph may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.

(4) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.

(6) The legal burdens of proof specified in section 1221(e) of title 5 shall be controlling for the purposes of any investigation conducted by an Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether discrimination prohibited under this section has occurred.

(7) The rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment.

(d) NOTIFICATION OF EMPLOYEES.—The Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall ensure that contractors and subcontractors of the Department of Defense and the National Aeronautics and Space Administration, as applicable, inform their employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

(e) EXCEPTIONS.—(1) This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(2) This section shall not apply to any disclosure made by an employee of a contractor, subcontractor, or grantee of an element of the intelligence community if such disclosure—

(A) relates to an activity of an element of the intelligence community; or

(B) was discovered during contract, subcontract, or grantee services provided to an element of the intelligence community.

(f) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an em-

ployee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(g) DEFINITIONS.—In this section:

(1) The term ''agency'' means an agency named in section 2303 of this title.

(2) The term ''head of an agency'' has the meaning provided by section 2302(1) of this title.

(3) The term ''contract'' means a contract awarded by the head of an agency.

(4) The term ''contractor'' means a person awarded a contract with an agency.

(5) The term ''Inspector General'' means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts awarded for or on behalf of, the Secretary of Defense.

(6) The term ''abuse of authority'' means the following:

(A) An arbitrary and capricious exercise of authority that is inconsistent with the mission of the Department of Defense or the successful performance of a Department contract or grant.

(B) An arbitrary and capricious exercise of authority that is inconsistent with the mission of the National Aeronautics and Space Administration or the successful performance of an Administration contract or grant.

(7) The term ''grantee'' means a person awarded a grant with an agency.

(Added Pub. L. 99–500, § 101(c) [title X, § 942(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, § 101(c) [title X, § 942(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, § 942(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–25, title VII, § 701(k)(1), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, § 1052(30)(A), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title VI, § 6005(a), Oct. 13, 1994, 108 Stat. 3364; Pub. L. 104–106, div. D, title XLIII, § 4321(a)(10), Feb. 10, 1996, 110 Stat. 671; Pub. L. 110–181, div. A, title VIII, § 846, Jan. 28, 2008, 122 Stat. 241; Pub. L. 112–239, div. A, title VIII, § 827(a)–(f), Jan. 2, 2013, 126 Stat. 1833–1836; Pub. L. 113–291, div. A, title VIII, § 856, title X, § 1071(c)(10), Dec. 19, 2014, 128 Stat. 3460, 3509.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (g)(5), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–291, § 856(a), substituted '', subcontractor, grantee, or subgrantee'' for ''or subcontractor'' in introductory provisions.

Subsec. (e)(1). Pub. L. 113–291, § 1071(c)(10), substituted ''(50 U.S.C. 3003(4))'' for ''(50 U.S.C. 401a(4))''.

Subsec. (g)(4). Pub. L. 113–291, § 856(b)(1), struck out ''or a grant'' after ''contract''.

Subsec. (g)(7). Pub. L. 113–291, § 856(b)(2), added par. (7).

2013—Subsec. (a). Pub. L. 112–239, § 827(a)(1), designated existing provisions as par. (1).

Subsec. (a)(1). Pub. L. 112–239, § 827(a)(2), inserted ''or subcontractor'' after ''employee of a contractor'', substituted ''a person or body described in paragraph (2)'' for ''a Member of Congress, a representative of a committee of Congress, an Inspector General, the Government Accountability Office, a Department of Defense employee responsible for contract oversight or management, or an authorized official of an agency or the Department of Justice'' and ''evidence of the following:'' for ''evidence of gross mismanagement of a Department of Defense contract or grant, a gross waste of Department of Defense funds, a substantial and specific danger to public health or safety, or a violation of law related to a Department of Defense contract (including the competition for or negotiation of a contract) or grant.'', and added subpars. (A) to (C).

Subsec. (a)(2), (3). Pub. L. 112–239, § 827(a)(3), added pars. (2) and (3).

Subsec. (b)(1). Pub. L. 112–239, § 827(b)(1), inserted ''fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant,'' after ''is frivolous,''.

Subsec. (b)(2)(A). Pub. L. 112–239, § 827(b)(2)(A), inserted '', fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant'' after ''is frivolous''.

Subsec. (b)(2)(B). Pub. L. 112–239, § 827(b)(2)(B), inserted '', up to 180 days,'' after ''such additional period of time''.

Subsec. (b)(3), (4). Pub. L. 112–239, § 827(b)(3), added pars. (3) and (4).

Subsec. (c)(1)(B). Pub. L. 112–239, § 827(c)(1), substituted ''compensatory damages (including back pay)'' for ''the compensation (including back pay)''.

Subsec. (c)(2). Pub. L. 112–239, § 827(c)(2), inserted at end ''An action under this paragraph may not be brought more than two years after the date on which remedies are deemed to have been exhausted.''

Subsec. (c)(4). Pub. L. 112–239, § 827(c)(3), substituted '', compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.'' for ''and compensatory and exemplary damages.''

Subsec. (c)(5). Pub. L. 112–239, § 827(c)(4), inserted at end ''Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.''

Subsec. (c)(6), (7). Pub. L. 112–239, § 827(c)(5), added pars. (6) and (7).

Subsec. (d). Pub. L. 112–239, § 827(d)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 112–239, § 827(e), added subsec. (e). Former subsec. (e) redesignated (g).

Subsecs. (f), (g). Pub. L. 112–239, § 827(d)(1), redesignated subsecs. (d) and (e) as (f) and (g), respectively.

Subsec. (g)(6). Pub. L. 112–239, § 827(f), added par. (6).

2008—Subsec. (a). Pub. L. 110–181, § 846(a), substituted ''disclosing to a Member of Congress, a representative of a committee of Congress, an Inspector General, the Government Accountability Office, a Department of Defense employee responsible for contract oversight or management,'' for ''disclosing to a Member of Congress'' and ''information that the employee reasonably believes is evidence of gross mismanagement of a Department of Defense contract or grant, a gross waste of Department of Defense funds, a substantial and specific danger to public health or safety, or a violation of law related to a Department of Defense contract (including the competition for or negotiation of a contract) or grant'' for ''information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract)''.

Subsec. (b). Pub. L. 110–181, § 846(b), designated existing provisions as par. (1), substituted ''the Department of Defense, or the Inspector General of the National Aeronautics and Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration'' for ''an agency'', and added par. (2).

Subsec. (c)(1). Pub. L. 110–181, § 846(c)(1), in introductory provisions, substituted ''Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall'' for ''If the head of the agency determines that a contractor has subjected a person to a reprisal prohibited by subsection (a), the head of the agency may''.

Subsec. (c)(2) to (5). Pub. L. 110–181, § 846(c)(2), (3), added pars. (2) and (3) and redesignated former pars. (2) and (3) as (4) and (5), respectively.

Subsec. (e)(4). Pub. L. 110–181, § 846(d)(1), inserted ''or a grant'' after ''a contract''.

Subsec. (e)(5). Pub. L. 110–181, § 846(d)(2), inserted ''and any Inspector General that receives funding from, or has oversight over contracts awarded for or on behalf of, the Secretary of Defense'' before period at end.

1996—Pub. L. 104–106 made technical correction to Pub. L. 103–355, § 6005(a). See 1994 Amendment note below.

1994—Pub. L. 103–355, § 6005(a), as amended by Pub. L. 104–106, amended section generally. Prior to amendment, subsec. (a) related to prohibition of reprisals, subsec. (b) to investigation of complaints, subsec. (c) to construction of section, and subsec. (d) to coordination of section with former section 2409a of this title.

1992—Subsec. (d). Pub. L. 102–484 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''EFFECTIVE DATE.—This section shall not be in effect during the period when section 2409a of this title is in effect.''

1991—Subsec. (d). Pub. L. 102–25 added subsec. (d).

EFFECTIVE DATE OF 2013 AMENDMENT

For effective date and applicability of amendments by Pub. L. 112–239, see section 827(i) of Pub. L. 112–239, set out as a note under section 2324 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIII, § 4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title X, § 1052(30)(B), Oct. 23, 1992, 106 Stat. 2501, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if enacted immediately following the enactment of Public Law 102–25 (105 Stat. 75).''

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 942(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, Pub. L. 99–591, § 101(c) [title X, § 942(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 942(b), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2409 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to any reprisal action taken on or after the date of the enactment of this Act [Oct. 18, 1986].''

INFORMATION FOR DEPARTMENT OF DEFENSE CONTRACTOR EMPLOYEES ON THEIR WHISTLEBLOWER RIGHTS

Pub. L. 110–417, [div. A], title VIII, § 842, Oct. 14, 2008, 122 Stat. 4539, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall ensure that contractors of the Department of Defense inform their employees in writing of employee whistleblower rights and protections under section 2409 of title 10, United States Code, as implemented by subpart 3.9 of part I of title 48, Code of Federal Regulations.

''(b) CONTRACTOR DEFINED.—In this section, the term 'contractor' has the meaning given that term in section 2409(e)(4) of title 10, United States Code.''

[§ 2409a. Repealed. Pub. L. 103–355, title VI, § 6005(b)(1), Oct. 13, 1994, 108 Stat. 3365]

Section, added Pub. L. 101–510, div. A, title VIII, § 837(a)(1), Nov. 5, 1990, 104 Stat. 1616; amended Pub. L. 102–25, title VII, § 701(j)(4), (k)(2), Apr. 6, 1991, 105 Stat. 116, 117, required promulgation of regulations prohibiting defense contractor from discharging or discriminating against employee for disclosing to Government official information concerning contract between contractor and Department of Defense evidencing violation of Federal law or regulation and providing certain complaint and investigation provisions and provided procedures for review and enforcement.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2410. Requests for equitable adjustment or other relief: certification

(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

(1) the request is made in good faith, and

(2) the supporting data are accurate and complete to the best of that person's knowledge and belief.

(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

(1) specifically refers to this subsection; and

(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.

(c) DEFINITION.—In this section, the term ''simplified acquisition threshold'' has the meaning given that term in section 134 of title 41.

(Added Pub. L. 103–355, title II, § 2301(a), Oct. 13, 1994, 108 Stat. 3320; amended Pub. L. 111–350, § 5(b)(27), Jan. 4, 2011, 124 Stat. 3845.)

REFERENCES IN TEXT

Public Law 85–804, referred to in subsecs. (a) and (b), is Pub. L. 85–804, Aug. 28, 1958, 72 Stat. 972, which is classified generally to chapter 29 (§ 1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section, added Pub. L. 100–370, § 1(h)(2), July 19, 1988, 102 Stat. 847, provided that contract claims, requests for equitable adjustments, requests for relief under section 1431 et seq. of Title 50, War and National Defense, and other similar requests by contractors exceeding $100,000 were not to be paid unless senior official of contractor certified that claim or request was made in good faith and that data submitted was accurate and complete to the best of such official's knowledge and belief, prior to repeal by Pub. L. 102–484, div. A, title VIII, § 813(b), Oct. 23, 1992, 106 Stat. 2453, effective upon promulgation of regulations pursuant to former section 2410e of this title [Interim rules, effective Apr. 30, 1993, were promulgated and published in the Federal Register, 58 F.R. 28458, May 13, 1993, and final rules, effective May 27, 1994, were promulgated and published in the Federal Register, 59 F.R. 27662, May 27, 1994].

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–350 substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act''.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2410a. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property

(a) AUTHORITY.—(1) The Secretary of Defense, the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for a purpose described in paragraph (2) for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(2) The purpose of a contract described in this paragraph is as follows:

(A) The procurement of severable services.

(B) The lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

(Added Pub. L. 100–370, § 1(h)(2), July 19, 1988, 102 Stat. 847; amended Pub. L. 102–190, div. A, title III, § 342, Dec. 5, 1991, 105 Stat. 1343; Pub. L. 104–324, title II, § 214(b), Oct. 19, 1996, 110 Stat. 3915; Pub. L. 105–85, div. A, title VIII, § 801(a), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title X, § 1005(a), (b)(1), Nov. 24, 2003, 117 Stat. 1584.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(e), (h), (*l*)], Dec. 19, 1985, 99 Stat. 1185, 1202.

AMENDMENTS

2003—Pub. L. 108–136, § 1005(b)(1), amended section catchline generally, substituting ''Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property'' for ''Severable service contracts for periods crossing fiscal years''.

Subsec. (a). Pub. L. 108–136, § 1005(a), inserted ''(1)'' before ''The Secretary of Defense'', substituted ''for a purpose described in paragraph (2)'' for ''for procurement of severable services'', and added par. (2).

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Pub. L. 105–85 amended section generally. Prior to amendment, section related to availability of appropriated funds for payments under contracts for various types of maintenance, leases, and operations and authorized Secretary of Transportation to enter into contracts for procurement of severable services.

1996—Pub. L. 104–324 designated existing provisions as subsec. (a) and added subsec. (b).

1991—Par. (1). Pub. L. 102–190, § 342(1), inserted '', equipment,'' after ''tools''.

Par. (4). Pub. L. 102–190, § 342(2), added par. (4).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title X, § 1005(c), Nov. 24, 2003, 117 Stat. 1585, provided that: ''The amendments made by this section [amending this section] shall not apply to funds appropriated for a fiscal year before fiscal year 2004.''

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.

§ 2410b. Contractor inventory accounting systems: standards

(a) The Secretary of Defense shall prescribe in regulations—

(1) standards for inventory accounting systems used by contractors under contract with the Department of Defense; and

(2) appropriate enforcement requirements with respect to such standards.

(b) The regulations prescribed pursuant to subsection (a) shall not apply to a contract that is for an amount not greater than the simplified acquisition threshold.

(c) The regulations prescribed pursuant to subsection (a) shall not apply to a contract for the purchase of commercial items (as defined in section 103 of title 41).

(Added Pub. L. 100–456, div. A, title VIII, § 834(a)(1), Sept. 29, 1988, 102 Stat. 2024; amended Pub. L. 103–355, title IV, § 4102(h), title VIII, § 8105(i), Oct. 13, 1994, 108 Stat. 3341, 3393; Pub. L. 104–106, div. D, title XLIII, § 4301(a)(1), Feb. 10, 1996, 110 Stat. 656; Pub. L. 104–201, div. A, title X, § 1074(b)(3), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 111–350, § 5(b)(28), Jan. 4, 2011, 124 Stat. 3845.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–350 substituted ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

1996—Subsec. (a)(2). Pub. L. 104–106, as amended by Pub. L. 104–201, struck out ''certification and'' after ''appropriate''.

1994—Subsecs. (a), (b). Pub. L. 103–355, § 4102(h), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (c). Pub. L. 103–355, § 8105(i), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

REGULATIONS

Pub. L. 100–456, div. A, title VIII, §834(b), Sept. 29, 1988, 102 Stat. 2025, provided that:

''(1) The Secretary of Defense shall prescribe the regulations required by paragraph (1) of section 2410b of title 10, United States Code, as added by subsection (a), not later than 30 days after the date of the enactment of this Act [Sept. 29, 1988].

''(2) The Secretary of Defense shall prescribe the regulations required by paragraph (2) of section 2410b of title 10, United States Code, as added by subsection (a), not later than 180 days after the date of the enactment of this Act.''

[§ 2410c. Renumbered § 2922f]

CODIFICATION

Another section 2410c was renumbered section 2410j of this title.

§ 2410d. Subcontracting plans: credit for certain purchases

(a) PURCHASES BENEFITING SEVERELY HANDICAPPED PERSONS.—In the case of a business concern that has negotiated a small business subcontracting plan with a military department or a Defense Agency, purchases made by that business concern from qualified nonprofit agencies for the blind or other severely handicapped shall count toward meeting the subcontracting goal provided in that plan.

(b) DEFINITIONS.—In this section:

(1) The term ''small business subcontracting plan'' means a plan negotiated pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) that establishes a goal for the participation of small business concerns as subcontractors under a contract.

(2) The term ''qualified nonprofit agency for the blind or other severely handicapped'' means—

(A) a qualified nonprofit agency for the blind, as defined in section 8501(7) of title 41;

(B) a qualified nonprofit agency for other severely disabled, as defined in section 8501(6) of title 41; and

(C) a central nonprofit agency designated by the Committee for Purchase from People Who Are Blind or Severely Disabled under section 8503(c) of title 41.

(Added Pub. L. 102–484, div. A, title VIII, §808(b)(1), Oct. 23, 1992, 106 Stat. 2449; amended Pub. L. 103–337, div. A, title VIII, §804, Oct. 5, 1994, 108 Stat. 2815; Pub. L. 104–106, div. D, title XLIII, §4321(b)(15), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title VIII, §835, Nov. 18, 1997, 111 Stat. 1843; Pub. L. 106–65, div. A, title VIII, §807, Oct. 5, 1999, 113 Stat. 705; Pub. L. 111–350, §5(b)(29), Jan. 4, 2011, 124 Stat. 3845.)

CODIFICATION

Another section 2410d was renumbered section 2410k of this title.

AMENDMENTS

2011—Subsec. (b)(2)(A). Pub. L. 111–350, §5(b)(29)(A), substituted ''section 8501(7) of title 41'' for ''section 5(3) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(3))''.

Subsec. (b)(2)(B). Pub. L. 111–350, §5(b)(29)(B), substituted ''disabled, as defined in section 8501(6) of title 41'' for ''handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4))''.

Subsec. (b)(2)(C). Pub. L. 111–350, §5(b)(29)(C), substituted ''section 8503(c) of title 41'' for ''section 2(c) of such Act (41 U.S.C. 47(c))''.

1999—Subsec. (c). Pub. L. 106–65 struck out heading and text of subsec. (c). Text read as follows: ''Subsection (a) shall cease to be effective at the end of September 30, 1999.''

1997—Subsec. (c). Pub. L. 105–85 substituted ''September 30, 1999'' for ''September 30, 1997''.

1996—Subsec. (b)(3). Pub. L. 104–106 struck out par. (3) which read as follows: ''The term 'Javits-Wagner-O'Day Act' means the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46–48c), commonly referred to as the Wagner-O'Day Act, that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), commonly referred to as the Javits-Wagner-O'Day Act.''

1994—Subsec. (b)(2)(C). Pub. L. 103–337, §804(1)(A), added subpar. (C).

Subsec. (b)(3), (4). Pub. L. 103–337, §804(1)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The terms 'approved commodity' and 'approved service' mean a commodity and a service, respectively, that has been determined by the Committee for Purchase from the Blind and Other Severely Handicapped under section 2 of such Act (41 U.S.C. 47) to be suitable for procurement by the Federal Government.''

Subsec. (c). Pub. L. 103–337, §804(2), substituted ''September 30, 1997'' for ''September 30, 1994''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, §835, Nov. 18, 1997, 111 Stat. 1843, provided that the amendment made by that section is effective as of Sept. 30, 1997.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE

Pub. L. 102–484, div. A, title VIII, §808(c), Oct. 23, 1992, 106 Stat. 2450, provided that: ''Sections 2301(d) and 2410d of title 10, United States Code (as added by subsections (a) and (b), respectively), shall take effect on October 1, 1993.''

CONTRACT PARTICIPATION BY AGENCIES FOR THE BLIND OR OTHER SEVERELY HANDICAPPED

Pub. L. 108–87, title VIII, §8025, Sept. 30, 2003, 117 Stat. 1077, as amended by Pub. L. 113–291, div. A, title X, §1071(b)(6), Dec. 19, 2014, 128 Stat. 3507, provided that:

''(a) Of the funds for the procurement of supplies or services appropriated by this Act [see Tables for classification] and hereafter, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.

''(b) During the current fiscal year and hereafter, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.

''(c) For the purpose of this section, the phrase 'qualified nonprofit agency for the blind or other severely handicapped' means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under chapter 85 of title 41, United States Code.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–248, title VIII, § 8025, Oct. 23, 2002, 116 Stat. 1542.

Pub. L. 107–117, div. A, title VIII, § 8028, Jan. 10, 2002, 115 Stat. 2253.

Pub. L. 106–259, title VIII, § 8028, Aug. 9, 2000, 114 Stat. 680.

Pub. L. 106–79, title VIII, § 8030, Oct. 25, 1999, 113 Stat. 1237.

Pub. L. 105–262, title VIII, § 8030, Oct. 17, 1998, 112 Stat. 2303.

Pub. L. 105–56, title VIII, § 8031, Oct. 8, 1997, 111 Stat. 1226.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8033], Sept. 30, 1996, 110 Stat. 3009–71, 3009–95.

Pub. L. 104–61, title VIII, § 8042, Dec. 1, 1995, 109 Stat. 660.

Pub. L. 103–335, title VIII, § 8048, Sept. 30, 1994, 108 Stat. 2628.

Pub. L. 103–139, title VIII, § 8055, Nov. 11, 1993, 107 Stat. 1452.

Pub. L. 102–396, title IX, § 9077, Oct. 6, 1992, 106 Stat. 1918.

Pub. L. 102–172, title VIII, § 8082, Nov. 26, 1991, 105 Stat. 1190.

Pub. L. 101–511, title VIII, § 8117, Nov. 5, 1990, 104 Stat. 1905.

[§ 2410e. Repealed. Pub. L. 103–355, title II, § 2301(b), Oct. 13, 1994, 108 Stat. 3321]

Section, added Pub. L. 102–484, div. A, title VIII, § 813(a)(1), Oct. 23, 1992, 106 Stat. 2452, directed Secretary of Defense to propose, for inclusion in Federal Acquisition Regulation, regulations relating to certification of contract claims, requests for equitable adjustment to contract terms, and requests for relief under section 1431 et seq. of Title 50, War and National Defense, that exceeded $100,000.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2410f. Debarment of persons convicted of fraudulent use of "Made in America" labels

(a) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a ''Made in America'' inscription, or another inscription with the same meaning, to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting with the Department of Defense.

(b) In this section, the term ''debar'' has the meaning given that term by section 2393(c) of this title.

(Added Pub. L. 102–484, div. A, title VIII, § 834(a)(1), Oct. 23, 1992, 106 Stat. 2461; amended Pub. L. 104–106, div. A, title X, § 1062(f), title XV, § 1503(a)(22), Feb. 10, 1996, 110 Stat. 444, 512; Pub. L. 107–107, div. A, title X, § 1048(a)(20), Dec. 28, 2001, 115 Stat. 1223.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted '', or another inscription with the same meaning,'' after ''inscription''.

1996—Subsec. (a). Pub. L. 104–106, § 1062(f), struck out at end ''If the Secretary determines that the person should not be debarred, the Secretary shall submit to Congress a report on such determination not later than 30 days after the determination is made.''

Subsec. (b). Pub. L. 104–106, § 1503(a)(22), substituted ''In'' for ''For purposes of''.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, § 834(b), Oct. 23, 1992, 106 Stat. 2461, provided that: ''Section 2410f 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 [Oct. 23, 1992].''

PROHIBITION OF CONTRACTS

Pub. L. 106–398, § 1 [[div. A], title VIII, § 825(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–220, provided that: ''If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a 'Made in America' inscription, or another inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 106–65, div. A, title VIII, § 816(b), Oct. 5, 1999, 113 Stat. 712.

Pub. L. 103–160, div. A, title VIII, § 849(b), Nov. 30, 1993, 107 Stat. 1725.

§ 2410g. Advance notification of contract performance outside the United States

(a) NOTIFICATION.—(1) A firm that is performing a Department of Defense contract for an amount exceeding $10,000,000, or is submitting a bid or proposal for such a contract, shall notify the Department of Defense in advance of any intention of the firm or any first-tier subcontractor of the firm to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada.

(2) If a firm submitting a bid or proposal for a Department of Defense contract is required to submit a notification under this subsection, and the firm is aware, at the time it submits its bid or proposal, that the firm intends to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada, the firm shall include the notification in its bid or proposal.

(3) The notification by a firm under paragraph (1) with respect to a first-tier subcontractor shall be made, to the maximum extent practicable, at least 30 days before award of the subcontract.

(b) RECIPIENT OF NOTIFICATION.—The firm shall transmit the notification—

(1) in the case of a contract of a military department, to such officer or employee of that military department as the Secretary of the military department may direct; and

(2) in the case of any other Department of Defense contract, to such officer or employee of the Department of Defense as the Secretary of Defense may direct.

(c) AVAILABILITY OF NOTIFICATIONS.—The Secretary of Defense shall ensure that the notifications (or copies) are maintained in compiled form for a period of 5 years after the date of submission and are available for use in the preparation of the national defense technology and industrial base assessment carried out under section 2505 of this title.

(d) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section shall not apply to contracts for any of the following:

(1) Commercial items (as defined in section 103 of title 41).

(2) Military construction.

(3) Ores.

(4) Natural gas.

(5) Utilities.

(6) Petroleum products and crudes.

(7) Timber.

(8) Subsistence.

(Added Pub. L. 102–484, div. A, title VIII, §840(a)(1), Oct. 23, 1992, 106 Stat. 2466; amended Pub. L. 104–106, div. D, title XLIII, §4321(b)(16), Feb. 10, 1996, 110 Stat. 673; Pub. L. 111–350, §5(b)(30), Jan. 4, 2011, 124 Stat. 3845.)

AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 111–350 substituted ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

1996—Subsec. (d)(1). Pub. L. 104–106 inserted ''(as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))'' before period at end.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, §840(b), Oct. 23, 1992, 106 Stat. 2467, provided that: ''Section 2410g 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 [Oct. 23, 1992].''

[§ 2410h. Renumbered § 1747]

§ 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel

(a) POLICY.—Under section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2402(5)(A)),[1] it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person.

(b) PROHIBITION.—(1) Consistent with the policy referred to in subsection (a), the Department of Defense may not award a contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of title 41) to a foreign entity unless that entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel.

(2) In paragraph (1), the term ''foreign entity'' means a foreign person, a foreign company, or any other foreign entity.

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibition in subsection (b) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States. Within 15 days after the end of each fiscal year, the Secretary shall submit to Congress a report identifying each contract for which a waiver was granted under this subsection during that fiscal year.

(d) EXCEPTIONS.—Subsection (b) does not apply—

(1) to contracts for consumable supplies, provisions, or services that are intended to be used for the support of United States forces or of allied forces in a foreign country; or

(2) to contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes by the United States Government in the interests of national security or to the acquisition or lease of any such equipment, technology, data, or services by the United States Government in the interests of national security.

(Added Pub. L. 102–484, div. A, title XIII, §1332(a), Oct. 23, 1992, 106 Stat. 2555; amended Pub. L. 111–350, §§4, 5(b)(31), Jan. 4, 2011, 124 Stat. 3841, 3845.)

REFERENCES IN TEXT

Section 3(5)(A) of the Export Administration Act of 1979, referred to in subsec. (a), was classified to section 2402(5)(A) of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as section 4602(5)(A) of Title 50.

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 111–350 substituted ''simplified acquisition threshold (as defined in section 134 of title 41)'' for ''small purchase threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

§ 2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides

(a) ASSISTANCE PROGRAM.—The Secretary of Defense may enter into a cooperative agreement with a defense contractor in order—

(1) to assist an eligible scientist or engineer employed by the contractor whose employment is terminated to obtain—

(A) certification or licensure as an elementary or secondary school teacher; or

(B) the credentials necessary to serve as a teacher's aide; and

(2) to facilitate the employment of the scientist or engineer by a local educational agency that—

(A) is receiving a grant under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as a result of having within its jurisdiction concentrations of children from low-income families; and

(B) is also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE DEFENSE CONTRACTORS.—(1) The Secretary of Defense shall establish an application and selection process for the participation of defense contractors in a cooperative agreement authorized under subsection (a).

[1] See References in Text note below.

(2) The Secretary shall determine which defense contractors are eligible to participate in the placement program on the basis of applications submitted under subsection (c). The Secretary shall limit participation to those defense contractors or subcontractors that—

(A) produce goods or services for the Department of Defense pursuant to a defense contract or operate nuclear weapons manufacturing facilities for the Department of Energy; and

(B) have recently reduced operations, or are likely to reduce operations, due to the completion or termination of a defense contract or program or by reductions in defense spending.

(3) The Secretary shall give special consideration to defense contractors who are located in areas that have been hit particularly hard by reductions in defense spending.

(c) DEFENSE CONTRACTOR APPLICATIONS.—(1) A defense contractor desiring to enter into a cooperative agreement with the Secretary of Defense under subsection (a) shall submit an application to the Secretary containing the following:

(A) Evidence that the contractor has been, or is expected to be, adversely affected by the completion or termination of a defense contract or program or by reductions in defense spending.

(B) An explanation that scientists and engineers employed by the contractor have been terminated, laid off, or retired, or are likely to be terminated, laid off, or retired, as a result of the completion or termination of a defense contract or program or reductions in defense spending.

(C) A description of programs implemented or proposed by the contractor to assist these scientists and engineers.

(D) A commitment to help fund the costs associated with the placement program by paying 50 percent of the stipend provided under subsection (g) to an employee or former employee of the contractor selected to receive assistance under this section.

(2) Once a cooperative agreement is entered into under subsection (a) between the Secretary and the defense contractor, the contractor shall publicize the program and distribute applications to prospective participants, and assist the prospective participants with the State screening process.

(d) ELIGIBLE SCIENTISTS AND ENGINEERS.—An individual shall be eligible for selection by the Secretary of Defense to receive assistance under this section if the individual—

(1) is employed or has been employed for not less than five years as a scientist or engineer with a private defense contractor that has entered into an agreement under subsection (a);

(2) has received—

(A) in the case of an individual applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(B) in the case of an individual applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(3) has been terminated or laid off (or received notice of termination or lay off) as a result of the completion or termination of a defense contract or program or reductions in defense spending; and

(4) satisfies such other criteria for selection as the Secretary may prescribe.

(e) SELECTION OF PARTICIPANTS.—(1) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary shall give priority to individuals who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area identified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(2) The Secretary may not select an individual under this section unless the Secretary has sufficient appropriations to carry out this section available at the time of the selection to satisfy the obligations to be incurred by the United States under this section with respect to that individual.

(f) AGREEMENT.—An individual selected under this section shall be required to enter into an agreement with the Secretary in which the participant agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an individual selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than two school years with a local educational agency identified under section 1151(b)(2) of this title, as in effect on October 4, 1999, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an individual selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than two school years with a local educational agency identified under section 1151(b)(3) of this title, as in effect on October 4, 1999, to begin the school year after obtaining the necessary credentials.

(g) STIPEND FOR PARTICIPANTS.—(1) The Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A stipend provided under this section shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(h) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151 of this title, as in effect on October 4, 1999, shall apply with respect to the placement as teachers and teachers' aides of individuals selected under this section.

(Added Pub. L. 102–484, div. D, title XLIV, §4443(a), Oct. 23, 1992, 106 Stat. 2732, §2410c; renumbered §2410j and amended Pub. L. 103–35, title II, §201(b)(1)(A), (g)(6), May 31, 1993, 107 Stat. 97, 100; Pub. L. 103–160, div. A, title XIII, §1331(c)(3), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, §391(b)(5), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 104–106, div. A, title XV, §1503(a)(23), Feb. 10, 1996, 110 Stat. 512; Pub. L. 104–201, div. A, title V, §576(c), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(14)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 1151 of this title, referred to in subsecs. (f)(2)(A), (B) and (h), was repealed by Pub. L. 106–65, div. A, title XVII, §1707(a)(1), Oct. 5, 1999, 113 Stat. 823, and a new section 1151 of this title was subsequently added by Pub. L. 109–364, §561(a).

The Higher Education Act of 1965, referred to in subsec. (g)(2), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20 and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2000—Subsec. (f)(2). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(14)(A)], inserted ''as in effect on October 4, 1999,'' after ''of this title,'' in subpars. (A) and (B).

Subsec. (h). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(14)(B)], inserted '', as in effect on October 4, 1999,'' after ''of this title''.

1996—Subsec. (a)(2)(A). Pub. L. 104–106 substituted ''6301'' for ''2701''.

Subsec. (f)(2)(A), (B). Pub. L. 104–201 substituted ''two school years'' for ''five school years''.

1994—Subsec. (a)(2)(A). Pub. L. 103–382 struck out ''chapter 1 of'' after ''grant under''.

1993—Pub. L. 103–35, §201(b)(1)(A), renumbered section 2410c of this title as this section.

Subsec. (f)(2)(A), (B). Pub. L. 103–160 substituted ''five school years'' for ''two school years''.

Subsec. (f)(2)(B). Pub. L. 103–35, §201(g)(6), substituted ''aide'' for ''aid'' after ''for placement as a teacher's''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–160 not applicable with respect to persons selected by Secretary of Defense before Nov. 30, 1993, to participate in teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of this title or agreements entered into by Secretary before such date with local educational agencies under such sections, see section 1331(h) of Pub. L. 103–160, set out as a note under section 1598 of this title.

SAVINGS PROVISION

Amendments by section 576 of Pub. L. 104–201 not to affect obligations under agreements entered into in accordance with section 1151, 1598, or 2410j of this title before Sept. 23, 1996, see section 576(d) of Pub. L. 104–201, set out as a note under section 1598 of this title.

§ 2410k. Defense contractors: listing of suitable employment openings with local employment service office

(a) REGULATIONS.—The Secretary of Defense shall promulgate regulations containing the requirement described in subsection (b) and such other provisions as the Secretary considers necessary to administer such requirement. Such regulations shall require that each contract described in subsection (c) shall contain a clause requiring the contractor to comply with such regulations.

(b) REQUIREMENT.—The regulations promulgated under this section shall require each contractor carrying out a contract described in subsection (c) to list immediately with the appropriate local employment service office, and where appropriate the Interstate Job Bank (established by the United States Employment Service), all of its suitable employment openings under such contract.

(c) COVERED CONTRACTS.—The regulations promulgated under this section shall apply to any contract entered into with the Department of Defense in an amount of $500,000 or more.

(Added Pub. L. 102–484, div. D, title XLIV, §4470(a)(1), Oct. 23, 1992, 106 Stat. 2753, §2410d; renumbered §2410k and amended Pub. L. 103–35, title II, §§201(b)(1)(A), 202(a)(18)(A), May 31, 1993, 107 Stat. 97, 102.)

AMENDMENTS

1993—Pub. L. 103–35, §201(b)(1)(A), renumbered section 2410d of this title as this section.

Pub. L. 103–35, §202(a)(18)(A), made technical amendment to directory language of Pub. L. 102–484, which enacted this section.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 202(a)(18)(A) of Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. D, title XLIV, §4470(b), Oct. 23, 1992, 106 Stat. 2753, provided that: ''Section 2410d of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into beginning 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

§ 2410*l*. Contracts for advisory and assistance services: cost comparison studies

(a) REQUIREMENT.—(1)(A) Before the Secretary of Defense enters into a contract described in subparagraph (B), the Secretary shall determine whether Department of Defense personnel have the capability to perform the services proposed to be covered by the contract.

(B) Subparagraph (A) applies to any contract of the Department of Defense for advisory and assistance services that is expected to have a value in excess of $100,000.

(2) If the Secretary determines that Department of Defense personnel have the capability to perform the services to be covered by the contract, the Secretary shall conduct a study comparing the cost of performing the services with Department of Defense personnel and the cost of performing the services with contractor personnel.

(b) WAIVER.—The Secretary of Defense may, pursuant to guidelines prescribed by the Secretary, waive the requirement to perform a cost comparison study under subsection (a)(2) based on factors that are not related to cost.

(Added Pub. L. 103–337, div. A, title III, § 363(a)(1), Oct. 5, 1994, 108 Stat. 2733.)

EFFECTIVE DATE

Pub. L. 103–337, div. A, title III, § 363(c), Oct. 5, 1994, 108 Stat. 2734, provided that: ''Section 2410*l* of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 5, 1994].''

PROCEDURES FOR CONDUCT OF STUDIES

Pub. L. 103–337, div. A, title III, § 363(b), Oct. 5, 1994, 108 Stat. 2734, provided that: ''The Secretary of Defense shall prescribe the following procedures:

''(1) Procedures for carrying out a cost comparison study under subsection (a)(2) of section 2410*l* of title 10, United States Code, as added by subsection (a), which may contain a requirement that the cost comparison study include consideration of factors that are not related to cost, including the quality of the service required to be performed, the availability of Department of Defense personnel, the duration and recurring nature of the services to be performed, and the consistency of the workload.

''(2) Procedures for reviewing contracts entered into after a waiver under subsection (b) of such section to determine whether the contract is justified and sufficiently documented.''

§ 2410m. Retention of amounts collected from contractor during the pendency of contract dispute

(a) RETENTION OF FUNDS.—Notwithstanding sections 1552(a) and 3302(b) of title 31, any amount, including interest, collected from a contractor as a result of a claim made by a military department or Defense Agency under chapter 71 of title 41, shall remain available in accordance with this section to pay—

(1) any settlement of the claim by the parties;

(2) any judgment rendered in the contractor's favor on an appeal of the decision on that claim to the Armed Services Board of Contract Appeals under section 7104(a) of title 41; or

(3) any judgment rendered in the contractor's favor in an action on that claim in a court of the United States.

(b) PERIOD OF AVAILABILITY.—(1) The period of availability of an amount under subsection (a), in connection with a claim—

(A) expires 180 days after the expiration of the period for bringing an action on that claim in the United States Court of Federal Claims under section 7104(b) of title 41 if, within that 180-day period—

(i) no appeal on the claim is commenced at the Armed Services Board of Contract Appeals under section 7104(a) of such title; and

(ii) no action on the claim is commenced in a court of the United States; or

(B) if not expiring under subparagraph (A), expires—

(i) in the case of a settlement of the claim, 180 days after the date of the settlement; or

(ii) in the case of a judgment rendered on the claim in an appeal to the Armed Services Board of Contract Appeals under section 7104(a) of title 41 or an action in a court of the United States, 180 days after the date on which the judgment becomes final and not appealable.

(2) While available under this section, an amount may be obligated or expended only for a purpose described in subsection (a).

(3) Upon the expiration of the period of availability of an amount under paragraph (1), the amount shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 105–85, div. A, title VIII, § 831(a), Nov. 18, 1997, 111 Stat. 1841; amended Pub. L. 108–136, div. A, title X, § 1031(a)(21), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 111–350, § 5(b)(32), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112–81, div. A, title X, § 1061(15), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 113–291, div. A, title X, § 1071(a)(8), Dec. 19, 2014, 128 Stat. 3504.)

AMENDMENTS

2014—Subsec. (b)(1)(A)(i). Pub. L. 113–291, § 1071(a)(8)(A), substituted ''section 7104(a) of such title'' for ''section 7 of such Act''.

Subsec. (b)(1)(B)(ii). Pub. L. 113–291, § 1071(a)(8)(B), substituted ''section 7104(a) of title 41'' for ''section 7 of the Contract Disputes Act of 1978''.

2011—Subsec. (a). Pub. L. 111–350, § 5(b)(32)(A), substituted ''chapter 71 of title 41'' for ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)'' in introductory provisions.

Subsec. (a)(2). Pub. L. 111–350, § 5(b)(32)(B), substituted ''section 7104(a) of title 41'' for ''section 7 of such Act (41 U.S.C. 606)''.

Subsec. (b)(1)(A). Pub. L. 111–350, § 5(b)(32)(C), substituted ''section 7104(b) of title 41'' for ''section 10(a) of the Contract Disputes Act of 1978 (41 U.S.C. 609(a))'' in introductory provisions.

Subsec. (c). Pub. L. 112–81 struck out subsec. (c), which required submission of annual report on amounts available for obligation.

2003—Subsec. (c). Pub. L. 108–136, § 1031(a)(21)(A), substituted ''Annual Report'' for ''Reporting Requirement'' in heading and ''Not later than 60 days after the end of each fiscal year'' for ''Each year'' in introductory provisions.

Subsec. (c)(1). Pub. L. 108–136, § 1031(a)(21)(B), inserted ''at the end of such fiscal year'' before period at end.

Subsec. (c)(2). Pub. L. 108–136, § 1031(a)(21)(C), substituted ''under this section during that fiscal year'' for ''during the year preceding the year in which the report is submitted''.

Subsec. (c)(3). Pub. L. 108–136, § 1031(a)(21)(D), substituted ''under this section during that fiscal year'' for ''in such preceding year''.

Subsec. (c)(4). Pub. L. 108–136, § 1031(a)(21)(E), substituted ''under this section during that fiscal year'' for ''in such preceding year''.

§ 2410n. Products of Federal Prison Industries: procedural requirements

(a) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES DOES NOT HAVE SIGNIFICANT MARKET SHARE.—(1) Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18 for which Federal Prison Industries does not have a significant market share, the Secretary of Defense shall conduct market research to determine whether the product is comparable to products available from the private sector that best meet the needs of the Department in terms of price, quality, and time of delivery.

(2) If the Secretary determines that a Federal Prison Industries product described in paragraph (1) is not comparable in price, quality, or time of delivery to products of the private sector that best meets the needs of the Department in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product, or shall make an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(b) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE.—(1) The Secretary of Defense may purchase a product listed in the latest edition of the Federal Prison Industries catalog for which Federal Prison Industries has a significant market share only if the Secretary uses competitive procedures for the procurement of the product or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(2) For purposes of this subsection, Federal Prison Industries shall be treated as having a significant share of the market for a product if the Secretary, in consultation with the Administrator of Federal Procurement Policy, determines that the Federal Prison Industries share of the Department of Defense market for the category of products including such product is greater than 5 percent.

(c) IMPLEMENTATION BY SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that—

(1) the Department of Defense does not purchase a Federal Prison Industries product or service unless a contracting officer of the Department determines that the product or service is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the Department of Defense.

(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of the Department of Defense may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a Department of Defense contract by any means, including means such as—

(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

(2) In this subsection, the term ''contractor'', with respect to a contract, includes a subcontractor at any tier under the contract.

(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The Secretary of Defense may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

(1) any data that is classified;

(2) any geographic data regarding the location of—

(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(C) other utilities; or

(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

(g) DEFINITIONS.—In this section:

(1) The term ''competitive procedures'' has the meaning given such term in section 2302(2) of this title.

(2) The term ''market research'' means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

(A) contacting knowledgeable individuals in government and industry;

(B) interactive communication among industry, acquisition personnel, and customers; and

(C) interchange meetings or pre-solicitation conferences with potential offerors.

(Added Pub. L. 107–107, div. A, title VIII, § 811(a)(1), Dec. 28, 2001, 115 Stat. 1180; amended Pub. L. 107–314, div. A, title VIII, § 819(a)(1), Dec.

2, 2002, 116 Stat. 2612; Pub. L. 109–163, div. A, title X, § 1056(c)(4), Jan. 6, 2006, 119 Stat. 3439; Pub. L. 110–181, div. A, title VIII, § 827(a)(1), Jan. 28, 2008, 122 Stat. 228.)

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–181 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, the Secretary of Defense shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery.

''(b) COMPETITION REQUIREMENT.—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the Secretary shall consider a timely offer from Federal Prison Industries.''

2006—Subsec. (b). Pub. L. 109–163 substituted ''competition'' for ''compeititon'' in text.

2002—Subsec. (a). Pub. L. 107–314, § 819(a)(1)(A), substituted ''Market Research'' for ''Market Research Before Purchase'' in heading and ''comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery'' for ''comparable in price, quality, and time of delivery to products available from the private sector''.

Subsec. (b). Pub. L. 107–314, § 819(a)(1)(B), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.''

Subsec. (c) to (g). Pub. L. 107–314, § 819(a)(1)(C), added subsecs. (c) to (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 827(a)(2), Jan. 28, 2008, 122 Stat. 228, as amended by Pub. L. 111–383, div. A, title X, § 1075(f)(4), Jan. 7, 2011, 124 Stat. 4376, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect 60 days after the date of the enactment of this Act [Jan. 28, 2008].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VIII, § 819(a)(2), Dec. 2, 2002, 116 Stat. 2613, provided that: ''Paragraph (1) [amending this section] and the amendments made by such paragraph shall take effect as of October 1, 2001.''

EFFECTIVE DATE

Pub. L. 107–107, div. A, title VIII, § 811(b), Dec. 28, 2001, 115 Stat. 1181, provided that: ''Section 2410n of title 10, United States Code (as added by subsection (a)), shall apply to purchases initiated on or after October 1, 2001.''

REGULATORY IMPLEMENTATION

Pub. L. 107–314, div. A, title VIII, § 819(b), Dec. 2, 2002, 116 Stat. 2613, provided that:

''(1) Proposed revisions to the Department of Defense Supplement to the Federal Acquisition Regulation to implement this section shall be published not later than 90 days after the date of the enactment of this Act [Dec. 2, 2002], and not less than 60 days shall be provided for public comment on the proposed revisions.

''(2) Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of the publication.''

LIST OF PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE

Pub. L. 110–181, div. A, title VIII, § 827(b), Jan. 28, 2008, 122 Stat. 228, provided that:

''(1) INITIAL LIST.—Not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall publish a list of product categories for which Federal Prison Industries' share of the Department of Defense market is greater than 5 percent, based on the most recent fiscal year for which data is available.

''(2) MODIFICATION.—The Secretary may modify the list published under paragraph (1) at any time if the Secretary determines that new data require adding a product category to the list or omitting a product category from the list.

''(3) CONSULTATION.—The Secretary shall carry out this subsection in consultation with the Administrator for Federal Procurement Policy.''

§ 2410*o*. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products

(a) TEN-YEAR CONTRACT PERIOD.—The Secretary of Defense may enter into a contract for a period of up to 10 years for the purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products for the support of a United States national security program or a United States space program.

(b) EXTENSIONS.—A contract entered into for more than one year under the authority of subsection (a) may be extended for a total of not more than 10 years pursuant to any option or options set forth in the contract.

(Added Pub. L. 107–314, div. A, title VIII, § 826(a), Dec. 2, 2002, 116 Stat. 2617.)

§ 2410p. Contracts: limitations on lead system integrators

(a) IN GENERAL.—Except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION.—An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(A) the entity was selected by the Department of Defense as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor,

through a process over which the entity exercised no control.

(c) CONSTRUCTION.—Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(Added Pub. L. 109–364, div. A, title VIII, § 807(a)(1), Oct. 17, 2006, 120 Stat. 2315.)

EFFECTIVE DATE

Pub. L. 109–364, div. A, title VIII, § 807(a)(3), Oct. 17, 2006, 120 Stat. 2316, provided that: ''Section 2410p of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts entered into after December 31, 2006.''

UPDATE OF REGULATIONS ON LEAD SYSTEM INTEGRATORS

Pub. L. 109–364, div. A, title VIII, § 807(b), Oct. 17, 2006, 120 Stat. 2316, provided that: ''Not later than December 31, 2006, the Secretary of Defense shall update the acquisition regulations of the Department of Defense in order to specify fully in such regulations the matters with respect to lead system integrators set forth in section 805(b) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3372) and the amendments made by subsection (a) [enacting this section].''

PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS

Pub. L. 110–181, div. A, title VIII, § 802, Jan. 28, 2008, 122 Stat. 206, as amended by Pub. L. 110–417, [div. A], title I, § 112, Oct. 14, 2008, 122 Stat. 4374, provided that:

''(a) PROHIBITIONS ON THE USE OF LEAD SYSTEMS INTEGRATORS.—

''(1) PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS.—Effective October 1, 2010, the Department of Defense may not award a new contract for lead systems integrator functions in the acquisition of a major system to any entity that was not performing lead systems integrator functions in the acquisition of the major system prior to the date of the enactment of this Act [Jan. 28, 2008].

''(2) PROHIBITION ON LEAD SYSTEMS INTEGRATORS BEYOND LOW-RATE INITIAL PRODUCTION.—Effective on the date of the enactment of this Act, the Department of Defense may award a new contract for lead systems integrator functions in the acquisition of a major system only if—

''(A) the major system has not yet proceeded beyond low-rate initial production; or

''(B) the Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions and that doing so is in the best interest of the Department.

''(3) REQUIREMENTS RELATING TO DETERMINATIONS.—A determination under paragraph (2)(B)—

''(A) shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions (including a discussion of alternatives, such as the use of the Department of Defense workforce, or a system engineering and technical assistance contractor);

''(B) shall include a plan for phasing out the use of contracted lead systems integrator functions over the shortest period of time consistent with the interest of the national defense;

''(C) may not be delegated below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics; and

''(D) shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

''(b) ACQUISITION WORKFORCE.—

''(1) REQUIREMENT.—The Secretary of Defense shall ensure that the acquisition workforce is of the appropriate size and skill level necessary—

''(A) to accomplish inherently governmental functions related to acquisition of major systems; and

''(B) to effectuate the purpose of subsection (a) to minimize and eventually eliminate the use of contractors to perform lead systems integrator functions.

''(2) REPORT.—The Secretary shall include an update on the progress made in complying with paragraph (1) in the annual report required by section 820 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2330) [10 U.S.C. 1701 note].

''(c) EXCEPTION FOR CONTRACTS FOR OTHER MANAGEMENT SERVICES.—The Department of Defense may continue to award contracts for the procurement of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, if the following conditions are met with respect to each such contract:

''(1) The contract prohibits the contractor from performing inherently governmental functions.

''(2) The Department of Defense organization responsible for the development or production of the major system ensures that Federal employees are responsible for—

''(A) determining courses of action to be taken in the best interest of the government; and

''(B) determining best technical performance for the warfighter.

''(3) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

''(d) DEFINITIONS.—In this section:

''(1) LEAD SYSTEMS INTEGRATOR.—The term 'lead systems integrator' means—

''(A) a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems; or

''(B) a prime contractor under a contract for the procurement of services the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions with respect to the development or production of a major system.

''(2) MAJOR SYSTEM.—The term 'major system' has the meaning given such term in section 2302d of title 10, United States Code.

''(3) LOW-RATE INITIAL PRODUCTION.—The term 'low-rate initial production' has the meaning given such term in section 2400 of title 10, United States Code.

''(e) STATUS OF FUTURE COMBAT SYSTEMS PROGRAM LEAD SYSTEM INTEGRATOR.—

''(1) LEAD SYSTEMS INTEGRATOR.—In the case of the Future Combat Systems program, the prime contractor of the program shall be considered to be a lead systems integrator until 45 days after the Secretary of the Army certifies in writing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such contractor is no longer serving as the lead systems integrator.

''(2) NEW CONTRACTS.—In applying subsection (a)(1) or (a)(2), any modification to the existing contract for the Future Combat Systems program, for the purpose of entering into full-rate production of major systems or subsystems, shall be considered a new contract.''

§ 2410q. Multiyear contracts: purchase of electricity from renewable energy sources

(a) MULTIYEAR CONTRACTS AUTHORIZED.—Subject to subsection (b), the Secretary of Defense may enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as that term is defined in section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)).

(b) LIMITATIONS ON CONTRACTS FOR PERIODS IN EXCESS OF FIVE YEARS.—The Secretary may exercise the authority in subsection (a) to enter into a contract for a period in excess of five years only if the Secretary determines, on the basis of a business case analysis prepared by the Department of Defense, that—

(1) the proposed purchase of electricity under such contract is cost effective for the Department of Defense; and

(2) it would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

(c) RELATIONSHIP TO OTHER MULTIYEAR CONTRACTING AUTHORITY.—Nothing in this section shall be construed to preclude the Department of Defense from using other multiyear contracting authority of the Department to purchase renewable energy.

(Added Pub. L. 110–181, div. A, title VIII, § 828(a), Jan. 28, 2008, 122 Stat. 229.)

CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

Sec.
2411. Definitions.
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AMENDMENTS

2013—Pub. L. 113–66, div. A, title XVI, § 1611(a)(2), Dec. 26, 2013, 127 Stat. 947, added item 2419 and redesignated former item 2419 as 2420.

1993—Pub. L. 103–35, title II, § 201(d)(2), May 31, 1993, 107 Stat. 99, made technical amendment to items 2418 and 2419.

1992—Pub. L. 102–484, div. D, title XLII, § 4236(a)(2), Oct. 23, 1992, 106 Stat. 2691, added item 2418 and redesignated former item 2418 as 2419.

1990—Pub. L. 101–510, div. A, title VIII, § 814(a)(2), Nov. 5, 1990, 104 Stat. 1597, added item 2417 and redesignated former item 2417 as 2418.

1986—Pub. L. 99–500, § 101(c) [title X, § 957(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 957(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, § 957(a)(2), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically adding item 2416 and redesignating former item 2416 as 2417.

§ 2411. Definitions

In this chapter:

(1) The term ''eligible entity'' means any of the following:

(A) A State.

(B) A local government.

(C) A private, nonprofit organization.

(D) A tribal organization, as defined in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (Public Law 93–638; 25 U.S.C. 450b(*l*)), or an economic enterprise, as defined in section 3(e) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(e)), whether or not such economic enterprise is organized for profit purposes or nonprofit purposes.

(2) The term ''distressed area'' means—

(A) the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government) that—

(i) has a per capita income of 80 percent or less of the State average; or

(ii) has an unemployment rate that is one percent greater than the national average for the most recent 24-month period for which statistics are available; or

(B) a reservation, as defined in section 3(d) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(d)).

(3) The term ''Secretary'' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.

(4) The terms ''State'' and ''local government'' have the meaning given those terms in section 6302 of title 31.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 691; Pub. L. 99–500, § 101(c) [title X, § 956(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 956(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, § 956(a), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VIII, § 807(b), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 100–456, div. A, title VIII, § 841(b)(2), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, § 853(e), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 102–25, title VII, § 701(j)(5), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, § 1052(31), Oct. 23, 1992, 106 Stat. 2501.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1992—Par. (1)(D). Pub. L. 102–484 substituted ''organized for profit purposes or nonprofit purposes'' for ''organized for-profit, or nonprofit purposes''.

1991—Par. (1)(D). Pub. L. 102–25, which directed the substitution of ''for profit purposes or nonprofit'' for ''for-profit and nonprofit'', could not be executed because the words ''for-profit and nonprofit'' did not appear.

1989—Par. (1)(D). Pub. L. 101–189 substituted ''section 4(*l*)'' for ''section 4(c)'' and ''25 U.S.C. 450b(*l*)'' for ''25 U.S.C. 450(c)''.

1988—Par. (1)(D). Pub. L. 100–456 inserted '', whether or not such economic enterprise is organized for-profit, or nonprofit purposes'' before period at end.

1987—Par. (1)(D). Pub. L. 100–180, § 807(b)(1), added subpar. (D).

Par. (2). Pub. L. 100–180, §807(b)(2), substituted ''means—'' for ''means'', designated existing text beginning with ''the area of a unit'' as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, substituted ''are available; or'' for ''are available.'', and added subpar. (B).

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section generally identically, striking out in par. (1) reference to section 6302(5) and 6302(2) of title 31, in par. (2) substituting ''The term 'distressed area' means the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government)'' for '''Distressed entity' means an eligible entity (within the meaning of paragraph (1)(B))'', and adding par. (4).

1985—Pub. L. 99–145 amended section generally. Prior to amendment, section read as follows: ''In this chapter:

''(1) 'Eligible entity' means a State (as defined in section 6302(5) of title 31), a local government (as defined in section 6302(2) of that title), or a private, nonprofit organization that enters into a cooperative agreement with the Secretary under this chapter to furnish procurement technical assistance to business entities and to defray at least one-half of the costs of furnishing such assistance.

''(2) 'Secretary' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.''

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, §919(d), Nov. 8, 1985, 99 Stat. 693, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 2412 to 2415 of this title] shall take effect on October 1, 1985.''

§ 2412. Purposes

The purposes of the program authorized by this chapter are—

(1) to increase assistance by the Department of Defense to eligible entities furnishing procurement technical assistance to business entities; and

(2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 692.)

AMENDMENTS

1985—Pub. L. 99–145 amended section generally, substituting ''assistance by the Department of Defense to eligible entities'' for ''Department of Defense assistance for eligible entities'' in par. (1).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2413. Cooperative agreements

(a) The Secretary, in accordance with the provisions of this chapter, may enter into cooperative agreements with eligible entities to carry out the purposes of this chapter.

(b) Under any such cooperative agreement, the eligible entity shall agree to sponsor programs to furnish procurement technical assistance to business entities and the Secretary shall agree to defray not more than 65 percent of the eligible entity's cost of furnishing such assistance under such programs, except that—

(1) in the case of a program sponsored by such an entity that provides services solely in a distressed area, the Secretary may agree to furnish more than 65 percent, but not more than 75 percent, of such cost with respect to such program; and

(2) in the case of a program sponsored by such an entity that provides assistance for covered small businesses pursuant to section 2419(b) of this title, the Secretary may agree to furnish the full cost of such assistance.

(c) In entering into cooperative agreements under subsection (a), the Secretary shall assure that at least one procurement technical assistance program is carried out in each Department of Defense contract administration services district during each fiscal year.

(d) In conducting a competition for the award of a cooperative agreement under subsection (a), the Secretary shall give significant weight to successful past performance of eligible entities under a cooperative agreement under this section.

(e) In determining the level of funding to provide under an agreement under subsection (b), the Secretary shall consider the forecast by the eligible entity of demand for procurement technical assistance, and, in the case of an established program under this chapter, the outlays and receipts of such program during prior years of operation.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 99–500, §101(c) [title X, §956(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §956(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, §956(b), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, and amended Pub. L. 100–180, div. A, title XII, §1233(b), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 105–261, div. A, title VIII, §802(a)(1), Oct. 17, 1998, 112 Stat. 2081; Pub. L. 107–314, div. A, title VIII, §814, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 113–66, div. A, title XVI, §§1611(c), 1612(a), Dec. 26, 2013, 127 Stat. 947, 948.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2013—Subsec. (b). Pub. L. 113–66, §1612(a)(1), substituted ''65 percent'' for ''one-half'' in introductory provisions.

Pub. L. 113–66, §1611(c)(1)(A), (B), substituted ''except that—

''(1) in the case''

for ''except that in the case'' and ''; and'' for period at end.

Subsec. (b)(1). Pub. L. 113–66, §1612(a), substituted ''65 percent'' for ''one-half'' and ''75 percent'' for ''three-fourths''.

Subsec. (b)(2). Pub. L. 113–66, §1611(c)(1)(C), added par. (2).

Subsec. (d). Pub. L. 113–66, §1611(c)(3), struck out ''and in determining the level of funding to provide under an agreement under subsection (b),'' after ''subsection (a),''.

Subsec. (e). Pub. L. 113–66, §1611(c)(2), added subsec. (e).

2002—Subsec. (d). Pub. L. 107–314 added subsec. (d).

1998—Subsec. (c). Pub. L. 105–261 substituted ''district'' for ''region''.

1987—Subsec. (b). Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, as amended by Pub. L. 100–180, amended subsec. (b) identically, inserting ''sponsor programs to'' after first reference to ''agree to'', ''under such programs'' after ''such assistance'', and ''with respect to such program'' after ''such cost'' and substituting ''a program sponsored by such an entity that provides services solely in a distressed area'' for ''an eligible entity that is a distressed entity''.

1985—Pub. L. 99–145 amended section generally, substituting '', in accordance with the provisions of this chapter, may enter'' for ''may, in accordance with the provisions of this chapter, enter'' in subsec. (a), adding subsec. (b), and redesignating former subsec. (b) as (c).

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title XII, § 1233(c)(2), Dec. 4, 1987, 101 Stat. 1161, provided that: ''The amendment made by subsection (b) [amending Public Laws 99–500, 99–591, and 99–661 which amended this section] shall apply as if included in the enactment of Public Laws 99–500, 99–591, and 99–661.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2414. Limitation

(a) IN GENERAL.—Except as provided in subsection (c), the value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed—

(1) in the case of a program operating on a Statewide basis, other than a program referred to in clause (3) or (4), $750,000;

(2) in the case of a program operating on less than a Statewide basis, other than a program referred to in clause (3) or (4), $450,000;

(3) in the case of a program operated wholly within one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, $300,000; or

(4) in the case of a program operated wholly within more than one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, $750,000.

(b) DETERMINATIONS ON SCOPE OF OPERATIONS.—A determination of whether a procurement technical assistance program is operating on a Statewide basis or on less than a Statewide basis or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) EXCEPTION.—The value of the assistance provided in accordance with section 2419(b) of this title is not subject to the limitations in subsection (a).

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–456, div. A, title VIII, § 841(a), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, § 819(c), Nov. 29, 1989, 103 Stat. 1503; Pub. L. 102–25, title VII, § 701(f)(7), Apr. 6, 1991, 105 Stat. 115; Pub. L. 107–107, div. A, title VIII, § 813, Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107–314, div. A, title VIII, § 815, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 109–163, div. A, title VIII, § 824, Jan. 6, 2006, 119 Stat. 3387; Pub. L. 113–66, div. A, title XVI, §§ 1611(b), 1612(b), Dec. 26, 2013, 127 Stat. 947, 948.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 113–66, § 1611(b)(1), substituted ''Except as provided in subsection (c), the value'' for ''The value'' in introductory provisions.

Subsec. (a)(1). Pub. L. 113–66, § 1612(b)(1), substituted ''$750,000'' for ''$600,000''.

Subsec. (a)(2). Pub. L. 113–66, § 1612(b)(2), substituted ''$450,000'' for ''$300,000''.

Subsec. (a)(3). Pub. L. 113–66, § 1612(b)(3), substituted ''$300,000'' for ''$150,000''.

Subsec. (a)(4). Pub. L. 113–66, § 1612(b)(1), substituted ''$750,000'' for ''$600,000''.

Subsec. (c). Pub. L. 113–66, § 1611(b)(2), added subsec. (c).

2006—Subsec. (a)(2). Pub. L. 109–163 substituted ''$300,000'' for ''$150,000''.

2002—Subsec. (a)(4). Pub. L. 107–314 substituted ''$600,000'' for ''$300,000''.

2001—Subsec. (a)(1). Pub. L. 107–107 substituted ''$600,000'' for ''$300,000''.

1991—Subsec. (b). Pub. L. 102–25 substituted ''section 2411(1)(D)'' for ''section 2411(a)(1)(D)''.

1989—Subsec. (a). Pub. L. 101–189, § 819(c)(1), added pars. (1) to (4) and struck out former pars. (1) and (2) which read as follows:

''(1) in the case of a program operating on a Statewide basis, $300,000; or

''(2) in the case of a program operating on less than a Statewide basis, $150,000.''

Subsec. (b). Pub. L. 101–189, § 819(c)(2), inserted ''or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(a)(1)(D) of this title'' after ''or on less than a Statewide basis''.

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed $150,000.''

1985—Pub. L. 99–145 amended section generally, substituting ''Secretary'' for ''Department of Defense'' and ''program under'' for ''program pursuant to''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2415. Distribution

The Secretary shall allocate funds available for assistance under this chapter equally to each Department of Defense contract administrative services district. If in any such fiscal year there is an insufficient number of satisfactory proposals in a district for cooperative agreements to allow effective use of the funds allocated to that district, the funds remaining with respect to that district shall be reallocated among the remaining districts.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606; amended Pub. L. 99–145,

title IX, §919(b), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–180, div. A, title VIII, §807(c), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 105–261, div. A, title VIII, §802(a)(2), (b), Oct. 17, 1998, 112 Stat. 2081; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293.)

AMENDMENTS

2000—Pub. L. 106–398 made technical amendment to directory language of Pub. L. 105–261, §802(b). See 1998 Amendment note below.

1998—Pub. L. 105–261, §802(a)(2), substituted ''district'' for ''region'' wherever appearing and ''districts'' for ''regions''.

Pub. L. 105–261, §802(b), as amended by Pub. L. 106–398, substituted ''Department of Defense contract administrative services'' for ''Defense Contract Administration Services''.

1987—Pub. L. 100–180, §807(c), struck out subsecs. (a) and (b) relating to requirement by Secretary of Defense to reserve 75% of first $3,000,000 appropriated to carry out this chapter for purpose of assisting cooperative agreements entered into under section 2413 of this title for fiscal years 1986 and 1987, and for fiscal years after 1987 the authority of Secretary to allocate funds in accordance with such cooperative agreements, and substituted ''The'' for ''(c) For any amount appropriated to carry out this chapter for fiscal year 1986 or 1987 in excess of $3,000,000, the''.

1985—Subsec. (a)(2). Pub. L. 99–145, §919(b)(1)(A), substituted ''fiscal years 1986 and 1987'' for ''fiscal year 1985 is 50 percent and during fiscal year 1986''.

Subsec. (a)(3). Pub. L. 99–145, §919(b)(1)(B), added par. (3).

Subsec. (b). Pub. L. 99–145, §919(b)(2), substituted ''1987'' for ''1986''.

Subsec. (c). Pub. L. 99–145, §919(b)(3), added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, §1087(d)(5)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2416. Subcontractor information

(a) The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

(b) Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contractor, together with the business address and telephone number and area of responsibility of each such employee.

(c) A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

(d) In this section, the term ''defense contractor'', for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of $1,000,000.

(Added Pub. L. 99–500, §101(c) [title X, §957(a)(1)(B)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §957(a)(1)(B)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, §957(a)(1)(B), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 108–375, div. A, title VIII, §816, Oct. 28, 2004, 118 Stat. 2015.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2416 was renumbered section 2420 of this title.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 substituted ''$1,000,000'' for ''$500,000''.

EFFECTIVE DATE

Pub. L. 99–500, §101(c) [title X, §957(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, Pub. L. 99–591, §101(c) [title X, §957(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175, and Pub. L. 99–661, div. A, title IX, formerly title IV, §957(b), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2416 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1987.''

§ 2417. Administrative costs

The Director of the Defense Logistics Agency may use, out of the amount appropriated for a fiscal year for operation and maintenance for the procurement technical assistance program authorized by this chapter, an amount not exceeding three percent of such amount to defray the expenses of administering the provisions of this chapter during such fiscal year.

(Added Pub. L. 101–510, div. A, title VIII, §814(a)(1)(B), Nov. 5, 1990, 104 Stat. 1596.)

PRIOR PROVISIONS

A prior section 2417 was renumbered section 2420 of this title.

EFFECTIVE DATE

Pub. L. 101–510, div. A, title VIII, §814(b), Nov. 5, 1990, 104 Stat. 1597, provided that: ''Section 2417 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal year 1991 and each fiscal year thereafter.''

§ 2418. Authority to provide certain types of technical assistance

(a) The procurement technical assistance furnished by eligible entities assisted by the Department of Defense under this chapter may include technical assistance relating to contracts entered into with (1) Federal departments and agencies other than the Department of Defense, and (2) State and local governments.

(b) An eligible entity assisted by the Department of Defense under this chapter also may furnish information relating to assistance and other programs available pursuant to the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992.

(c) An eligible entity assisted by the Department of Defense under this chapter also may furnish education on the requirements applicable to small businesses under the regulations issued under section 38 of the Arms Export Control Act (22 U.S.C. 2778) and on compliance with those requirements.

(Added Pub. L. 102–484, div. D, title XLII, § 4236(a)(1)(B), Oct. 23, 1992, 106 Stat. 2691; amended Pub. L. 113–291, div. A, title VIII, § 823(b), Dec. 19, 2014, 128 Stat. 3436.)

REFERENCES IN TEXT

The Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, referred to in subsec. (b), is division D of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2658. For complete classification of division D to the Code, see Short Title note set out under section 2500 of this title and Tables.

PRIOR PROVISIONS

A prior section 2418 was renumbered section 2420 of this title.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–291 added subsec. (c).

§ 2419. Advancing small business growth

(a) CONTRACT CLAUSE REQUIRED.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall require the clause described in paragraph (2) to be included in each covered contract awarded by the Department of Defense.

(2) The clause described in this paragraph is a clause that—

(A) requires the contractor to acknowledge that acceptance of the contract may cause the business to exceed the applicable small business size standards (established pursuant to section 3(a) of the Small Business Act) for the industry concerned and that the contractor may no longer qualify as a small business concern for that industry; and

(B) encourages the contractor to develop capabilities and characteristics typically desired in contractors that are competitive as an other-than-small business in that industry.

(b) AVAILABILITY OF ASSISTANCE.—Covered small businesses may be provided assistance as part of any procurement technical assistance furnished pursuant to this chapter.

(c) DEFINITIONS.—In this section:

(1) The term ''covered contract'' means a contract—

(A) awarded to a qualified small business concern as defined pursuant to section 3(a) of the Small Business Act; and

(B) with an estimated annual value—

(i) that will exceed the applicable receipt-based small business size standard; or

(ii) if the contract is in an industry with an employee-based size standard, that will exceed $70,000,000.

(2) The term ''covered small business'' means a qualified small business concern as defined pursuant to section 3(a) of the Small Business Act that has entered into a contract with the Department of Defense that includes a contract clause described in subsection (a)(2).

(Added Pub. L. 113–66, div. A, title XVI, § 1611(a)(1)(B), Dec. 26, 2013, 127 Stat. 946.)

REFERENCES IN TEXT

Section 3(a) of the Small Business Act, referred to in subsecs. (a)(2)(A) and (c)(1)(A), (2), is classified to section 632(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 2419 was renumbered section 2420 of this title.

§ 2420. Regulations

The Secretary of Defense shall prescribe regulations to carry out this chapter.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, § 2416; renumbered § 2417, Pub. L. 99–500, § 101(c) [title X, § 957(a)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 957(a)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 957(a)(1)(A), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; renumbered § 2418, Pub. L. 101–510, div. A, title VIII, § 814(a)(1)(A), Nov. 5, 1990, 104 Stat. 1596; renumbered § 2419, Pub. L. 102–484, div. D, title XLII, § 4236(a)(1)(A), Oct. 23, 1992, 106 Stat. 2691; renumbered § 2420, Pub. L. 113–66, div. A, title XVI, § 1611(a)(1)(A), Dec. 26, 2013, 127 Stat. 946.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2013—Pub. L. 113–66 renumbered section 2419 of this title as this section.

1992—Pub. L. 102–484 renumbered section 2418 of this title as this section.

1990—Pub. L. 101–510 renumbered section 2417 of this title as this section.

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, renumbered section 2416 of this title as this section.

CHAPTER 143—PRODUCTION BY MILITARY AGENCIES

Sec.
2421. Plantations and farms: operation, maintenance, and improvement.
2422. Bakery and dairy products: procurement outside the United States.
2423. Laundry and dry cleaning services: procurement from facilities operated by the Navy Resale and Services Support Office.
2424. Procurement of supplies and services from exchange stores outside the United States.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title III, §§ 323(b), 324(b), Nov. 29, 1989, 103 Stat. 1414, 1415, added items 2423 and 2424.

1986—Pub. L. 99–661, div. A, title III, § 312(b), Nov. 14, 1986, 100 Stat. 3852, added item 2422.

§ 2421. Plantations and farms: operation, maintenance, and improvement

(a) Appropriations for the subsistence of members of the Army, Navy, Air Force, or Marine Corps are available for expenditures necessary

in the operation, maintenance, and improvement of any plantation or farm, outside the United States and under the jurisdiction of the Army, Navy, Air Force, or Marine Corps, as the case may be, for furnishing fresh fruits and vegetables to the armed forces. However, no land may be acquired under this subsection.

(b) Fruits and vegetables produced under subsection (a) that are over the amount furnished or sold to the armed forces or to civilians serving with the armed forces may be sold only outside the United States.

(c) Of the persons employed by the United States under subsection (a), only nationals of the United States are entitled to the benefits provided by laws relating to the employment, work, compensation, or other benefits of civilian employees of the United States.

(d) A plantation or farm covered by subsection (a) shall be operated, maintained, and improved by a private contractor or lessee, so far as practicable. Before using members of the Army, Navy, Air Force, or Marine Corps, as the case may be, the Secretary concerned must make a reasonable effort to make a contract or lease with a person in civil life for his services for that operation, maintenance, or improvement, on terms advantageous to the United States. A determination by the Secretary as to the reasonableness of effort to make a contract or lease, and as to the advantageous nature of its terms, is final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2421(a)	10:1213 (less 1st and 2d provisos). 34:555a (less 1st and 2d provisos).	June 28, 1944, ch. 306; restated July 1, 1947, ch. 188, 61 Stat. 234; Oct. 31, 1951, ch. 654, §3(2), 65 Stat. 708.
2421(b)	10:1213 (2d proviso). 34:555a (2d proviso).	
2421(c)	10:1213 (1st proviso). 34:555a (1st proviso).	
2421(d)	10:1214. 34:555b.	

In subsection (a), the word ''management'', in 10:1213 and 34:555a, is omitted as covered by the word ''operation''. The word ''members'' is substituted for the word ''personnel''. The word ''may'' is substituted for the word ''shall''. The words ''any and all'' and ''the purpose of'' are omitted as surplusage.

In subsections (a) and (b), the word ''continental'' is omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (b), the words ''of the United States'' are omitted as surplusage. The words ''Fruits and vegetables produced under subsection (a)'' are substituted for the words ''That surplus production''.

In subsection (c), the words ''nationals of the United States'' are substituted for the words ''American nationals''. The words ''civil-service laws and other * * * of the United States'' and ''rights * * * or obligations'' are omitted as surplusage.

In subsection (d), the words ''after the termination of the present war'' are omitted as executed. The word ''by'' is substituted for the words ''through the instrumentality of''. The words ''partnership, association'' are omitted as covered by the definition of ''person'' in section 1 of title 1. The words ''United States'' are substituted for the word ''Government''. The words ''management'', ''for that purpose'', and ''or agreement'' are omitted as surplusage.

§ 2422. Bakery and dairy products: procurement outside the United States

(a) The Secretary of Defense may authorize any element of the Department of Defense that procures bakery and dairy products for use by the armed forces outside the United States to procure any products described in subsection (b) through the use of procedures other than competitive procedures.

(b) The products referred to in subsection (a) are bakery or dairy products produced by the Army and Air Force Exchange Service in a facility outside the United States that began operating before July 1, 1986.

(Added Pub. L. 99–661, div. A, title III, §312(a), Nov. 14, 1986, 100 Stat. 3851.)

§ 2423. Laundry and dry cleaning services: procurement from facilities operated by the Navy Resale and Services Support Office

(a) AUTHORITY.—The Secretary of Defense may authorize an element of the Department of Defense to enter into a contract (through the use of procedures other than competitive procedures) with a laundry and dry cleaning facility operated by the Navy Resale and Services Support Office to procure laundry and dry cleaning services for the armed forces outside the United States.

(b) APPLICATION.—Subsection (a) shall apply only with respect to a laundry and dry cleaning facility of the Navy Resale and Services Support Office that began operating before October 1, 1989.

(Added Pub. L. 101–189, div. A, title III, §323(a), Nov. 29, 1989, 103 Stat. 1414.)

§ 2424. Procurement of supplies and services from exchange stores outside the United States

(a) AUTHORITY.—The Secretary of Defense may authorize an element of the Department of Defense to enter into a contract (through the use of procedures other than competitive procedures) with an exchange store operated under the jurisdiction of the Secretary of a military department outside the United States to procure supplies or services for use by the armed forces outside the United States.

(b) LIMITATIONS.—(1) A contract may not be entered into under subsection (a) in an amount in excess of $100,000.

(2) Supplies provided under a contract entered into under subsection (a) shall be provided from the stocks of the exchange store on hand as of the date the contract is entered into with that exchange store.

(3) A contract entered into with an exchange store under subsection (a) may not provide for the procurement of services not regularly provided by that exchange store.

(c) EXCEPTION.—Paragraphs (1) and (2) of subsection (b) do not apply to contracts for the procurement of soft drinks that are manufactured in the United States. The Secretary of Defense shall prescribe in regulations the standards and procedures for determining whether a particular beverage is a soft drink and whether the beverage was manufactured in the United States.

(Added Pub. L. 101–189, div. A, title III, § 324(a), Nov. 29, 1989, 103 Stat. 1414; amended Pub. L. 103–355, title III, § 3066, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(17), Feb. 10, 1996, 110 Stat. 673; Pub. L. 109–163, div. A, title VI, § 671, Jan. 6, 2006, 119 Stat. 3319.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 substituted ''$100,000'' for ''$50,000''.

1996—Subsec. (c). Pub. L. 104–106 inserted heading and substituted ''particular beverage'' for ''particular drink'' and ''beverage was'' for ''drink was''.

1994—Subsec. (c). Pub. L. 103–355 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

OPERATION OF STARS AND STRIPES BOOKSTORES OVERSEAS BY MILITARY EXCHANGES

Pub. L. 103–160, div. A, title III, § 353, Nov. 30, 1993, 107 Stat. 1627, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall provide for the commencement, not later than October 1, 1994, of the operation of Stars and Stripes bookstores outside of the United States by the military exchanges.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out subsection (a).''

CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
2430. Major defense acquisition program defined.
2430a. Major subprograms.
2431. Weapons development and procurement schedules.
2431a. Acquisition strategy.
2431b. Risk reduction in major defense acquisition programs and major systems.[1]
2432. Selected Acquisition Reports.
2433. Unit cost reports.
2433a. Critical cost growth in major defense acquisition programs.
2434. Independent cost estimates.
2435. Baseline description.
2436. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States.
2437. Development of major defense acquisition programs: sustainment of system to be replaced.
2438. Performance assessments and root cause analyses.
[2439. Repealed.]
2440. Technology and industrial base plans.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title VIII, §§ 821(a)(2), 822(a)(2), 831(c)(2), Nov. 25, 2015, 129 Stat. 900, 901, 912, added items 2431a and 2431b and substituted ''Independent cost estimates'' for ''Independent cost estimates; operational manpower requirements'' in item 2434.

2011—Pub. L. 111–383, div. A, title IX, § 901(k)(2)(B), Jan. 7, 2011, 124 Stat. 4326, added item 2438.

2009—Pub. L. 111–23, title II, § 206(a)(2), May 22, 2009, 123 Stat. 1728, added item 2433a.

2008—Pub. L. 110–417, [div. A], title VIII, § 811(a)(2), Oct. 14, 2008, 122 Stat. 4521, added item 2430a.

2004—Pub. L. 108–375, div. A, title VIII, § 805(a)(2), Oct. 28, 2004, 118 Stat. 2009, added item 2437.

2003—Pub. L. 108–136, div. A, title VIII, § 822(a)(2), Nov. 24, 2003, 117 Stat. 1547, added item 2436.

1994—Pub. L. 103–355, title III, §§ 3005(b), 3006(b), 3007(b), Oct. 13, 1994, 108 Stat. 3331, substituted ''Baseline description'' for ''Enhanced program stability'' in item 2435 and struck out items 2438 ''Major programs: competitive phototyping'' and 2439 ''Major programs: competitive alternative sources''.

1993—Pub. L. 103–160, div. A, title VIII, § 828(a)(4), Nov. 30, 1993, 107 Stat. 1713, struck out items 2436 ''Defense enterprise programs'' and 2437 ''Defense enterprise programs: milestone authorization''.

1992—Pub. L. 102–484, div. A, title VIII, § 821(a)(2), div. D, title XLII, § 4216(b)(2), Oct. 23, 1992, 106 Stat. 2460, 2670, added items 2438 and 2440 and redesignated former item 2438 as 2439.

1987—Pub. L. 100–26, § 7(b)(1), (2)(B), (9)(B), Apr. 21, 1987, 100 Stat. 279, 280, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' in chapter heading, added item 2430, and transferred former item 2305a from chapter 137 and redesignated it as item 2438.

1986—Pub. L. 99–661, div. A, title XII, § 1208(c)(2), Nov. 14, 1986, 100 Stat. 3976, inserted ''; operational manpower requirements'' in item 2434.

Pub. L. 99–500, § 101(c) [title X, §§ 904(a)(2), 905(a)(2), 906(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, 1783–135, 1783–137, and Pub. L. 99–591, § 101(c) [title X, §§ 904(a)(2), 905(a)(2), 906(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134, 3341–135, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 904(a)(2), 905(a)(2), 906(a)(2), Nov. 14, 1986, 100 Stat. 3914–3916, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, added items 2435 to 2437.

Pub. L. 99–433, title I, § 101(a)(4), Oct. 1, 1986, 100 Stat. 994, added chapter heading and analysis of sections for chapter 144, consisting of sections 2431 to 2434.

§ 2430. Major defense acquisition program defined

(a) In this chapter, the term ''major defense acquisition program'' means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(1) that is designated by the Secretary of Defense as a major defense acquisition program; or

(2) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement, including all planned increments or spirals, of more than $1,800,000,000 (based on fiscal year 1990 constant dollars).

(b) The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in subsection (a)(2) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) For purposes of subsection (a)(2), the Secretary shall consider, as applicable, the following:

(1) The estimated level of resources required to fulfill the relevant joint military requirement, as determined by the Joint Requirements Oversight Council pursuant to section 181 of this title.

(2) The cost estimate referred to in section 2366a(a)(6) of this title.

[1] So in original. Does not conform to section catchline.

(3) The cost estimate referred to in section 2366b(a)(1)(C) of this title.

(4) The cost estimate within a baseline description as required by section 2435 of this title.

(Added Pub. L. 100–26, § 7(b)(2)(A), Apr. 21, 1987, 101 Stat. 279; amended Pub. L. 102–484, div. A, title VIII, § 817(b), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 111–23, title II, § 206(b), May 22, 2009, 123 Stat. 1728; Pub. L. 113–291, div. A, title X, § 1071(f)(18), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 114–92, div. A, title VIII, § 825(a), Nov. 25, 2015, 129 Stat. 907.)

AMENDMENT OF SECTION

Pub. L. 114–92, div. A, title VIII, § 825(a), (c)(3), Nov. 25, 2015, 129 Stat. 907, 908, provided that, effective Oct. 1, 2016, this section is amended by adding at the end the following new subsection:

(d)(1) The milestone decision authority for a major defense acquisition program reaching Milestone A after October 1, 2016, shall be the service acquisition executive of the military department that is managing the program, unless the Secretary of Defense designates, under paragraph (2), another official to serve as the milestone decision authority.

(2) The Secretary of Defense may designate an alternate milestone decision authority for a program with respect to which—

(A) the Secretary determines that the program is addressing a joint requirement;

(B) the Secretary determines that the program is best managed by a Defense Agency;

(C) the program has incurred a unit cost increase greater than the significant cost threshold or critical cost threshold under section 2433 of this title;

(D) the program is critical to a major interagency requirement or technology development effort, or has significant international partner involvement; or

(E) the Secretary determines that an alternate official serving as the milestone decision authority will best provide for the program to achieve desired cost, schedule, and performance outcomes.

(3)(A) After designating an alternate milestone decision authority under paragraph (2) for a program, the Secretary of Defense may revert the position of milestone decision authority for the program back to the service acquisition executive upon request of the Secretary of the military department concerned. A decision on the request shall be made within 180 days after receipt of the request from the Secretary of the military department concerned.

(B) If the Secretary of Defense denies the request for reversion of the milestone decision authority back to the service acquisition executive, the Secretary shall report to the congressional defense committees on the basis of the Secretary's decision that an alternate official serving as milestone decision authority will best provide for the program to achieve desired cost, schedule, and performance outcomes. No such reversion is authorized after a program has incurred a unit cost increase greater than the significant cost threshold or critical cost threshold under section 2433 of this title, except in exceptional circumstances.

(4)(A) For each major defense acquisition program, the Secretary of the military department concerned and the Chief of the armed force concerned shall, in each Selected Acquisition Report required under section 2432 of this title, certify that program requirements are stable and funding is adequate to meet cost, schedule, and performance objectives for the program and identify and report to the congressional defense committees on any increased risk to the program since the last report.

(B) The Secretary of Defense shall review the acquisition oversight process for major defense acquisition programs and shall limit outside requirements for documentation to an absolute minimum on those programs where the service acquisition executive of the military department that is managing the program is the milestone decision authority and ensure that any policies, procedures, and activities related to oversight efforts conducted outside of the military departments with regard to major defense acquisition programs shall be implemented in a manner that does not unnecessarily increase program costs or impede program schedules.

See 2015 Amendment note below.

AMENDMENTS

2015—Subsec. (d). Pub. L. 114–92 added subsec. (d).

2014—Subsec. (c)(2). Pub. L. 113–291 substituted ''section 2366a(a)(6)'' for ''section 2366a(a)(4)''.

2009—Subsec. (a)(2). Pub. L. 111–23, § 206(b)(1), inserted '', including all planned increments or spirals,'' after ''an eventual total expenditure for procurement''.

Subsec. (c). Pub. L. 111–23, § 206(b)(2), added subsec. (c).

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1992—Pub. L. 102–484 designated existing provisions as subsec. (a), in par. (2) substituted ''$300,000,000'' for ''$200,000,000'', ''1990'' for ''1980'' in two places, and ''$1,800,000,000'' for ''$1,000,000,000'', and added subsec. (b).

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–92 effective Oct. 1, 2016, see section 825(c)(3) of Pub. L. 114–92, set out as a note under section 133 of this title.

IMPLEMENTATION OF PROCEDURES FOR DESIGNATION OF MILESTONE DECISION AUTHORITIES

Pub. L. 114–92, div. A, title VIII, § 825(c)(1), (2), Nov. 25, 2015, 129 Stat. 908, provided that:

''(1) IMPLEMENTATION PLAN.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], 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 implementing subsection (d) of section 2430 of title 10, United States Code, as added by subsection (a) of this section.

''(2) GUIDANCE.—The Deputy Chief Management Officer of the Department of Defense, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics and the service acquisition executives, shall issue guidance to ensure that by not later than October 1, 2016, the acquisition policy, guidance, and practices of the Department of Defense conform to the requirements of subsection (d) of section 2430 of title 10, United States Code, as added by subsection (a) of this section. The guidance shall be designed to ensure a streamlined decisionmaking and ap-

proval process and to minimize any information requests, consistent with the requirement of paragraph (4)(A) of such subsection (d).''

TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS FOR PROGRAM DEFINITION PERIODS

Pub. L. 114–92, div. A, title VIII, § 826, Nov. 25, 2015, 129 Stat. 908, provided that:

''(a) REVISED GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall revise Department of Defense guidance for major defense acquisition programs to address the tenure and accountability of program managers for the program definition period of major defense acquisition programs.

''(b) PROGRAM DEFINITION PERIOD.—For the purposes of this section, the term 'program definition period', with respect to a major defense acquisition program, means the period beginning with initiation of the program and ending with Milestone B approval (or Key Decision Point B approval in the case of a space program).

''(c) RESPONSIBILITIES.—The revised guidance required by subsection (a) shall provide that the program manager for the program definition period of a major defense acquisition program is responsible for—

''(1) bringing technologies to maturity and identifying the manufacturing processes that will be needed to carry out the program;

''(2) ensuring continuing focus during program development on meeting stated mission requirements and other requirements of the Department of Defense;

''(3) recommending trade-offs between program cost, schedule, and performance for the life-cycle of the program;

''(4) developing a business case for the program; and

''(5) ensuring that appropriate information is available to the milestone decision authority to make a decision on Milestone B approval (or Key Decision Point B approval in the case of a space program), including information necessary to make the certification required by section 2366a of title 10, United States Code.

''(d) QUALIFICATIONS, RESOURCES, AND TENURE.—The Secretary of Defense shall ensure that each program manager for the program definition period of a major defense acquisition program—

''(1) has the appropriate management, engineering, technical, and financial expertise needed to meet the responsibilities assigned pursuant to subsection (c);

''(2) is provided the resources and support (including systems engineering expertise, cost-estimating expertise, and software development expertise) needed to meet such responsibilities; and

''(3) is assigned to the program manager position for such program until such time as such program receives Milestone B approval (or Key Decision Point B approval in the case of a space program), unless removed for cause or due to exceptional circumstances.

''(e) WAIVER AUTHORITY.—The Secretary may waive the requirement in paragraph (3) of subsection (d) upon a determination that the program definition period will take so long that it would not be appropriate for a single individual to serve as program manager for the entire period covered by such paragraph.''

TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS FOR PROGRAM EXECUTION PERIODS

Pub. L. 114–92, div. A, title VIII, § 827, Nov. 25, 2015, 129 Stat. 909, provided that:

''(a) REVISED GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall revise Department of Defense guidance for major defense acquisition programs to address the tenure and accountability of program managers for the program execution period of major defense acquisition programs.

''(b) PROGRAM EXECUTION PERIOD.—For purposes of this section, the term 'program execution period', with respect to a major defense acquisition program, means the period beginning with Milestone B approval (or Key Decision Point B approval in the case of a space program) and ending with declaration of initial operational capability.

''(c) RESPONSIBILITIES.—The revised guidance required by subsection (a) shall—

''(1) require the program manager for the program execution period of a major defense acquisition program to enter into a performance agreement with the manager's immediate supervisor for such program within six months of assignment, that—

''(A) establishes expected parameters for the cost, schedule, and performance of the program consistent with the business case for the program;

''(B) provides the commitment of the supervisor to provide the level of funding and resources required to meet such parameters; and

''(C) provides the assurance of the program manager that such parameters are achievable and that the program manager will be accountable for meeting such parameters; and

''(2) provide the program manager with the authority to—

''(A) consult on the addition of new program requirements that would be inconsistent with the parameters established in the performance agreement entered into pursuant to paragraph (1);

''(B) recommend trade-offs between cost, schedule, and performance, provided that such trade-offs are consistent with the parameters established in the performance agreement entered into pursuant to paragraph (1); and

''(C) develop such interim goals and milestones as may be required to achieve the parameters established in the performance agreement entered into pursuant to paragraph (1).

''(d) QUALIFICATIONS, RESOURCES, AND TENURE.—The Secretary shall ensure that each program manager for the program execution period of a defense acquisition program—

''(1) has the appropriate management, engineering, technical, and financial expertise needed to meet the responsibilities assigned pursuant to subsection (c);

''(2) is provided the resources and support (including systems engineering expertise, cost estimating expertise, and software development expertise) needed to meet such responsibilities; and

''(3) is assigned to the program manager position for such program during the program execution period, unless removed for cause or due to exceptional circumstances.

''(e) WAIVER AUTHORITY.—The immediate supervisor of a program manager for a major defense acquisition program may waive the requirement in paragraph (3) of subsection (d) upon a determination that the program execution period will take so long that it would not be appropriate for a single individual to serve as program manager for the entire program execution period.''

PENALTY FOR COST OVERRUNS

Pub. L. 114–92, div. A, title VIII, § 828, Nov. 25, 2015, 129 Stat. 910, provided that:

''(a) IN GENERAL.—For each fiscal year beginning with fiscal year 2015, the Secretary of each military department shall pay a penalty for cost overruns on the covered major defense acquisition programs of the military department.

''(b) CALCULATION OF PENALTY.—For the purposes of this section:

''(1) The amount of the cost overrun or underrun on any major defense acquisition program or subprogram in a fiscal year is the difference between the current program acquisition unit cost for the program or subprogram and the program acquisition unit cost for the program as shown in the original Baseline Estimate for the program or subprogram, multiplied by the quantity of items to be purchased under the program or subprogram, as reported in the final Selected Acquisition Report for the fiscal year

in accordance with section 2432 of title 10, United States Code.

''(2) Cost overruns or underruns for covered major defense acquisition programs that are joint programs of more than one military department shall be allocated among the military departments in percentages determined by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(3) The cumulative amount of cost overruns for a military department in a fiscal year is the sum of the cost overruns and cost underruns for all covered major defense acquisition programs of the department in the fiscal year (including cost overruns or underruns allocated to the military department in accordance with paragraph (2)).

''(4) The cost overrun penalty for a military department in a fiscal year is three percent of the cumulative amount of cost overruns of the military department in the fiscal year, as determined pursuant to paragraph (3), except that the cost overrun penalty may not be a negative amount.

''(c) TRANSFER OF FUNDS.—

''(1) REDUCTION OF RESEARCH, DEVELOPMENT, TEST, AND EVALUATION ACCOUNTS.—Not later than 60 days after the end of each fiscal year beginning with fiscal year 2015, the Secretary of each military department shall reduce each research, development, test, and evaluation account of the military department by the percentage determined under paragraph (2), and remit such amount to the Secretary of Defense.

''(2) DETERMINATION OF AMOUNT.—The percentage reduction to research, development, test, and evaluation accounts of a military department referred to in paragraph (1) is the percentage reduction to such accounts necessary to equal the cost overrun penalty for the fiscal year for such department determined pursuant to subsection (b)(4).

''(3) CREDITING OF FUNDS.—Any amount remitted under paragraph (1) shall be credited to the Rapid Prototyping Fund established pursuant to section 804 of this Act [set out as a note under section 2302 of this title].

''(d) COVERED PROGRAMS.—A major defense acquisition program is covered under this section if the original Baseline Estimate was established for such program under paragraph (1) or (2) of section 2435(d) of title 10, United States Code, on or after May 22, 2009 (which is the date of the enactment of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23)).''

IMPROVING ANALYTIC SUPPORT TO SYSTEMS ACQUISITION AND ALLOCATION OF ACQUISITION, INTELLIGENCE, SURVEILLANCE AND RECONNAISSANCE ASSETS

Pub. L. 113–291, div. A, title X, §1058, Dec. 19, 2014, 128 Stat. 3501, provided that:

''(a) GUIDANCE.—Not later than 120 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall review and issue or revise guidance to components of the Department of Defense to improve the application of operations research and systems analysis to—

''(1) the requirements process for acquisition of major defense acquisition programs and major automated information systems; and

''(2) the allocation of intelligence, surveillance, and reconnaissance systems to the combatant commands.

''(b) BRIEFING OF CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall brief—

''(1) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on any guidance issued or revised under subsection (a); and

''(2) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on any guidance issued or revised under subsection (a)(2) relevant to intelligence.''

LIMITATION ON USE OF COST-TYPE CONTRACTS

Pub. L. 112–239, div. A, title VIII, §811, Jan. 2, 2013, 126 Stat. 1828, provided that:

''(a) PROHIBITION WITH RESPECT TO PRODUCTION OF MAJOR DEFENSE ACQUISITION PROGRAMS.—Not later than 120 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall modify the acquisition regulations of the Department of Defense to prohibit the Department from entering into cost-type contracts for the production of major defense acquisition programs.

''(b) EXCEPTION.—

''(1) IN GENERAL.—The prohibition under subsection (a) shall not apply in the case of a particular cost-type contract if the Under Secretary of Defense for Acquisition, Technology, and Logistics provides written certification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that a cost-type contract is needed to provide a required capability in a timely and cost-effective manner.

''(2) SCOPE OF EXCEPTION.—In any case for which the Under Secretary grants an exception under paragraph (1), the Under Secretary shall take affirmative steps to make sure that the use of cost-type pricing is limited to only those line items or portions of the contract where such pricing is needed to achieve the purposes of the exception. A written certification under paragraph (1) shall be accompanied by an explanation of the steps taken under this paragraph.

''(c) DEFINITIONS.—In this section:

''(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' has the meaning given the term in section 2430(a) of title 10, United States Code.

''(2) PRODUCTION OF A MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'production of a major defense acquisition program' means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or any activity otherwise defined as Milestone C under Department of Defense Instruction 5000.02 or related authorities.

''(3) CONTRACT FOR THE PRODUCTION OF A MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'contract for the production of a major defense acquisition program'—

''(A) means a prime contract for the production of a major defense acquisition program; and

''(B) does not include individual line items for segregable efforts or contracts for the incremental improvement of systems that are already in production (other than contracts for major upgrades that are themselves major defense acquisition programs).

''(d) APPLICABILITY.—The requirements of this section shall apply to contracts for the production of major defense acquisition programs entered into on or after October 1, 2014.''

ESTIMATES OF POTENTIAL TERMINATION LIABILITY OF CONTRACTS FOR THE DEVELOPMENT OR PRODUCTION OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 112–239, div. A, title VIII, §812, Jan. 2, 2013, 126 Stat. 1829, provided that:

''(a) DEPARTMENT OF DEFENSE REVIEW.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall review relevant acquisition guidance and take appropriate actions to ensure that program managers for major defense acquisition programs are preparing estimates of potential termination liability for covered contracts, including how such termination liability is likely to increase or decrease over the period of performance, and are giving appropriate consideration to such estimates before making recommendations on decisions to enter into or terminate such contracts.

''(b) COMPTROLLER GENERAL OF THE UNITED STATES REPORT.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Comptroller

General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the extent to which the Department of Defense is considering potential termination liability as a factor in entering into and in terminating covered contracts.

''(2) MATTERS TO BE ADDRESSED.—The report required by paragraph (1) shall include, at a minimum, an assessment of the following:

''(A) The extent to which the Department of Defense developed estimates of potential termination liability for covered contracts entered into before the date of the enactment of this Act and how such termination liability was likely to increase or decrease over the period of performance before making decisions to enter into or terminate such contracts.

''(B) The extent to which the Department considered estimates of potential termination liability for such contracts and how such termination liability was likely to increase or decrease over the period of performance as a risk factor in deciding whether to enter into or terminate such contracts.

''(c) COVERED CONTRACTS.—For purposes of this section, a covered contract is a contract for the development or production of a major defense acquisition program for which potential termination liability could reasonably be expected to exceed $100,000,000.

''(d) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term 'major defense acquisition program' has the meaning given that term in section 2430(a) of title 10, United States Code.''

ASSESSMENT, MANAGEMENT, AND CONTROL OF OPERATING AND SUPPORT COSTS FOR MAJOR WEAPON SYSTEMS

Pub. L. 112–81, div. A, title VIII, § 832, Dec. 31, 2011, 125 Stat. 1504, as amended by Pub. L. 112–239, div. A, title X, § 1076(a)(12), Jan. 2, 2013, 126 Stat. 1948, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue guidance on actions to be taken to assess, manage, and control Department of Defense costs for the operation and support of major weapon systems.

''(b) ELEMENTS.—The guidance required by subsection (a) shall, at a minimum—

''(1) be issued in conjunction with the comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems required by section 805 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2403; 10 U.S.C. 2301 [2302] note);

''(2) require the military departments to retain each estimate of operating and support costs that is developed at any time during the life cycle of a major weapon system, together with supporting documentation used to develop the estimate;

''(3) require the military departments to update estimates of operating and support costs periodically throughout the life cycle of a major weapon system, to determine whether preliminary information and assumptions remain relevant and accurate, and identify and record reasons for variances;

''(4) establish standard requirements for the collection of data on operating and support costs for major weapon systems and require the military departments to revise their Visibility and Management of Operating and Support Costs (VAMOSC) systems to ensure that they collect complete and accurate data in compliance with such requirements and make such data available in a timely manner;

''(5) establish standard requirements for the collection and reporting of data on operating and support costs for major weapon systems by contractors performing weapon system sustainment functions in an appropriate format, and develop contract clauses to ensure that contractors comply with such requirements;

''(6) require the military departments—

''(A) to collect and retain data from operational and developmental testing and evaluation on the reliability and maintainability of major weapon systems; and

''(B) to use such data to inform system design decisions, provide insight into sustainment costs, and inform estimates of operating and support costs for such systems;

''(7) require the military departments to ensure that sustainment factors are fully considered at key life cycle management decision points and that appropriate measures are taken to reduce operating and support costs by influencing system design early in development, developing sound sustainment strategies, and addressing key drivers of costs;

''(8) require the military departments to conduct an independent logistics assessment of each major weapon system prior to key acquisition decision points (including milestone decisions) to identify features that are likely to drive future operating and support costs, changes to system design that could reduce such costs, and effective strategies for managing such costs;

''(9) include—

''(A) reliability metrics for major weapon systems; and

''(B) requirements on the use of metrics under subparagraph (A) as triggers—

''(i) to conduct further investigation and analysis into drivers of those metrics; and

''(ii) to develop strategies for improving reliability, availability, and maintainability of such systems at an affordable cost; and

''(10) require the military departments to conduct periodic reviews of operating and support costs of major weapon systems after such systems achieve initial operational capability to identify and address factors resulting in growth in operating and support costs and adapt support strategies to reduce such costs.

''(c) RETENTION OF DATA ON OPERATING AND SUPPORT COSTS.—

''(1) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall be responsible for developing and maintaining a database on operating and support estimates, supporting documentation, and actual operating and support costs for major weapon systems.

''(2) SUPPORT.—The Secretary of Defense shall ensure that the Director, in carrying out such responsibility—

''(A) promptly receives the results of all cost estimates and cost analyses conducted by the military departments with regard to operating and support costs of major weapon systems;

''(B) has timely access to any records and data of the military departments (including classified and proprietary information) that the Director considers necessary to carry out such responsibility; and

''(C) with the concurrence of the Under Secretary of Defense for Acquisition, Technology, and Logistics, may direct the military departments to collect and retain information necessary to support the database.

''(d) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term 'major weapon system' has the meaning given that term in section 2379(f) of title 10, United States Code.''

MANAGEMENT OF MANUFACTURING RISK IN MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–383, div. A, title VIII, § 812, Jan. 7, 2011, 124 Stat. 4264, as amended by Pub. L. 112–81, div. A, title VIII, § 834, Dec. 31, 2011, 125 Stat. 1506, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall issue comprehensive guidance on the management of manufacturing risk in major defense acquisition programs.

''(b) ELEMENTS.—The guidance issued under subsection (a) shall, at a minimum—

''(1) require the use of manufacturing readiness levels or other manufacturing readiness standards as a basis for measuring, assessing, reporting, and communicating manufacturing readiness and risk on major defense acquisition programs throughout the Department of Defense;

''(2) provide guidance on the definition of manufacturing readiness levels or other manufacturing readiness standards and how manufacturing readiness levels or other manufacturing readiness standards should be used to assess manufacturing risk and readiness in major defense acquisition programs;

''(3) specify manufacturing readiness levels or other manufacturing readiness standards that should be achieved at key milestones and decision points for major defense acquisition programs;

''(4) provide for the tailoring of manufacturing readiness levels or other manufacturing readiness standards to address the unique characteristics of specific industry sectors or weapon system portfolios;

''(5) identify tools and models that may be used to assess, manage, and reduce risks that are identified in the course of manufacturing readiness assessments for major defense acquisition programs; and

''(6) require appropriate consideration of the manufacturing readiness and manufacturing readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

''(c) MANUFACTURING READINESS EXPERTISE.—The Secretary shall ensure that—

''(1) the acquisition workforce chapter of the annual strategic workforce plan required by section 115b of title 10, United States Code, includes an assessment of the critical manufacturing readiness knowledge and skills needed in the acquisition workforce and a plan of action for addressing any gaps in such knowledge and skills; and

''(2) the need of the Department for manufacturing readiness knowledge and skills is given appropriate consideration, comparable to the consideration given to other program management functions, as the Department identifies areas of need for funding through the Defense Acquisition Workforce Development Fund established in accordance with the requirements of section 1705 of title 10, United States Code.

''(d) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term 'major defense acquisition program' has the meaning given that term in section 2430(a) of title 10, United States Code.''

DEVELOPMENTAL TEST AND EVALUATION AND SYSTEMS ENGINEERING IN THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES

Pub. L. 111–23, title I, §102(b), May 22, 2009, 123 Stat. 1714, as amended by Pub. L. 111–383, div. A, title VIII, §813(a), title IX, §901(*l*)(1), Jan. 7, 2011, 124 Stat. 4265, 4326, provided that:

''(1) PLANS.—The service acquisition executive of each military department and each Defense Agency with responsibility for a major defense acquisition program shall develop and implement plans to ensure the military department or Defense Agency concerned has provided appropriate resources for each of the following:

''(A) Developmental testing organizations with adequate numbers of trained personnel in order to—

''(i) ensure that developmental testing requirements are appropriately addressed in the translation of operational requirements into contract specifications, in the source selection process, and in the preparation of requests for proposals on all major defense acquisition programs;

''(ii) participate in the planning of developmental test and evaluation activities, including the preparation and approval of a developmental test and evaluation plan within the test and evaluation master plan for each major defense acquisition program; and

''(iii) participate in and oversee the conduct of developmental testing, the analysis of data, and the preparation of evaluations and reports based on such testing.

''(B) Development planning and systems engineering organizations with adequate numbers of trained personnel in order to—

''(i) support key requirements, acquisition, and budget decisions made for each major defense acquisition program prior to Milestone A approval and Milestone B approval through a rigorous systems analysis and systems engineering process;

''(ii) include a robust program for improving reliability, availability, maintainability, and sustainability as an integral part of design and development within the systems engineering master plan for each major defense acquisition program; and

''(iii) identify systems engineering requirements, including reliability, availability, maintainability, and lifecycle management and sustainability requirements, during the Joint Capabilities Integration Development System process, and incorporate such systems engineering requirements into contract requirements for each major defense acquisition program.

''(2) REPORTS BY SERVICE ACQUISITION EXECUTIVES.—Not later than 180 days after the date of the enactment of this Act [May 22, 2009], and not later than February 15 of each year from 2011 through 2014, the service acquisition executive of each military department and each Defense Agency with responsibility for a major defense acquisition program shall submit to the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation and the Deputy Assistant Secretary of Defense for Systems Engineering a report on the extent to which—

''(A) such military department or Defense Agency has implemented, or is implementing, the plan required by paragraph (1); and

''(B) additional authorities or resources are needed to attract, develop, retain, and reward developmental test and evaluation personnel and systems engineers with appropriate levels of hands-on experience and technical expertise to meet the needs of such military department or Defense Agency.

''(3) ASSESSMENT OF REPORTS BY DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR DEVELOPMENTAL TEST AND EVALUATION AND DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SYSTEMS ENGINEERING.—Each annual report from 2010 through 2014 submitted to Congress by the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation and the Deputy Assistant Secretary of Defense for Systems Engineering under section 139d(c) [now 139b(d)] of title 10, United States Code (as added by subsection (a)), shall include an assessment by the Deputy Assistant Secretaries of Defense of the reports submitted by the service acquisition executives to the Deputy Assistant Secretaries of Defense under paragraph (2).''

PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title I, §103, May 22, 2009, 123 Stat. 1715, which authorized the Secretary of Defense to designate a senior official as responsible for performance assessments and root cause analyses for major defense acquisition programs, was transferred to chapter 144 of this title and redesignated as section 2438 by Pub. L. 111–383, div. A, title IX, §901(d), Jan. 7, 2011, 124 Stat. 4321.

ACQUISITION STRATEGIES TO ENSURE COMPETITION THROUGHOUT THE LIFECYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, §202, May 22, 2009, 123 Stat. 1720, as amended by Pub. L. 112–81, div. A, title VIII, §837, Dec. 31, 2011, 125 Stat. 1509; Pub. L. 112–239, div. A, title VIII, §825, Jan. 2, 2013, 126 Stat. 1833, provided that:

''(a) ACQUISITION STRATEGIES TO ENSURE COMPETITION.—The Secretary of Defense shall ensure that the

acquisition strategy for each major defense acquisition program includes—

''(1) measures to ensure competition, or the option of competition, at both the prime contract level and the subcontract level (at such tier or tiers as are appropriate) of such program throughout the life-cycle of such program as a means to improve contractor performance; and

''(2) adequate documentation of the rationale for the selection of the subcontract tier or tiers under paragraph (1).

''(b) MEASURES TO ENSURE COMPETITION.—The measures to ensure competition, or the option of competition, for purposes of subsection (a)(1) may include measures to achieve the following, in appropriate cases if such measures are cost-effective:

''(1) Competitive prototyping.

''(2) Dual-sourcing.

''(3) Unbundling of contracts.

''(4) Funding of next-generation prototype systems or subsystems.

''(5) Use of modular, open architectures to enable competition for upgrades.

''(6) Use of build-to-print approaches to enable production through multiple sources.

''(7) Acquisition of complete technical data packages.

''(8) Periodic competitions for subsystem upgrades.

''(9) Licensing of additional suppliers.

''(10) Periodic system or program reviews to address long-term competitive effects of program decisions.

''(c) ADDITIONAL MEASURES TO ENSURE COMPETITION AT SUBCONTRACT LEVEL.—The Secretary shall take actions to ensure competition or the option of competition at the subcontract level on major defense acquisition programs by—

''(1) where appropriate, breaking out a major subsystem, conducting a separate competition for the subsystem, and providing the subsystem to the prime contractor as Government-furnished equipment;

''(2) requiring prime contractors to give full and fair consideration to qualified sources other than the prime contractor for the development or construction of major subsystems and components of major weapon systems;

''(3) providing for government surveillance of the process by which prime contractors consider such sources and determine whether to conduct such development or construction in-house or through a subcontract; and

''(4) providing for the assessment of the extent to which a contractor has given full and fair consideration to qualified sources other than the contractor in sourcing decisions as a part of past performance evaluations.

''(d) CONSIDERATION OF COMPETITION THROUGHOUT MAINTENANCE AND SUSTAINMENT OF MAJOR WEAPON SYSTEMS AND SUBSYSTEMS.—Whenever a decision regarding source of repair results in a plan to award a contract for performance of maintenance and sustainment of a major weapon system or subsystem of a major weapon system, the Secretary shall take actions to ensure that, to the maximum extent practicable and consistent with statutory requirements, contracts for such maintenance and sustainment, or for components needed for such maintenance and sustainment, are awarded on a competitive basis and give full consideration to all sources (including sources that partner or subcontract with public or private sector repair activities).

''(e) APPLICABILITY.—

''(1) STRATEGY AND MEASURES TO ENSURE COMPETITION.—The requirements of subsections (a) and (b) shall apply to any acquisition plan for a major defense acquisition program that is developed or revised on or after the date that is 60 days after the date of the enactment of this Act [May 22, 2009].

''(2) ADDITIONAL ACTIONS.—The actions required by subsections (c) and (d) shall be taken within 180 days after the date of the enactment of this Act.''

PROTOTYPING REQUIREMENTS FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, § 203, May 22, 2009, 123 Stat. 1722, as amended by Pub. L. 111–383, div. A, title VIII, § 813(b), Jan. 7, 2011, 124 Stat. 4265, which directed the Secretary of Defense to make certain modifications to Department of Defense guidelines related to competitive prototyping for major defense acquisition programs and waivers, was repealed by Pub. L. 114–92, div. A, title VIII, § 822(b), Nov. 25, 2015, 129 Stat. 902.

ORGANIZATIONAL CONFLICTS OF INTEREST IN MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, § 207(a)–(c), May 22, 2009, 123 Stat. 1728, 1729, provided that:

''(a) REVISED REGULATIONS REQUIRED.—Not later than 270 days after the date of the enactment of this Act [May 22, 2009], the Secretary of Defense shall revise the Defense Supplement to the Federal Acquisition Regulation to provide uniform guidance and tighten existing requirements for organizational conflicts of interest by contractors in major defense acquisition programs.

''(b) ELEMENTS.—The revised regulations required by subsection (a) shall, at a minimum—

''(1) address organizational conflicts of interest that could arise as a result of—

''(A) lead system integrator contracts on major defense acquisition programs and contracts that follow lead system integrator contracts on such programs, particularly contracts for production;

''(B) the ownership of business units performing systems engineering and technical assistance functions, professional services, or management support services in relation to major defense acquisition programs by contractors who simultaneously own business units competing to perform as either the prime contractor or the supplier of a major subsystem or component for such programs;

''(C) the award of major subsystem contracts by a prime contractor for a major defense acquisition program to business units or other affiliates of the same parent corporate entity, and particularly the award of subcontracts for software integration or the development of a proprietary software system architecture; or

''(D) the performance by, or assistance of, contractors in technical evaluations on major defense acquisition programs;

''(2) ensure that the Department of Defense receives advice on systems architecture and systems engineering matters with respect to major defense acquisition programs from federally funded research and development centers or other sources independent of the prime contractor;

''(3) require that a contract for the performance of systems engineering and technical assistance functions for a major defense acquisition program contains a provision prohibiting the contractor or any affiliate of the contractor from participating as a prime contractor or a major subcontractor in the development or construction of a weapon system under the program; and

''(4) establish such limited exceptions to the requirement in paragraphs (2) and (3) as may be necessary to ensure that the Department of Defense has continued access to advice on systems architecture and systems engineering matters from highly-qualified contractors with domain experience and expertise, while ensuring that such advice comes from sources that are objective and unbiased.

''(c) CONSULTATION IN REVISION OF REGULATIONS.—

''(1) RECOMMENDATIONS OF PANEL ON CONTRACTING INTEGRITY.—Not later than 90 days after the date of the enactment of this Act [May 22, 2009], the Panel on Contracting Integrity established pursuant to section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2320) [10 U.S.C. 2304 note] shall present recommendations to the Secretary of Defense on measures

to eliminate or mitigate organizational conflicts of interest in major defense acquisition programs.

''(2) CONSIDERATION OF RECOMMENDATIONS.—In developing the revised regulations required by subsection (a), the Secretary shall consider the following:

''(A) The recommendations presented by the Panel on Contracting Integrity pursuant to paragraph (1).

''(B) Any findings and recommendations of the Administrator for Federal Procurement Policy and the Director of the Office of Government Ethics pursuant to section 841(b) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4539) [41 U.S.C. 2303 note].''

CONFIGURATION STEERING BOARDS FOR COST CONTROL UNDER MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 110–417, [div. A], title VIII, §814, Oct. 14, 2008, 122 Stat. 4528, as amended by Pub. L. 114–92, div. A, title VIII, §830, Nov. 25, 2015, 129 Stat. 912, provided that:

''(a) CONFIGURATION STEERING BOARDS.—Each Secretary of a military department shall establish one or more boards (to be known as a 'Configuration Steering Board') for the major defense acquisition programs of such department.

''(b) COMPOSITION.—

''(1) CHAIR.—Each Configuration Steering Board under this section shall be chaired by the service acquisition executive of the military department concerned.

''(2) PARTICULAR MEMBERS.—Each Configuration Steering Board under this section shall include a representative of the following:

''(A) The Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(B) The Chief of Staff of the Armed Force concerned.

''(C) Other Armed Forces, as appropriate.

''(D) The Joint Staff.

''(E) The Comptroller of the military department concerned.

''(F) The military deputy to the service acquisition executive concerned.

''(G) The program executive officer for the major defense acquisition program concerned.

''(H) Other senior representatives of the Office of the Secretary of Defense and the military department concerned, as appropriate.

''(c) RESPONSIBILITIES.—

''(1) IN GENERAL.—The Configuration Steering Board for a major defense acquisition program under this section shall be responsible for the following:

''(A) Monitoring changes in program requirements and ensuring the Chief of Staff of the Armed Force concerned, in consultation with the Secretary of the military department concerned, approves of any proposed changes that could have an adverse effect on program cost or schedule.

''(B) Preventing unnecessary changes to program requirements and system configuration that could have an adverse impact on program cost or schedule.

''(C) Mitigating the adverse cost and schedule impact of any changes to program requirements or system configuration that may be required.

''(D) Ensuring that the program delivers as much planned capability as possible, at or below the relevant program baseline.

''(2) DISCHARGE OF RESPONSIBILITIES.—In discharging its responsibilities under this section with respect to a major defense acquisition program, a Configuration Steering Board shall—

''(A) review and approve or disapprove any proposed changes to program requirements or system configuration that have the potential to adversely impact program cost or schedule; and

''(B) review and recommend proposals to reduce program requirements that have the potential to improve program cost or schedule in a manner consistent with program objectives.

''(3) PRESENTATION OF RECOMMENDATIONS ON REDUCTION IN REQUIREMENTS.—Any recommendation for a proposed reduction in requirements that is made by a Configuration Steering Board under paragraph (2)(B) shall be presented to appropriate organizations of the Joint Staff and the military departments responsible for such requirements for review and approval in accordance with applicable procedures.

''(4) ANNUAL CONSIDERATION OF EACH MAJOR DEFENSE ACQUISITION PROGRAM.—The Secretary of the military department concerned shall ensure that a Configuration Steering Board under this section meets to consider each major defense acquisition program of such military department at least once each year.

''(5) CERTIFICATION OF COST AND SCHEDULE DEVIATIONS DURING SYSTEM DESIGN AND DEVELOPMENT.—For a major defense acquisition program that received an initial Milestone B approval during fiscal year 2008, a Configuration Steering Board may not approve any proposed alteration to program requirements or system configuration if such an alteration would—

''(A) increase the cost (including any increase for expected inflation or currency exchange rates) for system development and demonstration by more than 25 percent; or

''(B) extend the schedule for key events by more than 15 percent of the total number of months between the award of the system development and demonstration contract and the scheduled Milestone C approval date,

unless the Under Secretary of Defense for Acquisition, Technology, and Logistics certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], and includes in the certification supporting rationale, that approving such alteration to program requirements or system configuration is in the best interest of the Department of Defense despite the cost and schedule impacts to system development and demonstration of such program.

''(d) APPLICABILITY.—

''(1) IN GENERAL.—The requirements of this section shall apply with respect to any major defense acquisition program that is commenced before, on, or after the date of the enactment of this Act [Oct. 14, 2008].

''(2) CURRENT PROGRAMS.—In the case of any major defense acquisition program that is ongoing as of the date of the enactment of this Act, a Configuration Steering Board under this section shall be established for such program not later than 60 days after the date of the enactment of this Act.

''(e) GUIDANCE ON AUTHORITIES OF PROGRAM MANAGERS AFTER MILESTONE B.—

''(1) [Amended section 853(d)(2) of Pub. L. 109–364, set out below.]

''(2) APPLICABILITY.—The Secretary of Defense shall modify the guidance described in section 853(d) of the John Warner National Defense Authorization Act for Fiscal Year 2007 [Pub. L. 109–364; set out below] in order to take into account the amendment made by paragraph (1) not later than 60 days after the date of the enactment of this Act [Oct. 14, 2008].

''(f) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term 'major defense acquisition program' has the meaning given that term in section 2430(a) of title 10, United States Code.''

PRESERVATION OF TOOLING FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 110–417, [div. A], title VIII, §815, Oct. 14, 2008, 122 Stat. 4530, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall issue guidance requiring the preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program. Such guidance shall—

''(1) require that the milestone decision authority approve a plan, including the identification of any contract clauses, facilities, and funding required, for the preservation and storage of such tooling prior to Milestone C approval;

''(2) require that the milestone decision authority periodically review the plan required by paragraph (1) prior to the end of the service life of the end item, to ensure that the preservation and storage of such tooling remains adequate and in the best interest of the Department of Defense;

''(3) provide a mechanism for the Secretary to waive the requirement for preservation and storage of unique production tooling, or any category of unique production tooling, if the Secretary—

''(A) makes a written determination that such a waiver is in the best interest of the Department of Defense; and

''(B) notifies the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the waiver upon making such determination; and

''(4) provide such criteria as necessary to guide a determination made pursuant to paragraph (3)(A).

''(b) DEFINITIONS.—In this section:

''(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' has the meaning provided in section 2430 of title 10, United States Code.

''(2) MILESTONE DECISION AUTHORITY.—The term 'milestone decision authority' has the meaning provided in section 2366a(f)(2) [now 2366b(g)(3)] of such title.

''(3) MILESTONE C APPROVAL.—The term 'Milestone C approval' has the meaning provided in section 2366(e)(8) of such title.''

DUTIES OF PRINCIPAL MILITARY DEPUTIES

Pub. L. 110–181, div. A, title IX, § 908(d), Jan. 28, 2008, 122 Stat. 278, as amended by Pub. L. 114–92, div. A, title VIII, § 802(c), Nov. 25, 2015, 129 Stat. 879, provided that: ''Each Principal Military Deputy to a service acquisition executive shall be responsible for—

''(1) keeping the Chief of Staff of the Armed Force concerned informed of the progress of major defense acquisition programs;

''(2) informing the Chief of Staff on a continuing basis of any developments on major defense acquisition programs, which may require new or revisited trade-offs among cost, schedule, technical feasibility, and performance, including—

''(A) significant cost growth or schedule slippage; and

''(B) requirements creep (as defined in section 2547(c)(1) of title 10, United States Code); and

''(3) ensuring that the views of the Chief of Staff on cost, schedule, technical feasibility, and performance trade-offs are strongly considered by program managers and program executive officers in all phases of the acquisition process.''

REQUIREMENTS MANAGEMENT CERTIFICATION TRAINING PROGRAM

Pub. L. 109–364, div. A, title VIII, § 801, Oct. 17, 2006, 120 Stat. 2312, provided that:

''(a) TRAINING PROGRAM.—

''(1) REQUIREMENT.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, in consultation with the Defense Acquisition University, shall develop a training program to certify military and civilian personnel of the Department of Defense with responsibility for generating requirements for major defense acquisition programs (as defined in section 2430(a) of title 10, United States Code).

''(2) COMPETENCY AND OTHER REQUIREMENTS.—The Under Secretary shall establish competency requirements for the personnel undergoing the training program. The Under Secretary shall define the target population for such training program by identifying which military and civilian personnel should have responsibility for generating requirements. The Under Secretary also may establish other training programs for personnel not subject to chapter 87 of title 10, United States Code, who contribute significantly to other types of acquisitions by the Department of Defense.

''(b) APPLICABILITY.—Effective on and after September 30, 2008, a member of the Armed Forces or an employee of the Department of Defense with authority to generate requirements for a major defense acquisition program may not continue to participate in the requirements generation process unless the member or employee successfully completes the certification training program developed under this section.

''(c) REPORTS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an interim report, not later than March 1, 2007, and a final report, not later than March 1, 2008, on the implementation of the training program required under this section.''

PROGRAM MANAGER EMPOWERMENT AND ACCOUNTABILITY

Pub. L. 109–364, div. A, title VIII, § 853, Oct. 17, 2006, 120 Stat. 2342, as amended by Pub. L. 110–417, [div. A], title VIII, § 814(e)(1), Oct. 14, 2008, 122 Stat. 4530, provided that:

''(a) STRATEGY.—The Secretary of Defense shall develop a comprehensive strategy for enhancing the role of Department of Defense program managers in developing and carrying out defense acquisition programs.

''(b) MATTERS TO BE ADDRESSED.—The strategy required by this section shall address, at a minimum—

''(1) enhanced training and educational opportunities for program managers;

''(2) increased emphasis on the mentoring of current and future program managers by experienced senior executives and program managers within the Department;

''(3) improved career paths and career opportunities for program managers;

''(4) additional incentives for the recruitment and retention of highly qualified individuals to serve as program managers;

''(5) improved resources and support (including systems engineering expertise, cost estimating expertise, and software development expertise) for program managers;

''(6) improved means of collecting and disseminating best practices and lessons learned to enhance program management throughout the Department;

''(7) common templates and tools to support improved data gathering and analysis for program management and oversight purposes;

''(8) increased accountability of program managers for the results of defense acquisition programs; and

''(9) enhanced monetary and nonmonetary awards for successful accomplishment of program objectives by program managers.

''(c) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS BEFORE MILESTONE B.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall revise Department of Defense guidance for major defense acquisition programs to address the qualifications, resources, responsibilities, tenure, and accountability of program managers for the program development period (before Milestone B approval (or Key Decision Point B approval in the case of a space program)).

''(d) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS AFTER MILESTONE B.—Not later than 180 days after the date of enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall revise Department of Defense guidance for major defense acquisition programs to address the qualifications, resources, responsibilities, tenure and accountability of program managers for the program execution period (from Milestone B approval (or Key Decision Point B

approval in the case of a space program) until the delivery of the first production units of a program). The guidance issued pursuant to this subsection shall address, at a minimum—

''(1) the need for a performance agreement between a program manager and the milestone decision authority for the program, setting forth expected parameters for cost, schedule, and performance, and appropriate commitments by the program manager and the milestone decision authority to ensure that such parameters are met;

''(2) authorities available to the program manager, including—

''(A) the authority to object to the addition of new program requirements that would be inconsistent with the parameters established at Milestone B (or Key Decision Point B in the case of a space program) and reflected in the performance agreement, unless such requirements are approved by the appropriate Configuration Steering Board; and

''(B) the authority to recommend to the appropriate Configuration Steering Board reduced program requirements that have the potential to improve program cost or schedule in a manner consistent with program objectives; and

''(3) the extent to which a program manager for such period should continue in the position without interruption until the delivery of the first production units of the program.

''(e) REPORTS.—

''(1) REPORT BY SECRETARY OF DEFENSE.—Not later than 270 days after the date of enactment of this Act [Oct. 17, 2006], 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 the strategy developed pursuant to subsection (a) and the guidance issued pursuant to subsections (b) and (c).

''(2) REPORT BY COMPTROLLER GENERAL.—Not later than one year after the date of enactment of this Act, the Comptroller General shall submit to the congressional defense committees a report on the actions taken by the Secretary of Defense to implement the requirements of this section.''

MANAGEMENT OF NATIONAL SECURITY AGENCY MODERNIZATION PROGRAM

Pub. L. 108–136, div. A, title IX, §924, Nov. 24, 2003, 117 Stat. 1576, provided that:

''(a) MANAGEMENT OF ACQUISITION PROGRAMS THROUGH USD (AT&L).—The Secretary of Defense shall direct that, effective as of the date of the enactment of this Act [Nov. 24, 2003], acquisitions under the National Security Agency Modernization Program shall be directed and managed by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(b) APPLICABILITY OF MAJOR DEFENSE ACQUISITION PROGRAM AUTHORITIES.—(1) Each project designated as a major defense acquisition program under paragraph (2) shall be managed under the laws, policies, and procedures that are applicable to major defense acquisition programs (as defined in section 2430 of title 10, United States Code).

''(2) The Secretary of Defense (acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics) shall designate those projects under the National Security Agency Modernization Program that are to be managed as major defense acquisition programs.

''(c) MILESTONE DECISION AUTHORITY.—(1) The authority to make a decision that a program is authorized to proceed from one milestone stage into another (referred to as the milestone decision authority) may only be exercised by the Under Secretary of Defense for Acquisition, Technology, and Logistics for the following:

''(A) Each project of the National Security Agency Modernization Program that is to be managed as a major defense acquisition program, as designated under subsection (b).

''(B) Each major system under the National Security Agency Modernization Program.

''(2) The limitation in paragraph (1) shall terminate on, and the Under Secretary may delegate the milestone decision authority referred to in paragraph (1) to the Director of the National Security Agency at any time after, the date that is the later of—

''(A) September 30, 2005, or

''(B) the date on which the Under Secretary submits to the appropriate committees of Congress a notification described in paragraph (3).

''(3) A notification described in this paragraph is a notification by the Under Secretary of the Under Secretary's intention to delegate the milestone decision authority referred to in paragraph (1) to the Director of the National Security Agency, together with a detailed discussion of the justification for that delegation. Such a notification may not be submitted until—

''(A) the Under Secretary has determined (after consultation with the Under Secretary of Defense for Intelligence and the Deputy Director of Central Intelligence for Community Management) that the Director has implemented acquisition management policies, procedures, and practices that are sufficient to ensure that acquisitions by the National Security Agency are conducted in a manner consistent with sound, efficient acquisition practices;

''(B) the Under Secretary has consulted with the Under Secretary of Defense for Intelligence and the Deputy Director of Central Intelligence for Community Management on the delegation of such milestone decision authority to the Director; and

''(C) the Secretary of Defense has approved the delegation of such milestone decision authority to the Director.

''(d) PROJECTS COMPRISING PROGRAM.—The National Security Agency Modernization Program consists of the following projects of the National Security Agency:

''(1) The Trailblazer project.

''(2) The Groundbreaker project.

''(3) Each cryptological mission management project.

''(4) Each other project of that Agency that—

''(A) meets either of the dollar thresholds in effect under paragraph (2) of section 2430(a) of title 10, United States Code; and

''(B) is determined by the Under Secretary of Defense for Acquisition, Technology, and Logistics as being a major project that is within, or properly should be within, the National Security Agency Modernization Project.

''(e) DEFINITIONS.—In this section:

''(1) MAJOR SYSTEM.—The term 'major system' has the meaning given that term in section 2302(5) of title 10, United States Code.

''(2) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means the following:

''(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

''(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.''

SPIRAL DEVELOPMENT UNDER MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 107–314, div. A, title VIII, §803, Dec. 2, 2002, 116 Stat. 2603, which authorized the Secretary of Defense to conduct major defense acquisition programs as spiral development programs and set out limitations on and requirements for such programs, was repealed by Pub. L. 114–92, div. A, title VIII, §821(b)(2), Nov. 25, 2015, 129 Stat. 900.

ENVIRONMENTAL CONSEQUENCE ANALYSIS OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 103–337, div. A, title VIII, §815, Oct. 5, 1994, 108 Stat. 2819, provided that:

''(a) GUIDANCE.—Before April 1, 1995, the Secretary of Defense shall issue guidance, to apply uniformly throughout the Department of Defense, regarding—

''(1) how to achieve the purposes and intent of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by ensuring timely compliance for major defense acquisition programs (as defined in section 2430 of title 10, United States Code) through (A) initiation of compliance efforts before development begins, (B) appropriate environmental impact analysis in support of each milestone decision, and (C) accounting for all direct, indirect, and cumulative environmental effects before proceeding toward production; and

''(2) how to analyze, as early in the process as feasible, the life-cycle environmental costs for such major defense acquisition programs, including the materials to be used, the mode of operations and maintenance, requirements for demilitarization, and methods of disposal, after consideration of all pollution prevention opportunities and in light of all environmental mitigation measures to which the department expressly commits.

''(b) ANALYSIS.—Beginning not later than March 31, 1995, the Secretary of Defense shall analyze the environmental costs of a major defense acquisition process as an integral part of the life-cycle cost analysis of the program pursuant to the guidance issued under subsection (a).

''(c) DATA BASE FOR NEPA DOCUMENTATION.—The Secretary of Defense shall establish and maintain a data base for documents prepared by the Department of Defense in complying with the National Environmental Policy Act of 1969 with respect to major defense acquisition programs. Any such document relating to a major defense acquisition program shall be maintained in the data base for 5 years after commencement of low-rate initial production of the program.''

EFFICIENT CONTRACTING PROCESSES

Pub. L. 103–160, div. A, title VIII, §837, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103–355, title V, §5064(b)(2), Oct. 13, 1994, 108 Stat. 3360, provided that: ''The Secretary of Defense shall take any additional actions that the Secretary considers necessary to waive regulations not required by statute that affect the efficiency of the contracting process within the Department of Defense. Such actions shall include, in the Secretary's discretion, developing methods to streamline the procurement process, streamlining the period for entering into contracts, and defining alternative techniques to reduce reliance on military specifications and standards, in contracts for the defense acquisition programs participating in the Defense Acquisition Pilot Program.''

CONTRACT ADMINISTRATION: PERFORMANCE BASED CONTRACT MANAGEMENT

Pub. L. 103–160, div. A, title VIII, §838, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103–355, title V, §5064(b)(3), Oct. 13, 1994, 108 Stat. 3360, provided that: ''For at least one participating defense acquisition program for which a determination is made to make payments for work in progress under the authority of section 2307 of title 10, United States Code, the Secretary of Defense should define payment milestones on the basis of quantitative measures of results.''

DEFENSE ACQUISITION PILOT PROGRAM

Pub. L. 104–201, div. A, title VIII, §803, Sept. 23, 1996, 110 Stat. 2604, as amended by Pub. L. 105–85, div. A, title VIII, §847(b)(2), Nov. 18, 1997, 111 Stat. 1845, provided that:

''(a) AUTHORITY.—The Secretary of Defense may waive sections 2399, 2432, and 2433 of title 10, United States Code, in accordance with this section for any defense acquisition program designated by the Secretary of Defense for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2430 note).

''(b) OPERATIONAL TEST AND EVALUATION.—The Secretary of Defense may waive the requirements for operational test and evaluation for such a defense acquisition program as set forth in section 2399 of title 10, United States Code, if the Secretary—

''(1) determines (without delegation) that such test would be unreasonably expensive or impractical;

''(2) develops a suitable alternate operational test program for the system concerned;

''(3) describes in the test and evaluation master plan, as approved by the Director of Operational Test and Evaluation, the method of evaluation that will be used to evaluate whether the system will be effective and suitable for combat; and

''(4) submits to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and House of Representatives] a report containing the determination that was made under paragraph (1), a justification for that determination, and a copy of the plan required by paragraph (3).

''(c) SELECTED ACQUISITION REPORTS.—The Secretary of Defense may waive the requirements of sections 2432 and 2433 of title 10, United States Code, for such a defense acquisition program if the Secretary provides a single annual report to Congress at the end of each fiscal year that describes the status of the program in relation to the baseline description for the program established under section 2435 of such title.''

Pub. L. 103–355, title V, §5064, Oct. 13, 1994, 108 Stat. 3359, as amended by Pub. L. 106–398, §1 [[div. A], title VIII, §801(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–202, 1654A–203, provided that:

''(a) IN GENERAL.—The Secretary of Defense is authorized to designate the following defense acquisition programs for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note):

''(1) FIRE SUPPORT COMBINED ARMS TACTICAL TRAINER (FSCATT).—The Fire Support Combined Arms Tactical Trainer program with respect to all contracts directly related to the procurement of a training simulation system (including related hardware, software, and subsystems) to perform collective training of field artillery gunnery team components, with development of software as required to generate the training exercises and component interfaces.

''(2) JOINT DIRECT ATTACK MUNITION (JDAM I).—The Joint Direct Attack Munition program with respect to all contracts directly related to the development and procurement of a strap-on guidance kit, using an inertially guided, Global Positioning System updated guidance kit to enhance the delivery accuracy of 500-pound, 1000-pound, and 2000-pound bombs in inventory.

''(3) JOINT PRIMARY AIRCRAFT TRAINING SYSTEM (JPATS).—The Joint Primary Aircraft Training System (JPATS) with respect to all contracts directly related to the acquisition of a new primary trainer aircraft to fulfill Air Force and Navy joint undergraduate aviation training requirements, and an associated ground-based training system consisting of air crew training devices (simulators), courseware, a Training Management System, and contractor support for the life of the system.

''(4) COMMERCIAL-DERIVATIVE AIRCRAFT (CDA).—

''(A) All contracts directly related to the acquisition or upgrading of commercial-derivative aircraft for use in meeting airlift and tanker requirements and the air vehicle component for airborne warning and control systems.

''(B) For purposes of this paragraph, the term 'commercial-derivative aircraft' means any of the following:

''(i) Any aircraft (including spare parts, support services, support equipment, technical manuals, and data related thereto) that is or was of a type customarily used in the course of normal business operations for other than Federal Government purposes, that has been issued a type certificate by the Administrator of the Federal Aviation Ad-

ministration, and that has been sold or leased for use in the commercial marketplace or that has been offered for sale or lease for use in the commercial marketplace.

''(ii) Any aircraft that, but for modifications of a type customarily available in the commercial marketplace, or minor modifications made to meet Federal Government requirements, would satisfy or would have satisfied the criteria in subclause (I).

''(iii) For purposes of a potential complement or alternative to the C–17 program, any nondevelopmental airlift aircraft, other than the C–17 or any aircraft derived from the C–17, shall be considered a commercial-derivative aircraft.

''(5) COMMERCIAL-DERIVATIVE ENGINE (CDE).—The commercial derivative engine program with respect to all contracts directly related to the acquisition of (A) commercial derivative engines (including spare engines and upgrades), logistics support equipment, technical orders, management data, and spare parts, and (B) commercially derived engines for use in supporting the purchase of commercial-derivative aircraft for use in airlift and tanker requirements (including engine replacement and upgrades) and the air vehicle component for airborne warning and control systems. For purposes of a potential complement or alternative to the C–17 program, any nondevelopmental airlift aircraft engine shall be considered a commercial-derivative engine.

''(b) PILOT PROGRAM IMPLEMENTATION.—(1) [Amended section 833 of Pub. L. 103–160, set out below.]

''(2) [Amended section 837 of Pub. L. 103–160, set out above.]

''(3) [Amended section 838 of Pub. L. 103–160, set out above.]

''(4) Not later than 45 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 [Oct. 13, 1994], the Secretary of Defense shall identify for each defense acquisition program participating in the pilot program quantitative measures and goals for reducing acquisition management costs.

''(5) For each defense acquisition program participating in the pilot program, the Secretary of Defense shall establish a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that—

''(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

''(B) reduce data requirements from the current program review reporting requirements.

''(c) SPECIAL AUTHORITY.—The authority delegated under subsection (a) may include authority for the Secretary of Defense—

''(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot programs before the effective date of such amendment or repeal [see Effective Date of 1994 Amendment note set out under section 2302 of this title]; and

''(2) to apply to a procurement of items other than commercial items under such programs—

''(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

''(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

''(d) APPLICABILITY.—(1) Subsection (c) applies with respect to—

''(A) a contract that is awarded or modified during the period described in paragraph (2); and

''(B) a contract that is awarded before the beginning of such period and is to be performed (or may be performed), in whole or in part, during such period.

''(2) The period referred to in paragraph (1) is the period that begins on October 13, 1994, and ends on October 1, 2007.

''(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the programs designated for participation in the defense acquisition pilot program under the authority of subsection (a).''

Pub. L. 103–337, div. A, title VIII, §819, Oct. 5, 1994, 108 Stat. 2822, provided that: ''The Secretary of Defense is authorized to designate the following defense acquisition programs for participation, to the extent provided in the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, see Tables for classification], in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note):

''(1) The Fire Support Combined Arms Tactical Trainer program.

''(2) The Joint Direct Attack Munition program.

''(3) The Joint Primary Aircraft Training System.

''(4) Commercial-derivative aircraft.

''(5) Commercial-derivative engine.''

Pub. L. 103–160, div. A, title VIII, §833, Nov. 30, 1993, 107 Stat. 1716, as amended by Pub. L. 103–355, title V, §5064(b)(1), Oct. 13, 1994, 108 Stat. 3360, provided that:

''(a) MISSION-ORIENTED PROGRAM MANAGEMENT.—In the exercise of the authority provided in section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note), the Secretary of Defense should propose for one or more of the defense acquisition programs covered by the Defense Acquisition Pilot Program to utilize the concept of mission-oriented program management.

''(b) POLICIES AND PROCEDURES.—In the case of each defense acquisition program covered by the Defense Acquisition Pilot Program, the Secretary of Defense should prescribe policies and procedures for the interaction of the program manager and the commander of the operational command (or a representative) responsible for the requirement for the equipment acquired, and for the interaction with the commanders of the unified and specified combatant commands. Such policies and procedures should include provisions for enabling the user commands to participate in acceptance testing.''

Pub. L. 103–160, div. A, title VIII, §835(b), Nov. 30, 1993, 107 Stat. 1717, related to funding for Defense Acquisition Pilot Program, and authorized the Secretary of Defense to expend appropriated sums as necessary to carry out next phase of acquisition program cycle after Secretary determined that objective quantifiable performance expectations relating to execution of that phase had been identified, prior to repeal by Pub. L. 103–355, title V, §5002(b), Oct. 13, 1994, 108 Stat. 3350.

Pub. L. 103–160, div. A, title VIII, §839, Nov. 30, 1993, 107 Stat. 1718, provided that:

''(a) COLLECTION AND ANALYSIS OF PERFORMANCE INFORMATION.—The Secretary of Defense shall collect and analyze information on contractor performance under the Defense Acquisition Pilot Program.

''(b) INFORMATION TO BE INCLUDED.—Information collected under subsection (a) shall include the history of the performance of each contractor under the Defense Acquisition Pilot Program contracts and, for each such contract performed by the contractor, a technical evaluation of the contractor's performance prepared by the program manager responsible for the contract.''

Pub. L. 101–510, div. A, title VIII, §809, Nov. 5, 1990, 104 Stat. 1593, as amended by Pub. L. 102–484, div. A, title VIII, §811, Oct. 23, 1992, 106 Stat. 2450; Pub. L. 103–160, div. A, title VIII, §832, Nov. 30, 1993, 107 Stat. 1715, provided that:

''(a) AUTHORITY TO CONDUCT PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in defense acquisition programs.

''(b) DESIGNATION OF PARTICIPATING PROGRAMS.—(1) Subject to paragraph (2), the Secretary may designate defense acquisition programs for participation in the pilot program.

''(2) The Secretary may designate for participation in the pilot program only those defense acquisition programs specifically authorized to be so designated in a law authorizing appropriations for such program enacted after the date of the enactment of this Act [Nov. 5, 1990].

''(c) CONDUCT OF PILOT PROGRAM.—(1) In the case of each defense acquisition program designated for participation in the pilot program, the Secretary—

''(A) shall conduct the program in accordance with standard commercial, industrial practices; and

''(B) may waive or limit the applicability of any provision of law that is specifically authorized to be waived in the law authorizing appropriations referred to in subsection (b)(2) and that prescribes—

''(i) procedures for the procurement of supplies or services;

''(ii) a preference or requirement for acquisition from any source or class of sources;

''(iii) any requirement related to contractor performance;

''(iv) any cost allowability, cost accounting, or auditing requirements; or

''(v) any requirement for the management of, testing to be performed under, evaluation of, or reporting on a defense acquisition program.

''(2) The waiver authority provided in paragraph (1)(B) does not apply to a provision of law if, as determined by the Secretary—

''(A) a purpose of the provision is to ensure the financial integrity of the conduct of a Federal Government program; or

''(B) the provision relates to the authority of the Inspector General of the Department of Defense.

''(d) PUBLICATION OF POLICIES AND GUIDELINES.—The Secretary shall publish in the Federal Register a proposed memorandum setting forth policies and guidelines for implementation of the pilot program under this section and provide an opportunity for public comment on the proposed memorandum for a period of 60 days after the date of publication. The Secretary shall publish in the Federal Register any subsequent proposed change to the memorandum and provide an opportunity for public comment on each such proposed change for a period of 60 days after the date of publication.

''(e) NOTIFICATION AND IMPLEMENTATION.—(1) The Secretary shall transmit to the congressional defense committees a written notification of each defense acquisition program proposed to be designated by the Secretary for participation in the pilot program.

''(2) If the Secretary proposes to waive or limit the applicability of any provision of law to a defense acquisition program under the pilot program in accordance with this section, the Secretary shall include in the notification regarding that acquisition program—

''(A) the provision of law proposed to be waived or limited;

''(B) the effects of such provision of law on the acquisition, including specific examples;

''(C) the actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

''(D) a discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

''(f) LIMITATION ON WAIVER AUTHORITY.—The applicability of the following requirements of law may not be waived or limited under subsection (c)(1)(B) with respect to a defense acquisition program:

''(1) The requirements of this section.

''(2) The requirements contained in any law enacted on or after the date of the enactment of this Act [Nov. 5, 1990] if that law designates such defense acquisition program as a participant in the pilot program, except to the extent that a waiver of such requirement is specifically authorized for such defense acquisition program in a law enacted on or after such date.

''(g) TERMINATION OF AUTHORITY.—The authority to waive or limit the applicability of any law under this section may not be exercised after September 30, 1995.''

DEFINITIONS

Pub. L. 111–23, § 2, May 22, 2009, 123 Stat. 1704, provided that: ''In this Act [see Short Title of 2009 Amendment note set out under section 101 of this title]:

''(1) The term 'congressional defense committees' has the meaning given that term in section 101(a)(16) of title 10, United States Code.

''(2) The term 'major defense acquisition program' has the meaning given that term in section 2430 of title 10, United States Code.

''(3) The term 'major weapon system' has the meaning given that term in section 2379(d) [probably means section 2379(f)] of title 10, United States Code.''

§ 2430a. Major subprograms

(a) AUTHORITY TO DESIGNATE MAJOR SUBPROGRAMS AS SUBJECT TO ACQUISITION REPORTING REQUIREMENTS.—(1)(A) If the Secretary of Defense determines that a major defense acquisition program requires the delivery of two or more categories of end items which differ significantly from each other in form and function, the Secretary may designate each such category of end items as a major subprogram for the purposes of acquisition reporting under this chapter.

(B) If the Secretary of Defense determines that a major defense acquisition program to purchase satellites requires the delivery of satellites in two or more increments or blocks, the Secretary may designate each such increment or block as a major subprogram for the purposes of acquisition reporting under this chapter.

(2) The Secretary shall notify the congressional defense committees in writing of any proposed designation pursuant to paragraph (1) not less than 30 days before the date such designation takes effect.

(b) REPORTING REQUIREMENTS.—(1) If the Secretary designates a major subprogram of a major defense acquisition program in accordance with subsection (a), Selected Acquisition Reports, unit cost reports, and program baselines under this chapter shall reflect cost, schedule, and performance information—

(A) for the major defense acquisition program as a whole (other than as provided in paragraph (2)); and

(B) for each major subprogram of the major defense acquisition program so designated.

(2) For a major defense acquisition program for which a designation of a major subprogram has been made under subsection (a), unit costs under this chapter shall be submitted in accordance with the definitions in subsection (d).

(c) REQUIREMENT TO COVER ENTIRE MAJOR DEFENSE ACQUISITION PROGRAM.—If a subprogram of a major defense acquisition program is designated as a major subprogram under subsection (a), all other elements of the major defense acquisition program shall be appropriately organized into one or more subprograms under the major defense acquisition program, each of which subprograms, as so organized, shall be treated as a major subprogram under subsection (a).

(d) DEFINITIONS.—Notwithstanding paragraphs (1) and (2) of section 2432(a) of this title, in the case of a major defense acquisition program for which the Secretary has designated one or more major subprograms under this section for the purposes of this chapter—

(1) the term ''program acquisition unit cost'' applies at the level of the subprogram and means the total cost for the development and procurement of, and specific military construction for, the major defense acquisition program that is reasonably allocable to each such major subprogram, divided by the relevant number of fully-configured end items to be produced under such major subprogram;

(2) the term ''procurement unit cost'' applies at the level of the subprogram and means the total of all funds programmed to be available for obligation for procurement for each such major subprogram, divided by the number of fully-configured end items to be procured under such major subprogram;

(3) the term ''major contract'', with respect to a designated major subprogram, means each of the six largest prime, associate, or Government furnished equipment contracts under the subprogram that is in excess of $40,000,000 and that is not a firm-fixed price contract; and

(4) the term ''life cycle cost'', with respect to a designated major subprogram, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(Added Pub. L. 110–417, [div. A], title VIII, §811(a)(1), Oct. 14, 2008, 122 Stat. 4520; amended Pub. L. 111–383, div. A, title VIII, §814(a), Jan. 7, 2011, 124 Stat. 4266; Pub. L. 112–81, div. A, title IX, §912, Dec. 31, 2011, 125 Stat. 1536.)

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 112–81 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub. L. 111–383 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), inserted ''(other than as provided in paragraph (2))'' before semicolon in subpar. (A), and added par. (2).

§ 2431. Weapons development and procurement schedules

(a) The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits the budget to Congress under section 1105 of title 31, budget justification documents regarding development and procurement schedules for each weapon system for which fund authorization is required by section 114(a) of this title, and for which any funds for procurement are requested in that budget. The documents shall include data on operational testing and evaluation for each weapon system for which funds for procurement are requested (other than funds requested only for the procurement of units for operational testing and evaluation, or long lead-time items, or both). A weapon system shall also be included in the annual documents required under this subsection in each year thereafter until procurement of that system has been completed or terminated, or the Secretary of Defense certifies, in writing, that such inclusion would not serve any useful purpose and gives his reasons therefor.

(b) Any documents required to be submitted under subsection (a) shall include detailed and summarized information with respect to each weapon system covered and shall specifically include each of the following:

(1) The development schedule, including estimated annual costs until development is completed.

(2) The planned procurement schedule, including the best estimate of the Secretary of Defense of the annual costs and units to be procured until procurement is completed.

(3) To the extent required by the second sentence of subsection (a), the result of all operational testing and evaluation up to the time of the submission of the documents, or, if operational testing and evaluation has not been conducted, a statement of the reasons therefor and the results of such other testing and evaluation as has been conducted.

(4)(A) The most efficient production rate, the most efficient acquisition rate, and the minimum sustaining rate, consistent with the program priority established for such weapon system by the Secretary concerned.

(B) In this paragraph:

(i) The term ''most efficient production rate'' means the maximum rate for each budget year at which the weapon system can be produced with existing or planned plant capacity and tooling, with one shift a day running for eight hours a day and five days a week.

(ii) The term ''minimum sustaining rate'' means the production rate for each budget year that is necessary to keep production lines open while maintaining a base of responsive vendors and suppliers.

(c) In the case of any weapon system for which procurement funds have not been previously requested and for which funds are first requested by the President in any fiscal year after the Budget for that fiscal year has been submitted to Congress, the same documentation requirements shall be applicable to that system in the same manner and to the same extent as if funds had been requested for that system in that budget.

(Added Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 614, §139; amended Pub. L. 94–106, title VIII, §805, Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–513, title V, §511(5), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–86, title IX, §909(c), Dec. 1, 1981, 95 Stat. 1120; Pub. L. 97–258, §3(b)(1), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, §1405(3), Oct. 19, 1984, 98 Stat. 2621; renumbered §2431 and amended Pub. L. 99–433, title I, §§101(a)(5), 110(d)(12), (g)(6), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 100–180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title XIII, §1301(13), title XIV, §1484(f)(3), Nov. 5, 1990, 104 Stat. 1668, 1717; Pub. L. 103–355, title III, §3001, Oct. 13, 1994, 108 Stat. 3327; Pub. L. 104–106, div. D, title XLIII, §4321(b)(18), Feb. 10, 1996, 110 Stat. 673.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 92–156, title V, § 506, Nov. 17, 1971, 85 Stat. 429, prior to repeal by Pub. L. 93–155, § 803(b)(2).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, § 4321(b)(18)(A)(i), substituted ''Any documents'' for ''Any report'' in first sentence.

Subsec. (b)(3). Pub. L. 104–106, § 4321(b)(18)(A)(ii), substituted ''the documents'' for ''the report''.

Subsec. (c). Pub. L. 104–106, § 4321(b)(18)(B), substituted ''documentation'' for ''reporting''.

1994—Subsec. (a). Pub. L. 103–355, § 3001(a), substituted ''not later than 45 days after'' for ''at the same time'' and ''budget justification documents'' for ''a written report'' in first sentence and ''documents'' for ''report'' in second and third sentences.

Subsec. (b). Pub. L. 103–355, § 3001(b)(1), substituted ''include each of the following:'' for ''include—'' in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 103–355, § 3001(b)(2)–(4), capitalized first letter of first word in pars. (1) to (3) and substituted period for semicolon at end of pars. (1) and (2) and period for ''; and'' at end of par. (3).

Subsec. (b)(4). Pub. L. 103–355, § 3001(b)(5) amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the most efficient production rate and the most efficient acquisition rate consistent with the program priority established for such weapon system by the Secretary concerned.''

1990—Subsec. (b). Pub. L. 101–510, § 1484(f)(3), substituted ''covered and shall specifically include'' for ''covered, and specifically include, but not be limited to'' in introductory provisions.

Pub. L. 101–510, § 1301(13), redesignated subsec. (c) as (b), struck out ''or (b)'' after ''under subsection (a)'', and struck out former subsec. (b) which read as follows: ''The Secretary of Defense shall submit a supplemental report to Congress not less than 30, or more than 90, days before the award of any contract, or the exercise of any option in a contract, for the procurement of any such weapon system (other than procurement of units for operational testing and evaluation, or long lead-time items, or both), unless—

''(1) the contractor or contractors for that system have not yet been selected and the Secretary of Defense determines that the submission of that report would adversely affect the source selection process and notifies Congress in writing, prior to such award, of that determination, stating his reasons therefor; or

''(2) the Secretary of Defense determines that the submission of that report would otherwise adversely affect the vital security interests of the United States and notifies Congress in writing of that determination at least 30 days prior to the award, stating his reasons therefor.''

Subsecs. (c), (d). Pub. L. 101–510, § 1301(13)(C), redesignated subsecs. (c) and (d) as (b) and (c), respectively.

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139 of this title as this section.

Pub. L. 99–433, § 110(d)(12), substituted ''Weapons development and procurement schedules'' for ''Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports'' in section catchline.

Subsec. (a). Pub. L. 99–433, § 110(g)(6), substituted ''section 114(a)'' for ''section 138(a)''.

1984—Subsec. (b). Pub. L. 98–525, § 1405(3)(B), substituted ''30'' for ''thirty'' and ''90'' for ''ninety'' in introductory text.

Subsec. (b)(2). Pub. L. 98–525, § 1405(3)(A), substituted ''30'' for ''thirty''.

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 1105 of title 31'' for ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)''.

1981—Subsec. (c)(4). Pub. L. 97–86 added par. (4).

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)'' for ''section 11 of title 31''.

1975—Subsec. (b). Pub. L. 94–106 substituted ''or more than ninety, days before'' for ''or more than sixty, days before''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

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.

PLAN ON FULL INTEGRATION AND EXPLOITATION OF OVERHEAD PERSISTENT INFRARED CAPABILITY

Pub. L. 114–92, div. A, title XVI, § 1618, Nov. 25, 2015, 129 Stat. 1108, provided that:

''(a) PLAN.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Commander of the United States Strategic Command and the Director of Cost Assessment and Program Evaluation, in coordination with the Director of National Intelligence, shall jointly submit to the appropriate congressional committees a plan for the integration of overhead persistent infrared capabilities to support the missions specified in subsection (b)(1).

''(b) ELEMENTS.—The plan under subsection (a) shall—

''(1) ensure that all overhead persistent infrared capabilities of the United States, including such capabilities that are planned to be developed, are integrated to allow for such capabilities to be exploited to support the requirements of the missions of the Department of Defense relating to—

''(A) strategic and theater missile warning;

''(B) ballistic and cruise missile defense, including with respect to missile tracking, fire control, and kill assessment;

''(C) technical intelligence supporting missile warning;

''(D) battlespace awareness;

''(E) other technical intelligence;

''(F) civil and environmental missions, including with respect to the collection of weather data; and

''(G) battle damage assessments; and

''(2) establish clear benchmarks by which to establish acquisition plans, manning, and budget requirements.

''(c) ANNUAL DETERMINATION.—The Secretary of Defense shall include, together with, or not later than 30 days after, the budget justification materials submitted to Congress in support of the budget of the Department of Defense for a fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), a written determination of how the plan under subsection (a) is being implemented.

''(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means—

''(1) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(2) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''

INTEGRATION AND INTEROPERABILITY OF AIR AND MISSILE DEFENSE CAPABILITIES OF THE UNITED STATES

Pub. L. 114–92, div. A, title XVI, § 1675, Nov. 25, 2015, 129 Stat. 1131, provided that:

''(a) INTEROPERABILITY OF MISSILE DEFENSE SYSTEMS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Vice Chairman of the Joint Chiefs of Staff, acting through the Missile Defense Executive Board, shall ensure the interoperability and integration of the covered air and missile defense capabilities of the United States, including by carrying out operational testing.

''(b) ANNUAL DEMONSTRATION.—

''(1) REQUIREMENT.—Except as provided by paragraph (2), the Director of the Missile Defense Agency and the Secretary of the Army shall jointly ensure that not less than one intercept or flight test is carried out each year that demonstrates interoperability and integration among the covered air and missile defense capabilities of the United States.

''(2) WAIVER.—The Director and the Secretary may waive the requirement in paragraph (1) with respect to an intercept or flight test carried out during the year covered by the waiver if the Under Secretary of Defense for Acquisition, Technology, and Logistics—

''(A) determines that such waiver is necessary for such year; and

''(B) submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notification of such waiver, including an explanation for how such waiver will not negatively affect demonstrating the interoperability and integration among the covered air and missile defense capabilities of the United States.

''(c) DEFINITIONS.—In this section, the term 'covered air and missile defense capabilities' means Patriot air and missile defense batteries and associated interceptors and systems, Aegis ships and associated ballistic missile interceptors (including Aegis Ashore capability), AN/TPY–2 radars, or terminal high altitude area defense batteries and interceptors.''

BOOST PHASE DEFENSE SYSTEM

Pub. L. 114–92, div. A, title XVI, §1680, Nov. 25, 2015, 129 Stat. 1137, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall—

''(1) prioritize technology investments in the Department of Defense to support feasible and cost-effective efforts by the Missile Defense Agency to develop and field an airborne boost phase defense system by not later than fiscal year 2025;

''(2) ensure that development and fielding of a boost phase missile defense layer to the ballistic missile defense system supports multiple warfighter missile defense requirements, including, specifically, protection of the United States homeland and allies of the United States against ballistic missiles, particularly in the boost phase;

''(3) continue development and fielding of high-energy lasers, electromagnetic and other railgun technology, high-power microwave systems, and other advanced technologies as part of a layered architecture to defend ships and theater bases against air and cruise missile strikes;

''(4) encourage collaboration among the military departments and the Defense Advanced Research Projects Agency with respect to high energy laser efforts carried out in support of the Missile Defense Agency; and

''(5) ensure cooperation and coordination between the Missile Defense Agency with respect to the plans of the Missile Defense Agency to develop an airborne laser and the requirements of the Air Force for unmanned aerial vehicles.

''(b) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Nov. 25, 2015], 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 the efforts of the Department of Defense to develop and deploy an airborne or other boost phase defense system for missile defense by fiscal year 2025.

''(2) ELEMENTS.—The report under paragraph (1) shall include the following:

''(A) Such schedules, costs, warfighter requirements, operational concept, constraints, potential alternative boost phase approaches, and other information regarding the efforts described in paragraph (1) as the Secretary considers appropriate.

''(B) Analyses of the efforts described in paragraph (1) with respect to the following cases:

''(i) A case in which the Department is under no funding constraints with respect to such efforts and progress is based on the state of the technology.

''(ii) A case in which the Department is under funding constraints and the efforts are carried out in accordance with a moderately aggressive schedule and are subject to moderate technical risk.

''(iii) A case in which the Department is under funding constraints and the efforts are carried out in accordance with a less aggressive schedule and are subject to less technical risk.

''(C) An update on related efforts of the Department to develop high energy lasers, electromagnetic and other railguns, high power microwave systems, and other advanced technologies to defend ships and theater bases against air and cruise missile strikes and to protect the homeland of the United States and protect allies of the United States.

''(D) An evaluation of recommendations, including a listing of the recommendations, from industry on emerging technologies that could be applied for boost phase missile defense.

''(E) Such recommendations as the Secretary may have for legislative or administrative action to enable more rapid fielding of a directed-energy based missile defense system.

''(3) FORM.—The report required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.''

DEVELOPMENT AND DEPLOYMENT OF MULTIPLE-OBJECT KILL VEHICLE FOR MISSILE DEFENSE OF THE UNITED STATES HOMELAND

Pub. L. 114–92, div. A, title XVI, §1681, Nov. 25, 2015, 129 Stat. 1138, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the defense of the United States homeland against the threat of limited ballistic missile attack (whether accidental, unauthorized, or deliberate) is the highest priority of the Missile Defense Agency;

''(2) the Missile Defense Agency is appropriately prioritizing the design, development, and deployment of the redesigned kill vehicle; and

''(3) the multiple-object kill vehicle could contribute critical capabilities to the future of the ballistic missile defense of the United States homeland.

''(b) MULTIPLE-OBJECT KILL VEHICLE.—

''(1) DEVELOPMENT.—The Director of the Missile Defense Agency shall develop a highly reliable multiple-object kill vehicle for the ground-based midcourse defense system using sound acquisition practices.

''(2) DEPLOYMENT.—The Director shall—

''(A) conduct rigorous flight testing of the multiple-object kill vehicle developed under paragraph (1) by not later than 2020; and

''(B) recognizing the primacy of developing the redesigned kill vehicle, produce and deploy the multiple-object kill vehicle as early as practicable after the date on which the Director carries out subparagraph (A).

''(c) CAPABILITIES AND CRITERIA.—The Director shall ensure that the multiple-object kill vehicle developed under subsection (b)(1) meets, at a minimum, the following capabilities and criteria:

''(1) Vehicle-to-vehicle communications.

''(2) Vehicle-to-ground communications.

''(3) Kill assessment capability.

''(4) The ability to counter advanced counter measures, decoys, and penetration aids.

''(5) Producibility and manufacturability.

''(6) Use of technology involving high technology readiness levels.

''(7) Options to be integrated onto other missile defense interceptor vehicles other than the ground-based interceptors of the ground-based midcourse defense system.

''(8) Sound acquisition processes.

''(d) PROGRAM MANAGEMENT.—The management of the multiple-object kill vehicle program under subsection (b) shall report directly to the Deputy Director of the Missile Defense Agency.

''(e) REPORT ON FUNDING PROFILE.—The Director shall include with the budget justification materials submitted to Congress in support of the budget of the Department of Defense for fiscal year 2017 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the funding profile necessary for the multiple-object kill vehicle program to meet the objectives under subsection (b).''

REQUIREMENT TO REPLACE CAPABILITY ENHANCEMENT I EXOATMOSPHERIC KILL VEHICLES

Pub. L. 114–92, div. A, title XVI, § 1682, Nov. 25, 2015, 129 Stat. 1139, provided that:

''(a) IN GENERAL.—Subject to subsection (b), the Director of the Missile Defense Agency shall ensure, to the maximum extent practicable, that all remaining ground-based interceptors of the ground-based midcourse defense system that are armed with the capability enhancement I exoatmospheric kill vehicle are replaced with the redesigned exoatmospheric kill vehicle before September 30, 2022.

''(b) CONDITION.—Subsection (a) shall not apply if the Director determines that flight and intercept testing of the redesigned exoatmospheric kill vehicle is not successful.''

ADDITIONAL MISSILE DEFENSE SENSOR COVERAGE FOR PROTECTION OF UNITED STATES HOMELAND

Pub. L. 114–92, div. A, title XVI, § 1684, Nov. 25, 2015, 129 Stat. 1140, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that additional missile defense sensor discrimination capabilities are needed to enhance the protection of the United States homeland against potential long-range ballistic missiles from Iran that, according to the Department of Defense, could soon be obtained by Iran as a result of its active space launch program.

''(b) STUDIES AND EVALUATIONS ON HOMEPORT OF SEA-BASED X-BAND RADAR.—Not later than 60 days after the date of the enactment of this Act [Nov. 25, 2015], the Director of the Missile Defense Agency shall commence any siting studies, environmental impact assessments or statements required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) that have not otherwise been prepared, homeport agreements for sea-based X-band radar support, evaluations of any needed pier modifications, and evaluations of any communications capabilities or other requirements to carry out the reassignment of the homeport of the sea-based X-band radar to a homeport on the East Coast of the United States.

''(c) POTENTIAL FUTURE MISSILE DEFENSE SENSOR SITES.—

''(1) EVALUATION.—Not later than March 31, 2016, the Director shall commence a study to evaluate at least three possible additional locations (in or outside the United States), selected by the Director, that would be best suited for future deployment of an advanced missile defense sensor site optimized against threats from Iran.

''(2) ENVIRONMENTAL IMPACT STATEMENTS.—Except as provided by paragraph (3), the evaluation under paragraph (1) shall include an environmental impact statement or other analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for each location included in the evaluation.

''(3) EXCEPTION.—If an environmental impact statement or other analysis described in paragraph (2) has already been prepared, or is not required by law, for a location included in the evaluation under paragraph (1), the Director shall not be required to carry out paragraph (2) with respect to such location.

''(d) DEPLOYMENT OF ADDITIONAL COVERAGE.—

''(1) DEPLOYMENT.—Not later than December 31, 2020, the Director, in cooperation with the relevant combatant command, shall deploy a long-range discrimination radar or other appropriate sensor capability in a location optimized to support the defense of the homeland of the United States from emerging long-range ballistic missile threats from Iran.

''(2) SEA-BASED X-BAND RADAR.—If the Director carries out paragraph (1) by reassigning the homeport of the sea-based X-band radar, the Director and the Secretary of the Navy may not carry out such reassignment until the date on which the Director certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that Hawaii will have adequate missile defense coverage prior to such reassignment.

''(e) SUBMISSION OF INFORMATION.—

''(1) REPORT.—Not later than December 31, 2018, the Director shall submit to the congressional defense committees a report containing the following:

''(A) The findings of the study conducted under paragraph (1) of subsection (c), including any environmental impact statements or analyses required by paragraph (2) of such subsection.

''(B) Notification of the manner in which Hawaii is being provided ballistic missile defense coverage.

''(2) PLAN.—In the budget justification materials submitted to Congress in support of the budget for each of fiscal years 2017 through 2020 submitted by the President to Congress under section 1105 of title 31, United States Code, the Director shall include—

''(A) the plan of the Director to carry out subsection (d); and

''(B) an update on the progress of the Director in implementing subsections (b) and (c).''

DEVELOPMENT OF REQUIREMENTS TO SUPPORT INTEGRATED AIR AND MISSILE DEFENSE CAPABILITIES

Pub. L. 114–92, div. A, title XVI, § 1687, Nov. 25, 2015, 129 Stat. 1143, provided that:

''(a) IN GENERAL.—Consistent with the memorandum of the Chairman of the Joint Chiefs of Staff of January 27, 2014, regarding joint integrated air and missile defense, the Vice Chairman of the Joint Chiefs of Staff shall oversee the development of warfighter requirements for persistent and survivable capabilities to detect, identify, determine the status, track, and support engagement of strategically important mobile or relocatable assets in all phases of conflict in order to achieve the objective of preventing the effective employment of such assets, including through offensive actions against such assets prior to their use.

''(b) PURPOSE OF REQUIREMENTS.—The requirements developed pursuant to subsection (a) shall be used and updated, as appropriate, for the purpose of informing applicable acquisition programs and systems-of-systems architecture planning that are funded through the Military Intelligence Program, the National Intelligence Program, and non-intelligence programs.

''(c) SUPPORTING ACTIVITIES.—The Vice Chairman shall also oversee the development of the enabling framework for intelligence support for integrated air and missile defense, including concepts for the integrated operation of multiple systems, and, as appropriate, the development of requirements for capabilities to be acquired to achieve such integrated operations.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that new acquisition programs for applicable major systems or capabilities, or for upgrades to existing sys-

tems, should not be undertaken until the applicable requirements described in subsections (a) and (c) have been developed and incorporated into programmatic decision-making.''

TESTING AND ASSESSMENT OF MISSILE DEFENSE SYSTEMS PRIOR TO PRODUCTION AND DEPLOYMENT

Pub. L. 113–291, div. A, title XVI, §1662, Dec. 19, 2014, 128 Stat. 3657, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) it is a high priority of the United States that the ballistic missile defense system should work in an operationally effective and cost-effective manner;

''(2) prior to making final production decisions for such systems, and prior to the operational deployment of such systems, the United States should conduct operationally realistic intercept flight testing that should create sufficiently challenging operational conditions to establish confidence that such systems will work in an operationally effective and cost-effective manner when needed; and

''(3) in order to achieve these objectives, and to avoid post-production and post-deployment problems, it is essential for the Department of Defense to follow a 'fly before you buy' approach to adequately test and assess the elements of the ballistic missile defense system before final production decisions or operational deployment.

''(b) SUCCESSFUL TESTING REQUIRED PRIOR TO FINAL PRODUCTION OR OPERATIONAL DEPLOYMENT.—The Secretary of Defense may not make a final production decision for, or operationally deploy, a covered system unless—

''(1) the Secretary ensures that—

''(A) sufficient and operationally realistic testing of the covered system is conducted to assess the performance of the covered system in order to inform a final production decision or an operational deployment decision; and

''(B) the results of such testing have demonstrated a high probability that the covered system—

''(i) will work in an operationally effective manner; and

''(ii) has the ability to accomplish the intended mission of the covered system;

''(2) the Director of Operational Test and Evaluation has carried out subsection (c) with respect to such covered system; and

''(3) the Commander of the United States Strategic Command has carried out subsection (d) with respect to such covered system.

''(c) ASSESSMENT BY DIRECTOR OF OPERATIONAL TEST AND EVALUATION.—The Director of Operational Test and Evaluation shall—

''(1) provide to the Secretary the assessment of the Director, based on the available test data, of the sufficiency, adequacy, and results of the testing of each covered system, including an assessment of whether the covered system will be sufficiently effective, suitable, and survivable when needed; and

''(2) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a written summary of such assessment.

''(d) ASSESSMENT BY COMMANDER OF UNITED STATES STRATEGIC COMMAND.—The Commander of the United States Strategic Command shall—

''(1) provide to the Secretary a military utility assessment of the operational utility of each covered system; and

''(2) not later than 30 days after providing such assessment to the Secretary, submit to the congressional defense committees a written summary of such assessment.

''(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter, modify, or otherwise affect a determination of the Secretary with respect to the participation of the Missile Defense Agency in the Joint Capabilities Integration Development System or the acquisition reporting process under the Department of Defense Directive 5000 series.

''(f) COVERED SYSTEM.—In this section, the term 'covered system' means a new or substantially upgraded interceptor or weapon system of the ballistic missile defense system, other than the re-designed exo-atmospheric kill vehicle covered by the acquisition plan developed under section 1663 [set out below].''

ACQUISITION PLAN FOR RE-DESIGNED EXO-ATMOSPHERIC KILL VEHICLE

Pub. L. 113–291, div. A, title XVI, §1663, Dec. 19, 2014, 128 Stat. 3658, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the existing models of the exo-atmospheric kill vehicle of the ground-based midcourse defense system are prototype designs that were developed and deployed without using traditional acquisition practices in order to provide an initial defensive capability for an emerging ballistic missile threat;

''(2) consequently, while the deployed models of the exo-atmospheric kill vehicle have demonstrated an initial level of capability against a limited threat, such models do not have the degree of reliability, robustness, cost effectiveness, and performance that are desirable;

''(3) the exo-atmospheric kill vehicle for the ground-based midcourse defense system needs to be re-designed to substantially improve the performance and reliability of such kill vehicles; and

''(4) the Secretary of Defense should follow a robust and rigorous acquisition plan for the design, development, and testing of the re-designed exo-atmospheric kill vehicle.

''(b) ACQUISITION PLAN REQUIRED.—The Secretary of Defense shall develop an acquisition plan for the re-design of the exo-atmospheric kill vehicle of the ground-based midcourse defense system that includes rigorous elements for system engineering, design, integration, development, testing, and evaluation.

''(c) OBJECTIVES.—The objectives of the acquisition plan under subsection (b) shall be to ensure that the re-designed exo-atmospheric kill vehicle is operationally effective, reliable, producible, cost effective, maintainable, and testable.

''(d) APPROVAL OF ACQUISITION PLAN REQUIRED.—The acquisition plan under subsection (b) shall be subject to approval by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(e) TESTING REQUIRED.—Prior to operational deployment of the re-designed exo-atmospheric kill vehicle, the Secretary shall ensure that the re-designed kill vehicle has demonstrated, through successful, operationally realistic flight testing—

''(1) a high probability of working in an operationally effective manner; and

''(2) the ability to accomplish the intended mission of the re-designed kill vehicle, including against more complex emerging ballistic missile threats.

''(f) REPORT REQUIRED.—Not later than 60 days after the date on which the Under Secretary of Defense for Acquisition, Technology, and Logistics approves the acquisition plan under subsection (d), the Director of the Missile Defense Agency shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report describing the acquisition plan and the manner in which the plan will meet the objectives described in subsection (c).''

ADDITIONAL MISSILE DEFENSE RADAR FOR THE PROTECTION OF THE UNITED STATES HOMELAND

Pub. L. 113–66, div. A, title II, §235, Dec. 26, 2013, 127 Stat. 714, provided that:

''(a) DEPLOYMENT OF LONG-RANGE DISCRIMINATING RADAR.—

''(1) IN GENERAL.—The Director of the Missile Defense Agency shall deploy a long-range discriminat-

ing radar against long-range ballistic missile threats from the Democratic People's Republic of Korea. Such radar shall be located at a location optimized to support the defense of the homeland of the United States.

''(2) FUNDING.—Of the funds authorized to be appropriated by this Act for research, development, test, and evaluation, Defense-wide, for the Missile Defense Agency for BMD Sensors (PE 63884C), as specified in the funding table in section 4201, $30,000,000 shall be available for initial costs toward the deployment of the radar required by paragraph (1).

''(b) ADDITIONAL SENSOR COVERAGE FOR THREATS FROM IRAN.—

''(1) IN GENERAL.—The Secretary of Defense shall ensure that the Secretary is able to deploy additional tracking and discrimination sensor capabilities to support the defense of the homeland of the United States from future long-range ballistic missile threats that emerge from Iran.

''(2) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that details what sensor capabilities of the United States, including re-locatable land- and sea-based capabilities, are or will become available to support the defense of the homeland of the United States from future long-range ballistic missile threats that emerge from Iran. Such report shall include the following:

''(A) With respect to the capabilities included in the report, an identification of such capabilities that can be located on the Atlantic-side of the United States by not later than 2019, or sooner if long-range ballistic missile threats from Iran are successfully flight-tested prior to 2019.

''(B) A description of the manner in which the United States will maintain such capabilities so as to ensure the deployment of the capabilities in time to support the missile defense of the United States from long-range ballistic missile threats from Iran.''

PLANS TO IMPROVE THE GROUND-BASED MIDCOURSE DEFENSE SYSTEM

Pub. L. 113–66, div. A, title II, § 237, Dec. 26, 2013, 127 Stat. 717, provided that:

''(a) IMPROVED KILL ASSESSMENT CAPABILITY.—The Director of the Missile Defense Agency, in consultation with the Commander of the United States Strategic Command and the Commander of the United States Northern Command, shall develop—

''(1) options to achieve an improved kill assessment capability for the ground-based midcourse defense system that can be developed as soon as practicable with acceptable acquisition risk, with the objective of achieving initial operating capability by not later than December 31, 2019, including by improving—

''(A) the exo-atmospheric kill vehicle for the ground-based interceptor;

''(B) the command, control, battle management, and communications system; and

''(C) the sensor and communications architecture of the ballistic missile defense system; and

''(2) a plan to carry out such options that gives priority to including such improved capabilities in at least some of the 14 ground-based interceptors that will be procured by the Director, as announced by the Secretary of Defense on March 15, 2013.

''(b) IMPROVED HIT ASSESSMENT.—The Director, in consultation with the Commander of the United States Strategic Command and the Commander of the United States Northern Command, shall take appropriate steps to develop an interim capability for improved hit assessment for the ground-based midcourse defense system that can be integrated into near-term exo-atmospheric kill vehicle upgrades and refurbishment.

''(c) REPORT ON IMPROVED CAPABILITIES.—Not later than April 1, 2014, the Director, the Commander of the United States Strategic Command, and the Commander of the United States Northern Command shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on—

''(1) the development of an improved kill assessment capability under subsection (a), including the plan developed under paragraph (2) of such subsection; and

''(2) the development of an interim capability for improved hit assessment under subsection (b).

''(d) PLAN FOR UPGRADED ENHANCED EXO-ATMOSPHERIC KILL VEHICLE.—

''(1) PLAN REQUIRED.—Not later than 120 days after the date of the enactment of this Act [Dec. 26, 2013], the Director shall submit to the congressional defense committees a plan to use covered funding to develop, test, and deploy an upgraded enhanced exo-atmospheric kill vehicle for the ground-based midcourse defense system that—

''(A) is tested under a test program coordinated with the Director of Operational Test and Evaluation; and

''(B) following such test program, is capable of being deployed during fiscal year 2018 or thereafter.

''(2) PRIORITY.—In developing the plan for an upgraded enhanced exo-atmospheric kill vehicle under paragraph (1), the Director shall give priority to the following attributes:

''(A) Cost effectiveness and high reliability, testability, producibility, modularity, and maintainability.

''(B) Capability across the midcourse battle space.

''(C) Ability to leverage ballistic missile defense system data with kill vehicle on-board capability to discriminate lethal objects.

''(D) Reliable on-demand communications.

''(E) Sufficient flexibility to ensure that the potential for future enhancements, including ballistic missile defense system interceptor commonality and multiple and volume kill capability, is maintained.

''(3) COVERED FUNDING DEFINED.—In this subsection, the term 'covered funding' means—

''(A) funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2014 for the Missile Defense Agency, as specified in the funding table in section 4201; and

''(B) funds authorized to be appropriated by the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239) or otherwise made available for fiscal year 2013 that are available to the Director to carry out the plan under paragraph (1).''

LIMITATION ON AVAILABILITY OF FUNDS FOR MISSILE DEFENSE INTERCEPTORS IN EUROPE

Pub. L. 111–383, div. A, title II, § 223(a)–(d), Jan. 7, 2011, 124 Stat. 4168, 4169, provided that:

''(a) LIMITATION ON CONSTRUCTION AND DEPLOYMENT OF INTERCEPTORS.—No funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for the Department of Defense for fiscal year 2011 or any fiscal year thereafter may be obligated or expended for site activation, construction, or deployment of missile defense interceptors on European land as part of the phased, adaptive approach to missile defense in Europe until—

''(1) any nation agreeing to host such system has signed and ratified a missile defense basing agreement and a status of forces agreement authorizing the deployment of such interceptors; and

''(2) a period of 45 days has elapsed following the date on which the Secretary of Defense submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the report on the independent assessment of alternative missile defense systems in Europe required by section 235(c)(2) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2235).

''(b) LIMITATION ON PROCUREMENT OR DEPLOYMENT OF INTERCEPTORS.—No funds authorized to be appropriated by this Act or otherwise made available for the Department of Defense for fiscal year 2011 or any fiscal year thereafter may be obligated or expended for the procurement (other than initial long-lead procurement) or deployment of operational missiles on European land as part of the phased, adaptive approach to missile defense in Europe until the Secretary of Defense, after receiving the views of the Director of Operational Test and Evaluation, submits to the congressional defense committees a report certifying that the proposed interceptor to be deployed as part of such missile defense system has demonstrated, through successful, operationally realistic flight testing, a high probability of working in an operationally effective manner and that such missile defense system has the ability to accomplish the mission.

''(c) WAIVER.—The Secretary of Defense may waive the limitations in subsections (a) and (b) if—

''(1) the Secretary submits to the congressional defense committees written certification that the waiver is in the urgent national security interests of the United States; and

''(2) a period of seven days has elapsed following the date on which the certification under paragraph (1) is submitted.

''(d) CONSTRUCTION.—Nothing in this section shall be construed so as to limit the obligation and expenditure of funds for any missile defense activities not otherwise limited by subsection (a) or (b), including, with respect to the planned deployments of missile defense interceptors on European land as part of the phased, adaptive approach to missile defense in Europe—

''(1) research, development, test and evaluation;

''(2) site surveys;

''(3) studies and analyses; and

''(4) site planning and design and construction design.''

LIMITATION ON AVAILABILITY OF FUNDS FOR PROCUREMENT, CONSTRUCTION, AND DEPLOYMENT OF MISSILE DEFENSES IN EUROPE

Pub. L. 111–84, div. A, title II, §234, Oct. 28, 2009, 123 Stat. 2234, set forth reporting requirements for the use of Department of Defense funds for the acquisition or deployment of operational missiles of a long-range missile defense system in Europe, prior to repeal by Pub. L. 111–383, div. A, title II, §223(e), Jan. 7, 2011, 124 Stat. 4169.

Pub. L. 110–417, [div. A], title II, §233, Oct. 14, 2008, 122 Stat. 4393, as amended by Pub. L. 111–383, div. A, title X, §1075(e)(3), Jan. 7, 2011, 124 Stat. 4374, provided that:

''(a) GENERAL LIMITATION.—No funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for the Department of Defense for fiscal year 2009 or any fiscal year thereafter may be obligated or expended for procurement, site activation, construction, preparation of equipment for, or deployment of a long-range missile defense system in Europe until the following conditions have been met:

''(1) In the case of the proposed midcourse radar element of such missile defense system, the host nation has signed and ratified the missile defense basing agreement and status of forces agreement that allow for the stationing in such nation of the radar and personnel to carry out the proposed deployment.

''(2) In the case of the proposed long-range missile defense interceptor site element of such missile defense system—

''(A) the condition in paragraph (1) has been met; and

''(B) the host nation has signed and ratified the missile defense basing agreement and status of forces agreement that allow for the stationing in such nation of the interceptor site and personnel to carry out the proposed deployment.

''(3) In the case of either element of such missile defense system described in paragraph (1) or (2), 45 days have elapsed following the receipt by the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the report required by section 226(c)(6) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 43).

''(b) ADDITIONAL LIMITATION.—In addition to the limitation in subsection (a), no funds authorized to be appropriated by this Act or otherwise made available for the Department of Defense for fiscal year 2009 may be obligated or expended for the acquisition (other than initial long-lead procurement) or deployment of operational missiles of a long-range missile defense system in Europe until the Secretary of Defense, after receiving the views of the Director of Operational Test and Evaluation, submits to the congressional defense committees a report certifying that the proposed interceptor to be deployed as part of such missile defense system has demonstrated, through successful, operationally realistic flight testing, a high probability of working in an operationally effective manner and the ability to accomplish the mission.

''(c) CONSTRUCTION.—Nothing in this section shall be construed to limit continuing obligation and expenditure of funds for missile defense, including for research and development and for other activities not otherwise limited by subsection (a) or (b), including, but not limited to, site surveys, studies, analysis, and planning and design for the proposed missile defense deployment in Europe.''

POLICY OF THE UNITED STATES ON PROTECTION OF THE UNITED STATES AND ITS ALLIES AGAINST IRANIAN BALLISTIC MISSILES

Pub. L. 110–181, div. A, title II, §229, Jan. 28, 2008, 122 Stat. 45, provided that:

''(a) FINDING.—Congress finds that Iran maintains a nuclear program in continued defiance of the international community while developing ballistic missiles of increasing sophistication and range that—

''(1) pose a threat to—

''(A) the forward-deployed forces of the United States;

''(B) North Atlantic Treaty Organization (NATO) allies in Europe; and

''(C) other allies and friendly foreign countries in the region; and

''(2) eventually could pose a threat to the United States homeland.

''(b) POLICY OF THE UNITED STATES.—It is the policy of the United States—

''(1) to develop, test, and deploy, as soon as technologically feasible, in conjunction with allies and friendly foreign countries whenever possible, an effective defense against the threat from Iran described in subsection (a) that will provide protection—

''(A) for the forward-deployed forces of the United States, NATO allies, and other allies and friendly foreign countries in the region; and

''(B) for the United States homeland;

''(2) to encourage the NATO alliance to accelerate its efforts to—

''(A) protect NATO territory in Europe against the existing threat of Iranian short- and medium-range ballistic missiles; and

''(B) facilitate the ability of NATO allies to acquire the missile defense systems needed to provide a wide-area defense capability against short- and medium-range ballistic missiles; and

''(3) to proceed with the activities specified in paragraphs (1) and (2) in a manner such that any missile defense systems fielded by the United States in Europe are integrated with or complementary to missile defense systems fielded by NATO in Europe.''

POLICY OF THE UNITED STATES ON PRIORITIES IN THE DEVELOPMENT, TESTING, AND FIELDING OF MISSILE DEFENSE CAPABILITIES

Pub. L. 109–364, div. A, title II, §223, Oct. 17, 2006, 120 Stat. 2130, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) In response to the threat posed by ballistic missiles, President George W. Bush in December 2002 directed the Secretary of Defense to proceed with the fielding of an initial set of missile defense capabilities in 2004 and 2005.

''(2) According to assessments by the intelligence community of the United States, North Korea tested in 2005 a new solid propellant short-range ballistic missile, conducted a launch of a Taepodong-2 ballistic missile/space launch vehicle in 2006, and is likely developing intermediate-range and intercontinental ballistic missile capabilities that could someday reach as far as the United States with a nuclear payload.

''(3) According to assessments by the intelligence community of the United States, Iran continued in 2005 to test its medium-range ballistic missile, and the danger that Iran will acquire a nuclear weapon and integrate it with a ballistic missile Iran already possesses is a reason for immediate concern.

''(b) POLICY.—It is the policy of the United States that the Department of Defense accord a priority within the missile defense program to the development, testing, fielding, and improvement of effective near-term missile defense capabilities, including the ground-based midcourse defense system, the Aegis ballistic missile defense system, the Patriot PAC–3 system, the Terminal High Altitude Area Defense system, and the sensors necessary to support such systems.''

PLANS FOR TEST AND EVALUATION OF OPERATIONAL CAPABILITY OF THE BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 109–163, div. A, title II, § 234, Jan. 6, 2006, 119 Stat. 3174, as amended by Pub. L. 109–364, div. A, title II, § 225, Oct. 17, 2006, 120 Stat. 2130, provided that:

''(a) TEST AND EVALUATION PLANS FOR BLOCKS.—

''(1) PLANS REQUIRED.—With respect to block 06 and each subsequent block of the Ballistic Missile Defense System, the appropriate joint and service operational test and evaluation components of the Department of Defense concerned with the block shall prepare a plan, appropriate for the level of technological maturity of the block, to test, evaluate, and characterize the operational capability of the block.

''(2) CONSULTATION AND REVIEW.—The preparation of each plan under this subsection shall be—

''(A) carried out in coordination with the Missile Defense Agency; and

''(B) subject to the review and approval of the Director of Operational Test and Evaluation.

''(3) SUBMITTAL TO CONGRESS.—Each plan prepared under this subsection and approved by the Director of Operational Test and Evaluation shall be submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 30 days after the date of the approval of such plan by the Director.

''(b) REPORTS ON TEST AND EVALUATION OF BLOCKS.—At the conclusion of the test and evaluation of block 06 and each subsequent block of the Ballistic Missile Defense System, the Director of Operational Test and Evaluation shall submit to the Secretary of Defense and the congressional defense committees a report providing—

''(1) the assessment of the Director as to whether or not the test and evaluation was adequate to evaluate the operational capability of the block; and

''(2) the characterization of the Director as to the operational effectiveness, suitability, and survivability of the block, as appropriate for the level of technological maturity of the block tested.''

INTEGRATION OF PATRIOT ADVANCED CAPABILITY-3 AND MEDIUM EXTENDED AIR DEFENSE SYSTEM INTO BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 108–375, div. A, title II, § 232, Oct. 28, 2004, 118 Stat. 1835, provided that:

''(a) RELATIONSHIP TO BALLISTIC MISSILE DEFENSE SYSTEM.—The combined program of the Department of the Army known as the Patriot Advanced Capability-3/Medium Extended Air Defense System air and missile defense program (hereinafter in this section referred to as the 'PAC–3/MEADS program') is an element of the Ballistic Missile Defense System.

''(b) MANAGEMENT OF CONFIGURATION CHANGES.—The Director of the Missile Defense Agency, in consultation with the Secretary of the Army (acting through the Assistant Secretary of the Army for Acquisition, Logistics and Technology) shall ensure that any configuration change for the PAC–3/MEADS program is subject to the configuration control board processes of the Missile Defense Agency so as to ensure integration of the PAC–3/MEADS element with appropriate elements of the Ballistic Missile Defense System.

''(c) REQUIRED PROCEDURES.—(1) Except as otherwise directed by the Secretary of Defense, the Secretary of the Army (acting through the Assistant Secretary of the Army for Acquisition, Logistics and Technology) may make a significant change to the baseline technical specifications or the baseline schedule for the PAC–3/MEADS program only with the concurrence of the Director of the Missile Defense Agency.

''(2) With respect to a proposal by the Secretary of the Army to make a significant change to the procurement quantity (including any quantity in any future block procurement) that, as of the date of such proposal, is planned for the PAC–3/MEADS program, the Secretary of Defense shall establish—

''(A) procedures for a determination of the effect of such change on Ballistic Missile Defense System capabilities and on the cost of the PAC–3/MEADS program; and

''(B) procedures for review of the proposed change by all relevant commands and agencies of the Department of Defense, including determination of the concurrence or nonconcurrence of each such command and agency with respect to such proposed change.

''(d) REPORT.—Not later than February 1, 2005, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report describing the procedures developed pursuant to subsection (c)(2).

''(e) DEFINITIONS.—For purpose of this section:

''(1) The term 'significant change' means, with respect to the PAC–3/MEADS program, a change that would substantially alter the role or contribution of that program in the Ballistic Missile Defense System.

''(2) The term 'baseline technical specifications' means, with respect to the PAC–3/MEADS program, those technical specifications for that program that have been approved by the configuration control board of the Missile Defense Agency and are in effect as of the date of the review.

''(3) The term 'baseline schedule' means, with respect to the PAC–3/MEADS program, the development and production schedule for the PAC–3/MEADS program in effect at the time of a review of such program conducted pursuant to subsection (b) or (c)(2)(B).''

BASELINES AND OPERATIONAL TEST AND EVALUATION FOR BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 108–375, div. A, title II, § 234, Oct. 28, 2004, 118 Stat. 1837, provided that:

''(a) TESTING CRITERIA.—Not later than February 1, 2005, the Secretary of Defense, in consultation with the Director of Operational Test and Evaluation, shall prescribe appropriate criteria for operationally realistic testing of fieldable prototypes developed under the ballistic missile defense spiral development program. The Secretary shall submit a copy of the prescribed criteria to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives].

''(b) USE OF CRITERIA.—(1) The Secretary of Defense shall ensure that, not later than October 1, 2005, a test

of the ballistic missile defense system is conducted consistent with the criteria prescribed under subsection (a).

''(2) The Secretary of Defense shall ensure that each block configuration of the ballistic missile defense system is tested consistent with the criteria prescribed under subsection (a).

''(c) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to exempt any spiral development program of the Department of Defense, after completion of the spiral development, from the applicability of any provision of chapter 144 of title 10, United States Code, or section 139, 181, 2366, 2399, or 2400 of such title in accordance with the terms and conditions of such provision.

''(d) EVALUATION.—(1) The Director of Operational Test and Evaluation shall evaluate the results of each test conducted under subsection (a) as soon as practicable after the completion of such test.

''(2) The Director shall submit to the Secretary of Defense and the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the evaluation of each test conducted under subsection (a) upon completion of the evaluation of such test under paragraph (1).

''(e) COST, SCHEDULE, AND PERFORMANCE BASELINES.—(1) The Director of the Missile Defense Agency shall establish cost, schedule, and performance baselines for each block configuration of the Ballistic Missile Defense System being fielded. The cost baseline for a block configuration shall include full life cycle costs for the block configuration.

''(2) The Director shall include the baselines established under paragraph (1) in the first Selected Acquisition Report for the Ballistic Missile Defense System that is submitted to Congress under section 2432 of title 10, United States Code, after the establishment of such baselines.

''(3) The Director shall also include in the Selected Acquisition Report submitted to Congress under paragraph (2) the significant assumptions used in determining the performance baseline under paragraph (1), including any assumptions regarding threat missile countermeasures and decoys.

''(f) VARIATIONS AGAINST BASELINES.—In the event the cost, schedule, or performance of any block configuration of the Ballistic Missile Defense System varies significantly (as determined by the Director of the Ballistic Missile Defense Agency) from the applicable baseline established under subsection (d), the Director shall include such variation, and the reasons for such variation, in the Selected Acquisition Report submitted to Congress under section 2432 of title 10, United States Code.

''(g) MODIFICATIONS OF BASELINES.—In the event the Director of the Missile Defense Agency elects to undertake any modification of a baseline established under subsection (d), the Director shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report setting forth the reasons for such modification.''

REPORT REQUIREMENTS RELATING TO BALLISTIC MISSILE DEFENSE PROGRAMS

Pub. L. 107–314, div. A, title II, §221, Dec. 2, 2002, 116 Stat. 2484, related to annual submission of current performance goals and development baselines; research, development, test, and evaluation budget justification materials; and review of Missile Defense Agency criteria in relation to military requirements, prior to repeal by Pub. L. 112–81, div. A, title II, §231(b)(3), Dec. 31, 2011, 125 Stat. 1339.

PROVISION OF INFORMATION ON FLIGHT TESTING OF GROUND-BASED MIDCOURSE NATIONAL MISSILE DEFENSE SYSTEM

Pub. L. 107–314, div. A, title II, §224, Dec. 2, 2002, 116 Stat. 2485, provided that:

''(a) INFORMATION TO BE FURNISHED TO CONGRESSIONAL COMMITTEES.—The Director of the Missile Defense Agency shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] information on the results of each flight test of the Ground-based Midcourse national missile defense system.

''(b) CONTENT.—Information provided under subsection (a) on the results of a flight test shall include the following matters:

''(1) A thorough discussion of the content and objectives of the test.

''(2) For each such test objective, a statement regarding whether or not the objective was achieved.

''(3) For any such test objective not achieved—

''(A) a thorough discussion describing the reasons that the objective was not achieved; and

''(B) a discussion of any plans for future tests to achieve that objective.''

MISSILE DEFENSE AGENCY TEST PROGRAM

Pub. L. 107–107, div. A, title II, §232(c)–(h), Dec. 28, 2001, 115 Stat. 1037–1039, as amended by Pub. L. 107–314, div. A, title II, §225(b)(2)(A), Dec. 2, 2002, 116 Stat. 2486; Pub. L. 108–136, div. A, title II, §221(b)(2), (c)(2), Nov. 24, 2003, 117 Stat. 1419; Pub. L. 108–375, div. A, title II, §233, Oct. 28, 2004, 118 Stat. 1836; Pub. L. 109–163, div. A, title II, §232, Jan. 6, 2006, 119 Stat. 3174; Pub. L. 109–364, div. A, title II, §224, Oct. 17, 2006, 120 Stat. 2130; Pub. L. 110–181, div. A, title II, §225, Jan. 28, 2008, 122 Stat. 41; Pub. L. 110–417, [div. A], title II, §231(a), (b), Oct. 14, 2008, 122 Stat. 4390, 4391; Pub. L. 111–383, div. A, title X, §1075(e)(2), Jan. 7, 2011, 124 Stat. 4374; Pub. L. 112–81, div. A, title II, §232(c), title X, §1062(h), Dec. 31, 2011, 125 Stat. 1340, 1585, provided that:

''[(c), (d). Repealed. Pub. L. 112–81, div. A, title X, §1062(h), Dec. 31, 2011, 125 Stat. 1585.]

''(e) INTERNAL DOD REVIEWS.—(1) The officials and elements of the Department of Defense specified in paragraph (2) shall on an ongoing basis—

''(A) review the development of goals under subsection (c) and the annual program plan under subsection (d); and

''(B) provide to the Secretary of Defense and the Director of the Missile Defense Agency any comments on such matters as considered appropriate.

''(2) Paragraph (1) applies with respect to the following:

''(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(B) The Director of Operational Test and Evaluation.

''(C) The Director of Program Analysis and Evaluation.

''(D) The Joint Requirements Oversight Council.

''(E) The Cost Analysis and Improvement Group.

''(f) DEMONSTRATION OF CRITICAL TECHNOLOGIES.—(1) The Director of the Missile Defense Agency shall develop a plan for ensuring that each critical technology for a missile defense program is successfully demonstrated in an appropriate environment before that technology enters into operational service as part of a missile defense program.

''(2) The Director of Operational Test and Evaluation of the Department of Defense shall monitor the development of the plan under paragraph (1) and shall submit to the Director of the Missile Defense Agency any comments regarding that plan that the Director of Operational Test and Evaluation considers appropriate.

''[(g) Repealed. Pub. L. 112–81, div. A, title II, §232(c), Dec. 31, 2011, 125 Stat. 1340.]

''(h) ANNUAL OT&E ASSESSMENT AND CHARACTERIZATION OF CERTAIN BALLISTIC MISSILE DEFENSE MATTERS.—(1) The Director of Operational Test and Evaluation shall each year assess the adequacy and sufficiency of the Missile Defense Agency test program during the preceding fiscal year.

''(2) The Director of Operational Test and Evaluation shall also each year characterize the operational effec-

tiveness, suitability, and survivability of the ballistic missile defense system, and its elements, that have been fielded or tested before the end of the preceding fiscal year.

''(3) Not later than February 15 each year the Director shall submit to the congressional defense committees a report on the assessment under paragraph (1) and the characterization under paragraph (2) with respect to the preceding fiscal year.''

[Pub. L. 110–417, [div. A], title II, § 231(c), Oct. 14, 2008, 122 Stat. 4391, provided that: ''The amendments made by this section [amending Pub. L. 107–107, § 232(h), set out above] shall take effect on October 1, 2008, and shall apply with respect to fiscal years beginning on or after that date.'']

MISSILE DEFENSE TESTING INITIATIVE

Pub. L. 107–107, div. A, title II, § 234, Dec. 28, 2001, 115 Stat. 1039, provided that:

''(a) TESTING INFRASTRUCTURE.—(1) The Secretary of Defense shall ensure that each annual budget request of the Department of Defense—

''(A) is designed to provide for comprehensive testing of ballistic missile defense programs during early stages of development; and

''(B) includes necessary funding to support and improve test infrastructure and provide adequate test assets for the testing of such programs.

''(2) The Secretary shall ensure that ballistic missile defense programs incorporate, to the greatest possible extent, operationally realistic test configurations (referred to as 'test bed' configurations) to demonstrate system performance across a broad range of capability and, during final stages of operational testing, to demonstrate reliable performance.

''(3) The Secretary shall ensure that the test infrastructure for ballistic missile defense programs is capable of supporting continued testing of ballistic missile defense systems after deployment.

''(b) REQUIREMENTS FOR EARLY STAGES OF SYSTEM DEVELOPMENT.—In order to demonstrate acceptable risk and developmental stability, the Secretary of Defense shall ensure that any ballistic missile defense program incorporates, to the maximum extent practicable, the following elements during the early stages of system development:

''(1) Pursuit of parallel conceptual approaches and technological paths for all critical problematic components until effective and reliable solutions can be demonstrated.

''(2) Comprehensive ground testing in conjunction with flight-testing for key elements of the proposed system that are considered to present high risk, with such ground testing to make use of existing facilities and combinations of facilities that support testing at the highest possible levels of integration.

''(3) Where appropriate, expenditures to enhance the capabilities of existing test facilities, or to construct new test facilities, to support alternative complementary test methodologies.

''(4) Sufficient funding of test instrumentation to ensure accurate measurement of all critical test events.

''(5) Incorporation into the program of sufficient schedule flexibility and expendable test assets, including missile interceptors and targets, to ensure that failed or aborted tests can be repeated in a prudent, but expeditious manner.

''(6) Incorporation into flight-test planning for the program, where possible, of—

''(A) methods that make the most cost-effective use of test opportunities;

''(B) events to demonstrate engagement of multiple targets, 'shoot-look-shoot', and other planned operational concepts; and

''(C) exploitation of opportunities to facilitate early development and demonstration of 'family of systems' concepts.

''(c) SPECIFIC REQUIREMENTS FOR GROUND-BASED MID-COURSE INTERCEPTOR SYSTEMS.—For ground-based mid-course interceptor systems, the Secretary of Defense shall initiate steps during fiscal year 2002 to establish a flight-test capability of launching not less than three missile defense interceptors and not less than two ballistic missile targets to provide a realistic test infrastructure.''

NATIONAL MISSILE DEFENSE POLICY

Pub. L. 106–38, § 2, July 22, 1999, 113 Stat. 205, provided that: ''It is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate) with funding subject to the annual authorization of appropriations and the annual appropriation of funds for National Missile Defense.''

NATIONAL MISSILE DEFENSE PROGRAM

Pub. L. 105–85, div. A, title II, § 231, Nov. 18, 1997, 111 Stat. 1661, provided that the Secretary of Defense was to ensure that the National Missile Defense Program was structured and programmed for funding so as to support a test, in fiscal year 1999, of an integrated national missile defense system that was representative of the national missile defense system architecture that could achieve initial operational capability in fiscal year 2003, and that not later than Feb. 15, 1998, the Secretary was to submit to the congressional defense committees a plan for the development and deployment of a national missile defense system that could achieve initial operational capability in fiscal year 2003.

ENHANCED COOPERATION BETWEEN NATIONAL NUCLEAR SECURITY ADMINISTRATION AND MISSILE DEFENSE AGENCY

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3132], Oct. 30, 2000, 114 Stat. 1654, 1654A–455, as amended by Pub. L. 107–314, div. A, title II, § 225(b)(3), Dec. 2, 2002, 116 Stat. 2486, provided that:

''(a) JOINTLY FUNDED PROJECTS.—The Secretary of Energy and the Secretary of Defense shall modify the memorandum of understanding for the use of the national laboratories for ballistic missile defense programs, entered into under section 3131 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2034; 10 U.S.C. 2431 note), to provide for jointly funded projects.

''(b) REQUIREMENTS FOR PROJECTS.—The projects referred to in subsection (a) shall—

''(1) be carried out by the National Nuclear Security Administration and the Missile Defense Agency; and

''(2) contribute to sustaining—

''(A) the expertise necessary for the viability of such laboratories; and

''(B) the capabilities required to sustain the nuclear stockpile.

''(c) PARTICIPATION BY NNSA IN CERTAIN MDA ACTIVITIES.—The Administrator for Nuclear Security and the Director of the Missile Defense Agency shall implement mechanisms that increase the cooperative relationship between those organizations. Those mechanisms may include participation by personnel of the National Nuclear Security Administration in the following activities of the Missile Defense Agency:

''(1) Peer reviews of technical efforts.

''(2) Activities of so-called 'red teams'.''

Pub. L. 105–85, div. C, title XXXI, § 3131, Nov. 18, 1997, 111 Stat. 2034, provided that:

''(a) MEMORANDUM OF UNDERSTANDING.—The Secretary of Energy and the Secretary of Defense shall enter into a memorandum of understanding for the purpose of improving and facilitating the use by the Secretary of Defense of the expertise of the national laboratories for the ballistic missile defense programs of the Department of Defense.

''(b) ASSISTANCE.—The memorandum of understanding shall provide that the Secretary of Defense shall re-

quest such assistance with respect to the ballistic missile defense programs of the Department of Defense as the Secretary of Defense and the Secretary of Energy determine can be provided through the technical skills and experience of the national laboratories, using such financial arrangements as the Secretaries determine are appropriate.

''(c) ACTIVITIES.—The memorandum of understanding shall provide that the national laboratories shall carry out those activities necessary to respond to requests for assistance from the Secretary of Defense referred to in subsection (b). Such activities may include the identification of technical modifications and test techniques, the analysis of physics problems, the consolidation of range and test activities, and the analysis and simulation of theater missile defense deployment problems.

''(d) NATIONAL LABORATORIES.—For purposes of this section, the national laboratories are—

''(1) the Lawrence Livermore National Laboratory, Livermore, California;

''(2) the Los Alamos National Laboratory, Los Alamos, New Mexico; and

''(3) the Sandia National Laboratories, Albuquerque, New Mexico.''

BALLISTIC MISSILE DEFENSE PROGRAM

Pub. L. 104–106, div. A, title II, subtitle C, Feb. 10, 1996, 110 Stat. 228–233, as amended by Pub. L. 105–85, div. A, title II, §236, Nov. 18, 1997, 111 Stat. 1665; Pub. L. 106–65, div. A, title X, §1067(6), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, §1041(c), Dec. 2, 2002, 116 Stat. 2646, provided that:

''SEC. 231. SHORT TITLE.

''This subtitle may be cited as the 'Ballistic Missile Defense Act of 1995'.

''SEC. 232. FINDINGS.

''Congress makes the following findings:

''(1) The emerging threat that is posed to the national security interests of the United States by the proliferation of ballistic missiles is significant and growing, both in terms of numbers of missiles and in terms of the technical capabilities of those missiles.

''(2) The deployment of ballistic missile defenses is a necessary, but not sufficient, element of a broader strategy to discourage both the proliferation of weapons of mass destruction and the proliferation of the means of their delivery and to defend against the consequences of such proliferation.

''(3) The deployment of effective Theater Missile Defense systems can deter potential adversaries of the United States from escalating a conflict by threatening or attacking United States forces or the forces or territory of coalition partners or allies of the United States with ballistic missiles armed with weapons of mass destruction to offset the operational and technical advantages of the United States and its coalition partners and allies.

''(4) United States intelligence officials have provided intelligence estimates to congressional committees that (A) the trend in missile proliferation is toward longer range and more sophisticated ballistic missiles, (B) North Korea may deploy an intercontinental ballistic missile capable of reaching Alaska or beyond within five years, and (C) although a new, indigenously developed ballistic missile threat to the continental United States is not foreseen within the next ten years, determined countries can acquire intercontinental ballistic missiles in the near future and with little warning by means other than indigenous development.

''(5) The development and deployment by the United States and its allies of effective defenses against ballistic missiles of all ranges will reduce the incentives for countries to acquire such missiles or to augment existing missile capabilities.

''(6) The concept of mutual assured destruction (based upon an offense-only form of deterrence), which is the major philosophical rationale underlying the ABM Treaty, is now questionable as a basis for stability in a multipolar world in which the United States and the states of the former Soviet Union are seeking to normalize relations and eliminate Cold War attitudes and arrangements.

''(7) The development and deployment of a National Missile Defense system against the threat of limited ballistic missile attacks—

''(A) would strengthen deterrence at the levels of forces agreed to by the United States and Russia under the Strategic Arms Reduction Talks Treaty (START–I); and

''(B) would further strengthen deterrence if reductions below the levels permitted under START–I should be agreed to and implemented in the future.

''(8) The distinction made during the Cold War, based upon the technology of the time, between strategic ballistic missiles and nonstrategic ballistic missiles, which resulted in the distinction made in the ABM Treaty between strategic defense and nonstrategic defense, has become obsolete because of technological advancement (including the development by North Korea of long-range Taepo-Dong I and Taepo-Dong II missiles) and, therefore, that distinction in the ABM Treaty should be reviewed.

''SEC. 233. BALLISTIC MISSILE DEFENSE POLICY.

''It is the policy of the United States—

''(1) to deploy affordable and operationally effective theater missile defenses to protect forward-deployed and expeditionary elements of the Armed Forces of the United States and to complement the missile defense capabilities of forces of coalition partners and of allies of the United States; and

''(2) to seek a cooperative, negotiated transition to a regime that does not feature an offense-only form of deterrence as the basis for strategic stability.

''SEC. 234. THEATER MISSILE DEFENSE ARCHITECTURE.

''(a) ESTABLISHMENT OF CORE PROGRAM.—To implement the policy established in paragraph (1) of section 233, the Secretary of Defense shall restructure the core theater missile defense program to consist of the following systems:

''(1) The Patriot PAC–3 system.

''(2) The Navy Area Defense system.

''(3) The Theater High-Altitude Area Defense (THAAD) system.

''(4) The Navy Theater Wide system.

''(b) USE OF STREAMLINED ACQUISITION PROCEDURES.—The Secretary of Defense shall prescribe and use streamlined acquisition policies and procedures to reduce the cost and increase the efficiency of developing and deploying the theater missile defense systems specified in subsection (a).

''(c) INTEROPERABILITY AND SUPPORT OF CORE SYSTEMS.—To maximize effectiveness and flexibility of the systems comprising the core theater missile defense program, the Secretary of Defense shall ensure that those systems are integrated and complementary and are fully capable of exploiting external sensor and battle management support from systems such as—

''(A) the Cooperative Engagement Capability (CEC) system of the Navy;

''(B) airborne sensors; and

''(C) space-based sensors (including, in particular, the Space and Missile Tracking System).

''(d) FOLLOW-ON SYSTEMS.—(1) The Secretary of Defense shall prepare an affordable development plan for theater missile defense systems to be developed as follow-on systems to the core systems specified in subsection (a). The Secretary shall make the selection of a system for inclusion in the plan based on the capability of the system to satisfy military requirements not met by the systems in the core program and on the capability of the system to use prior investments in technologies, infrastructure, and battle-management capabilities that are incorporated in, or associated with, the systems in the core program.

''(2) The Secretary may not proceed with the development of a follow-on theater missile defense system beyond the Demonstration/Validation stage of development unless the Secretary designates that system as a part of the core program under this section and submits to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and House of Representatives] notice of that designation. The Secretary shall include with any such notification a report describing—

''(A) the requirements for the system and the specific threats that such system is designed to counter;

''(B) how the system will relate to, support, and build upon existing core systems;

''(C) the planned acquisition strategy for the system; and

''(D) a preliminary estimate of total program cost for that system and the effect of development and acquisition of such system on Department of Defense budget projections.

''(e) PROGRAM ACCOUNTABILITY REPORT.—(1) As part of the annual report of the Ballistic Missile Defense Organization [now Missile Defense Agency] required by section 224 of Public Law 101–189 (10 U.S.C. 2431 note), the Secretary of Defense shall describe the technical milestones, the schedule, and the cost of each phase of development and acquisition (together with total estimated program costs) for each core and follow-on theater missile defense program.

''(2) As part of such report, the Secretary shall describe, with respect to each program covered in the report, any variance in the technical milestones, program schedule milestones, and costs for the program compared with the information relating to that program in the report submitted in the previous year and in the report submitted in the first year in which that program was covered.

''SEC. 235. PROHIBITION ON USE OF FUNDS TO IMPLEMENT AN INTERNATIONAL AGREEMENT CONCERNING THEATER MISSILE DEFENSE SYSTEMS.

''(a) FINDINGS.—(1) Congress hereby reaffirms—

''(A) the finding in [former] section 234(a)(7) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1595; 10 U.S.C. 2431 note) that the ABM Treaty was not intended to, and does not, apply to or limit research, development, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles, regardless of the capabilities of such missiles, unless those systems, system upgrades, or system components are tested against or have demonstrated capabilities to counter modern strategic ballistic missiles; and

''(B) the statement in section 232 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2700) that the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered into pursuant to the treaty making power of the President under the Constitution.

''(2) Congress also finds that the demarcation standard described in subsection (b)(1) for compliance of a missile defense system, system upgrade, or system component with the ABM Treaty is based upon current technology.

''(b) SENSE OF CONGRESS CONCERNING COMPLIANCE POLICY.—It is the sense of Congress that—

''(1) unless a missile defense system, system upgrade, or system component (including one that exploits data from space-based or other external sensors) is flight tested in an ABM-qualifying flight test (as defined in subsection (e)), that system, system upgrade, or system component has not, for purposes of the ABM Treaty, been tested in an ABM mode nor been given capabilities to counter strategic ballistic missiles and, therefore, is not subject to any application, limitation, or obligation under the ABM Treaty; and

''(2) any international agreement that would limit the research, development, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles in a manner that would be more restrictive than the compliance criteria specified in paragraph (1) should be entered into only pursuant to the treaty making powers of the President under the Constitution.

''(c) PROHIBITION ON FUNDING.—Funds appropriated or otherwise made available to the Department of Defense for fiscal year 1996 may not be obligated or expended to implement an agreement, or any understanding with respect to interpretation of the ABM Treaty, between the United States and any of the independent states of the former Soviet Union entered into after January 1, 1995, that—

''(1) would establish a demarcation between theater missile defense systems and anti-ballistic missile systems for purposes of the ABM Treaty; or

''(2) would restrict the performance, operation, or deployment of United States theater missile defense systems.

''(d) EXCEPTIONS.—Subsection (c) does not apply—

''(1) to the extent provided by law in an Act enacted after this Act [Pub. L. 104–106, enacted Feb. 10, 1996];

''(2) to expenditures to implement that portion of any such agreement or understanding that implements the policy set forth in subsection (b)(1); or

''(3) to expenditures to implement any such agreement or understanding that is approved as a treaty or by law.

''(e) ABM-QUALIFYING FLIGHT TEST DEFINED.—For purposes of this section, an ABM-qualifying flight test is a flight test against a ballistic missile which, in that flight test, exceeds (1) a range of 3,500 kilometers, or (2) a velocity of 5 kilometers per second.

''SEC. 236. BALLISTIC MISSILE DEFENSE COOPERATION WITH ALLIES.

''It is in the interest of the United States to develop its own missile defense capabilities in a manner that will permit the United States to complement the missile defense capabilities developed and deployed by its allies and possible coalition partners. Therefore, the Congress urges the President—

''(1) to pursue high-level discussions with allies of the United States and selected other states on the means and methods by which the parties on a bilateral basis can cooperate in the development, deployment, and operation of ballistic missile defenses;

''(2) to take the initiative within the North Atlantic Treaty Organization to develop consensus in the Alliance for a timely deployment of effective ballistic missile defenses by the Alliance; and

''(3) in the interim, to seek agreement with allies of the United States and selected other states on steps the parties should take, consistent with their national interests, to reduce the risks posed by the threat of limited ballistic missile attacks, such steps to include—

''(A) the sharing of early warning information derived from sensors deployed by the United States and other states;

''(B) the exchange on a reciprocal basis of technical data and technology to support both joint development programs and the sale and purchase of missile defense systems and components; and

''(C) operational level planning to exploit current missile defense capabilities and to help define future requirements.

''SEC. 237. ABM TREATY DEFINED.

''For purposes of this subtitle, the term 'ABM Treaty' means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, and signed at Moscow on May 26, 1972, and includes the Protocols to that Treaty, signed at Moscow on July 3, 1974.

''SEC. 238. REPEAL OF MISSILE DEFENSE ACT OF 1991.

''The Missile Defense Act of 1991 [Pub. L. 102–190, div. A, title II, part C] (10 U.S.C. 2431 note) is repealed.''

COMPLIANCE OF BALLISTIC MISSILE DEFENSE SYSTEMS AND COMPONENTS WITH ABM TREATY

Pub. L. 103–337, div. A, title II, §231, Oct. 5, 1994, 108 Stat. 2699, provided that:

''(a) GENERAL LIMITATION.—Funds appropriated to the Department of Defense for fiscal year 1995, or otherwise made available to the Department of Defense from any funds appropriated for fiscal year 1995 or for any fiscal year before 1995, may not be obligated or expended—

''(1) for any development or testing of anti-ballistic missile systems or components except for development and testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter; or

''(2) for the acquisition of any material or equipment (including long lead materials, components, piece parts, or test equipment, or any modified space launch vehicle) required or to be used for the development or testing of anti-ballistic missile systems or components, except for material or equipment required for development or testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(b) LIMITATION RELATING TO BRILLIANT EYES.—Of the funds appropriated pursuant to the authorizations of appropriations in section 201 [108 Stat. 2690] that are made available for the space-based, midcourse missile tracking system known as the Brilliant Eyes program, not more than $80,000,000 may be obligated until the Secretary of Defense submits to the appropriate congressional committees a report on the compliance of that program with the ABM Treaty, as determined under the compliance review conducted pursuant to subsection (c).

''(c) COMPLIANCE REVIEW FOR BRILLIANT EYES.—The Secretary of Defense shall review the Brilliant Eyes program to determine whether, and under what conditions, the development, testing, and deployment of the Brilliant Eyes missile tracking system in conjunction with a theater ballistic missile defense system, with a limited national missile defense system, and with both such systems, would be in compliance with the ABM Treaty, including the interpretation of that treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(d) COMPLIANCE REVIEW FOR NAVY UPPER TIER SYSTEM.—(1) The Secretary of Defense shall review the theater ballistic missile program known as the Navy Upper Tier program to determine whether the development, testing, and deployment of the system being developed under that program would be in compliance with the ABM Treaty, including the interpretation of the Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(2) Of the funds made available to the Department of Defense for fiscal year 1995, not more than $40,000,000 may be obligated for the Navy Upper Tier program before the date on which the Secretary submits to the appropriate congressional committees a report on the compliance of that program with the ABM Treaty, as determined under the compliance review under paragraph (1).

''(e) DEFINITIONS.—In this section:

''(1) The term 'July 13, 1993, ACDA letter' means the letter dated July 13, 1993, from the Acting Director of the Arms Control and Disarmament Agency to the chairman of the Committee on Foreign Relations of the Senate relating to the correct interpretation of the ABM Treaty and accompanied by an enclosure setting forth such interpretation.

''(2) The term 'ABM Treaty' means the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles, signed in Moscow on May 26, 1972.

''(3) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.''

Pub. L. 103–160, div. A, title II, §234, Nov. 30, 1993, 107 Stat. 1595, contained findings of Congress, required compliance review, and limited funding pending submission of report, prior to repeal by Pub. L. 104–106, div. A, title II, §253(6), Feb. 10, 1996, 110 Stat. 235.

THEATER MISSILE DEFENSE MASTER PLAN

Pub. L. 103–160, div. A, title II, §235, Nov. 30, 1993, 107 Stat. 1598, provided that:

''(a) INTEGRATION AND COMPATIBILITY.—In carrying out the Theater Missile Defense Initiative, the Secretary of Defense shall—

''(1) seek to maximize the use of existing systems and technologies; and

''(2) seek to promote joint use by the military departments of existing and future ballistic missile defense equipment (rather than each military department developing its own systems that would largely overlap in their capabilities).

The Secretaries of the military departments shall seek the maximum integration and compatibility of their ballistic missile defense systems as well as of the respective roles and missions of those systems.

''(b) TMD MASTER PLAN.—The Secretary of Defense shall submit to Congress a report (which shall constitute the TMD master plan) containing a thorough and complete analysis of the future of theater missile defense programs. The report shall include the following:

''(1) A description of the mission and scope of Theater Missile Defense.

''(2) A description of the role of each of the Armed Forces in Theater Missile Defense.

''(3) A description of how those roles interact and complement each other.

''(4) An evaluation of the cost and relative effectiveness of each interceptor and sensor under development as part of a Theater Missile Defense system by the Ballistic Missile Defense Organization [now Missile Defense Agency].

''(5) A detailed acquisition strategy which includes an analysis and comparison of the projected acquisition and life-cycle costs of each Theater Missile Defense system intended for production (shown separately for research, development, test, and evaluation, for procurement, for operation and maintenance, and for personnel costs for each system).

''(6) Specification of the baseline production rate for each year of the program through completion of procurement.

''(7) An estimate of the unit cost and capabilities of each system.

''(8) A description of plans for theater and tactical missile defense doctrine, training, tactics, and force structure.

''(c) DESCRIPTION OF TESTING PROGRAM.—The Secretary of Defense shall include in the report under subsection (b)—

''(1) a description of the current and projected testing program for Theater Missile Defense systems and major components; and

''(2) an evaluation of the adequacy of the testing program to simulate conditions similar to those the systems and components would actually be expected to encounter if and when deployed (such as the ability to track and engage multiple targets with multiple interceptors, to discriminate targets from decoys and other incoming objects, and to be employed in a shoot-look-shoot firing mode).

''(d) RELATIONSHIP TO ARMS CONTROL TREATIES.—The Secretary shall include in the report under subsection (b) a statement of how production and deployment of any projected Theater Missile Defense program will

conform to all relevant arms control agreements. The report shall describe any potential noncompliance with any such agreement, when such noncompliance is expected to occur, and whether provisions need to be renegotiated within that agreement to address future contingencies.

''(e) SUBMISSION OF REPORT.—The report required by subsection (b) shall be submitted as part of the next annual report of the Secretary submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).

''(f) OBJECTIVES OF PLAN.—In preparing the master plan, the Secretary shall—

''(1) seek to maximize the use of existing technologies (such as SM–2, AEGIS, Patriot, and THAAD) rather than develop new systems;

''(2) seek to maximize integration and compatibility among the systems, roles, and missions of the military departments; and

''(3) seek to promote cross-service use of existing equipment (such as development of Army equipment for the Marine Corps or ground utilization of an air or sea system).

''(g) REVIEW AND REPORT ON DEPLOYMENT OF BALLISTIC MISSILE DEFENSES.—(1) The Secretary of Defense shall conduct an intensive and extensive review of opportunities to streamline the weapon systems acquisition process applicable to the development, testing, and deployment of theater ballistic missile defenses with the objective of reducing the cost of deployment and accelerating the schedule for deployment without significantly increasing programmatic risk or concurrency.

''(2) In conducting the review, the Secretary shall obtain recommendations and advice from—

''(A) the Defense Science Board;

''(B) the faculty of the Industrial College of the Armed Forces [now Dwight D. Eisenhower School for National Security and Resource Strategy]; and

''(C) federally funded research and development centers supporting the Office of the Secretary of Defense.

''(3) Not later than May 1, 1994, the Secretary shall submit to the congressional defense committees a report on the Secretary's findings resulting from the review under paragraph (1), together with any recommendations of the Secretary for legislation. The Secretary shall submit the report in unclassified form, but may submit a classified version of the report if necessary to clarify any of the information in the findings or recommendations or any related information. The report may be submitted as part of the next annual report of the Secretary submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).''

COOPERATION OF UNITED STATES ALLIES ON DEVELOPMENT OF TACTICAL AND THEATER MISSILE DEFENSES

Pub. L. 103–160, div. A, title II, § 242(a)–(e), Nov. 30, 1993, 107 Stat. 1603–1605, stated congressional findings, required Secretary of Defense to develop plan to coordinate development and implementation of Theater Missile Defense programs of United States with theater missile defense programs of allies of United States, specified contents of such plan, required Secretary to submit to Congress report on such plan in both classified and unclassified versions, required Secretary to include in each annual Theater Missile Defense Initiative report to Congress report on actions taken to implement such plan, specified contents of such report, related to restriction on funds, stated sense of Congress that whenever United States deployed theater ballistic missile defenses to protect country that had not provided support for development of such defenses United States was to consider seeking reimbursement from such country to cover at least incremental cost of such deployment, and related to congressional encouragement of allies of United States to participate in cooperative Theater Missile Defense programs of United States and encouragement of participation by United States in cooperative theater missile defense efforts of allied nations, prior to repeal by Pub. L. 104–106, div. A, title II, § 253(7), Feb. 10, 1996, 110 Stat. 235.

TRANSFER OF FOLLOW-ON TECHNOLOGY PROGRAMS

Pub. L. 103–160, div. A, title II, § 243, Nov. 30, 1993, 107 Stat. 1605, as amended by Pub. L. 104–201, div. A, title X, § 1073(e)(1)(E), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 107–314, div. A, title II, § 225(b)(4)(B), Dec. 2, 2002, 116 Stat. 2486, provided that:

''(a) MANAGEMENT RESPONSIBILITY.—Except as provided in subsection (b), the Secretary of Defense shall provide that management and budget responsibility for research and development of any program, project, or activity to develop far-term follow-on technology relating to ballistic missile defense shall be provided through the Defense Advanced Research Projects Agency or the appropriate military department.

''(b) WAIVER AUTHORITY.—The Secretary may waive the provisions of subsection (a) in the case of a particular program, project, or activity if the Secretary certifies to the congressional defense committees that it is in the national security interest of the United States to provide management and budget responsibility for that program, project, or activity through the Missile Defense Agency.

''(c) REPORT REQUIRED.—As a part of the report required by section 231(e) [107 Stat. 1593], the Secretary shall submit to the congressional defense committees a report identifying—

''(1) each program, project, and activity with respect to which the Secretary has transferred management and budget responsibility from the Missile Defense Agency in accordance with subsection (a);

''(2) the agency or military department to which each such transfer was made; and

''(3) the date on which each such transfer was made.

''(d) DEFINITION.—For the purposes of this section, the term 'far-term follow-on technology' means a technology that is not incorporated into a ballistic missile defense architecture and is not likely to be incorporated within 15 years into a weapon system for ballistic missile defense.

''(e) CONFORMING AMENDMENT.—Section 234 of the Missile Defense Act of 1991 [Pub. L. 102–190; 10 U.S.C. 2431 note] is repealed.''

THEATER MISSILE DEFENSE INITIATIVE

Pub. L. 102–484, div. A, title II, § 231, Oct. 23, 1992, 106 Stat. 2354, provided that:

''(a) ESTABLISHMENT OF THEATER MISSILE DEFENSE INITIATIVE.—The Secretary of Defense shall establish a Theater Missile Defense Initiative office within the Department of Defense. All theater and tactical missile defense activities of the Department of Defense (including all programs, projects, and activities formerly associated with the Theater Missile Defense program element of the Strategic Defense Initiative) shall be carried out under the Theater Missile Defense Initiative.

''(b) FUNDING FOR FISCAL YEAR 1993.—Of the amounts appropriated pursuant to section 201 [106 Stat. 2349] or otherwise made available to the Department of Defense for research, development, test, and evaluation for fiscal year 1993, not more than $935,000,000 may be obligated for activities of the Theater Missile Defense Initiative, of which not less than $90,000,000 shall be made available for exploration of promising concepts for naval theater missile defense.

''(c) REPORT.—When the President's budget for fiscal year 1994 is submitted to Congress pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees a report—

''(1) setting forth the proposed allocation by the Secretary of funds for the Theater Missile Defense Initiative for fiscal year 1994, shown for each program, project, and activity;

''(2) describing an updated master plan for the Theater Missile Defense Initiative that includes (A) a detailed consideration of plans for theater and tactical

missile defense doctrine, training, tactics, and force structure, and (B) a detailed acquisition strategy which includes a consideration of acquisition and life-cycle costs through the year 2005 for the programs, projects, and activities associated with the Theater Missile Defense Initiative;

''(3) assessing the possible near-term contribution and cost-effectiveness for theater missile defense of exoatmospheric capabilities, to include at a minimum a consideration of—

''(A) the use of the Navy's Standard missile combined with a kick stage rocket motor and lightweight exoatmospheric projectile (LEAP); and

''(B) the use of the Patriot missile combined with a kick stage rocket motor and LEAP.

''(d) EFFECTIVE DATE.—The provisions of subsections (a), (b), and (c) shall be implemented not later than 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

MISSILE DEFENSE PROGRAM

Pub. L. 102–190, div. A, title II, part C, Dec. 5, 1991, 105 Stat. 1321, as amended by Pub. L. 102–484, div. A, title II, §234(a)–(d)(1), (e), (f), title X, §1053(1), (2), Oct. 23, 1992, 106 Stat. 2356, 2357, 2501; Pub. L. 103–35, title II, §§202(a)(2), 203(b)(1), May 31, 1993, 107 Stat. 101, 102; Pub. L. 103–160, div. A, title II, §§232, 243(e), Nov. 30, 1993, 107 Stat. 1593, 1606; Pub. L. 103–337, div. A, title II, §233, Oct. 5, 1994, 108 Stat. 2700, specified that such provisions could be cited as the ''Missile Defense Act of 1991'', and related to missile defense goal of United States, implementation of goal, review of follow-on deployment options, definition of term ''ABM Treaty'', and interpretation of such provisions, prior to repeal by Pub. L. 104–106, div. A, title II, §238, Feb. 10, 1996, 110 Stat. 233.

Similar provisions were contained in the following prior authorization act:

Pub. L. 101–510, div. A, title II, §221, Nov. 5, 1990, 104 Stat. 1511.

STRETCHOUT OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 100–456, div. A, title I, §117, Sept. 29, 1988, 102 Stat. 1933, as amended by Pub. L. 104–106, div. D, title XLIII, §4321(i)(3), Feb. 10, 1996, 110 Stat. 676, required Secretary of Defense to submit a stretchout impact statement for certain major defense acquisition programs at same time the budget for any fiscal year is submitted to Congress and to submit to Committees on Armed Services of Senate and House of Representatives, no later than Mar. 15, 1989, a report on feasibility and effect of establishing maximum production rates by December 1990 for certain major defense acquisition programs, prior to repeal by Pub. L. 105–85, div. A, title X, §1041(c), Nov. 18, 1997, 111 Stat. 1885.

PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES

Pub. L. 100–180, div. A, title II, §222, Dec. 4, 1987, 101 Stat. 1055, prohibited use of appropriated funds for certain Strategic Defense Initiative program contracts with foreign entities, prior to repeal by Pub. L. 111–383, div. A, title II, §222, Jan. 7, 2011, 124 Stat. 4168.

LIMITATION ON TRANSFER OF CERTAIN MILITARY TECHNOLOGY TO INDEPENDENT STATES OF FORMER SOVIET UNION

Pub. L. 100–180, div. A, title II, §223, Dec. 4, 1987, 101 Stat. 1056, as amended by Pub. L. 103–199, title II, §203(a)(1), Dec. 17, 1993, 107 Stat. 2321, provided that: ''Military technology developed with funds appropriated or otherwise made available for the Ballistic Missile Defense Program may not be transferred (or made available for transfer) to Russia or any other independent state of the former Soviet Union by the United States (or with the consent of the United States) unless the President determines, and certifies to the Congress at least 15 days prior to any such transfer, that such transfer is in the national interest of the United States and is to be made for the purpose of maintaining peace.''

SDI ARCHITECTURE TO REQUIRE HUMAN DECISION MAKING

Pub. L. 100–180, div. A, title II, §224, Dec. 4, 1987, 101 Stat. 1056, provided that: ''No agency of the Federal Government may plan for, fund, or otherwise support the development of command and control systems for strategic defense in the boost or post-boost phase against ballistic missile threats that would permit such strategic defenses to initiate the directing of damaging or lethal fire except by affirmative human decision at an appropriate level of authority.''

PROHIBITION ON DEPLOYMENT OF ANTI-BALLISTIC MISSILE SYSTEM UNLESS AUTHORIZED BY LAW

Pub. L. 100–180, div. A, title II, §226, Dec. 4, 1987, 101 Stat. 1057, prohibited Secretary of Defense from deploying anti-ballistic missile system unless such deployment was specifically authorized by law after Dec. 4, 1987, prior to repeal by Pub. L. 104–106, div. A, title II, §253(3), Feb. 10, 1996, 110 Stat. 234.

ESTABLISHMENT OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER TO SUPPORT SDI PROGRAM

Pub. L. 100–180, div. A, title II, §227, Dec. 4, 1987, 101 Stat. 1057, authorized the Secretary of Defense, using funds appropriated to the Department of Defense for the Strategic Defense Initiative program, to enter into a contract not to be awarded before Oct. 1, 1989, to provide for the establishment and operation of a federally funded research and development center (FFRDC) to provide independent and objective technical support to the Strategic Defense Initiative program, and provided that no Federal funds could be provided to the new FFRDC after the end of the five-year period beginning on the date of the award of the first contract awarded.

LIMITATION ON ESTABLISHMENT OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER FOR STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 99–661, div. A, title II, §213, Nov. 14, 1986, 100 Stat. 3841, prohibited the Secretary of Defense from obligating or expending any funds for the purpose of operating a Federally funded research and development center that was established for the support of the Strategic Defense Initiative Program after Nov. 14, 1986, unless the Secretary submitted to the Committees on Armed Services of the Senate and House of Representatives a report with respect to such proposed center and funds were specifically authorized to be appropriated for such purpose in an Act other than an appropriations Act or a continuing resolution.

SHOULD-COST ANALYSES

Pub. L. 99–145, title IX, §915, Nov. 8, 1985, 99 Stat. 688, as amended by Pub. L. 100–26, §11(a)(2), Apr. 21, 1987, 101 Stat. 288, required Secretary of Defense to submit to Congress an annual report setting forth Secretary's plan for performance during next fiscal year of cost analyses for major defense acquisition programs for purpose of determining how much production of covered systems under such programs should cost, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1322(d)(2), Nov. 5, 1990, 104 Stat. 1672.

REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR DEPLOYMENT OF STRATEGIC DEFENSE INITIATIVE SYSTEM

Pub. L. 99–145, title II, §222, Nov. 8, 1985, 99 Stat. 613, provided that strategic defense system developed as consequence of research, development, test, and evaluation conducted on Strategic Defense Initiative program could not be deployed in whole or in part unless President made a certain determination and certification to Congress and funding for deployment of such system was specifically authorized by legislation enacted after date of certification, prior to repeal by Pub. L. 104–106, div. A, title II, §253(1), Feb. 10, 1996, 110 Stat. 234.

ANNUAL REPORT ON BALLISTIC MISSILE DEFENSE PROGRAM

Pub. L. 101–189, div. A, title II, § 224, Nov. 29, 1989, 103 Stat. 1398, as amended by Pub. L. 103–160, div. A, title II, § 240, Nov. 30, 1993, 107 Stat. 1603; Pub. L. 104–201, div. A, title II, § 244, Sept. 23, 1996, 110 Stat. 2463, provided that not later than March 15 of each year, the Secretary of Defense was to transmit to Congress a report on the programs and projects that constitute the Ballistic Missile Defense program and on any other program or project relating to defense against ballistic missiles, prior to repeal by Pub. L. 106–65, div. A, title X, § 1032(b)(1), Oct. 5, 1999, 113 Stat. 751.

Pub. L. 100–180, div. A, title II, § 231(a), Dec. 4, 1987, 101 Stat. 1059, provided that not later than Mar. 15, 1988 and Mar. 15, 1989, the Secretary of Defense was to transmit to Congress a report on the programs that constitute the Strategic Defense Initiative and on any other program relating to defense against ballistic missiles.

Pub. L. 98–525, title XI, § 1102, Oct. 19, 1984, 98 Stat. 2580, required Secretary of Defense, at time of his annual budget presentation to Congress beginning with fiscal year 1986 and ending with fiscal year 1990, to transmit to Committees on Armed Services and Foreign Affairs of House of Representatives and Committees on Armed Services and Foreign Relations of Senate, a detailed report on programs that constitute SDI, prior to repeal by Pub. L. 100–180, div. A, title II, § 231(b), Dec. 4, 1987, 101 Stat. 1060.

PLANS FOR MANAGEMENT OF TECHNICAL DATA AND COMPUTER CAPABILITY IMPROVEMENTS

Pub. L. 98–525, title XII, § 1252, Oct. 19, 1984, 98 Stat. 2610, directed Secretary of Defense, not later than one year after Oct. 19, 1984, to develop a plan for an improved system for the management of technical data relating to any major system of the Department of Defense and, not later than 5 years after Oct. 19, 1984, to complete implementation of the management plan, directed Comptroller General, not later than 18 months after Oct. 19, 1984, to transmit to Congress a report evaluating the plan developed, and directed Secretary of Defense, not later than 180 days after Oct. 19, 1984, to transmit to Congress a plan to improve substantially the computer capability of each of the military departments and of the Defense Logistics Agency to store and access rapidly data that is needed for the efficient procurement of supplies.

CONSULTATION WITH ALLIES ON STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8104], Oct. 12, 1984, 98 Stat. 1904, 1942, provided that: ''It is the sense of the Congress that—(a) the President shall inform and make every effort to consult with other member nations of the North Atlantic Treaty Organization, Japan, and other appropriate allies concerning the research being conducted in the Strategic Defense Initiative program. (b) The Secretary of Defense, in coordination with the Secretary of State and the Director of the Arms Control and Disarmament Agency, shall at the time of the submission of the annual budget presentation materials for each fiscal year beginning after September 30, 1984, report to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives on the status of the consultations referred to under subsection (a).''

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

ANTISATELLITE WEAPONS TEST

Pub. L. 100–180, div. A, title II, § 208, Dec. 4, 1986, 101 Stat. 1048, prohibited the Secretary of Defense, until Oct. 1, 1988, from carrying out a test of the Space Defense System (antisatellite weapon) involving the F–15 launched miniature homing vehicle against an object in space until the President certified to Congress that the Soviet Union had conducted, after Dec. 4, 1987, a test against an object in space of a dedicated antisatellite weapon.

Pub. L. 99–661, div. A, title II, § 231, Nov. 14, 1986, 100 Stat. 3847, prohibited the Secretary of Defense, until Oct. 1, 1987, from carrying out a test of the Space Defense System (anti-satellite weapon) against an object in space until the President certified to Congress that the Soviet Union had conducted, after Nov. 14, 1986, a test against an object in space of a dedicated anti-satellite weapon.

Similar provisions were contained in the following prior acts:

Pub. L. 99–500, § 101(c) [title XI, § 1101], Oct. 18, 1986, 100 Stat. 1783–82, 1783–177, and Pub. L. 99–591, § 101(c) [title XI, § 1101], Oct. 30, 1986, 100 Stat. 3341–82, 3341–177.

Pub. L. 99–190, § 101(b) [title VIII, § 8097], Dec. 19, 1985, 99 Stat. 1185, 1219.

Pub. L. 99–145, title II, § 208(a), (b), Nov. 8, 1985, 99 Stat. 610, provided that:

''(a) REQUIREMENT REGARDING THE USE OF FUNDS.—None of the funds appropriated pursuant to an authorization in this or any other Act may be obligated or expended to test against an object in space the miniature homing vehicle (MHV) anti-satellite warhead launched from an F–15 aircraft unless the President has made a determination and a certification to the Congress as provided in section 8100 of the Department of Defense Appropriations Act, 1985 [set out as a note below] (as contained in section 101(h) of Public Law 98–473 (98 Stat. 1941)).

''(b) LIMITATION ON NUMBER OF TESTS.—Not more than three tests described in subsection (a) may be conducted before October 1, 1986.''

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8100], Oct. 12, 1984, 98 Stat. 1904, 1941, provided that:

''(a) Notwithstanding any other provision of law, none of the funds appropriated or made available in this or any other Act may be obligated or expended to test against an object in space the miniature homing vehicle (MHV) anti-satellite warhead launched from an F–15 aircraft unless the President determines and certifies to Congress—

''(1) that the United States is endeavoring, in good faith, to negotiate with the Soviet Union a mutual and verifiable agreement with the strictest possible limitations on anti-satellite weapons consistent with the national security interests of the United States;

''(2) that, pending agreement on such strict limitations, testing against objects in space of the F–15 launched miniature homing vehicle anti-satellite warhead by the United States is necessary to avert clear and irrevocable harm to the national security;

''(3) that such testing would not constitute an irreversible step that would gravely impair prospects for negotiations on anti-satellite weapons; and

''(4) that such testing is fully consistent with the rights and obligations of the United States under the Anti-Ballistic Missile Treaty of 1972 as those rights and obligations exist at the time of such testing.

''(b) During fiscal year 1985, funds appropriated for the purpose of testing the F–15 launched miniature homing vehicle anti-satellite warhead may not be used to conduct more than three tests of that warhead against objects in space.

''(c) The limitation on the expenditure of funds provided by subsection (a) of this section shall cease to apply fifteen calendar days after the date of the receipt by Congress of the certification referred to in subsection (a) or March 1, 1985, whichever occurs later.''

Similar provisions were contained in the following prior authorization act:

Pub. L. 98–94, title XI, § 1235, Sept. 24, 1983, 97 Stat. 695; as amended by Pub. L. 98–525, title II, § 205, Oct. 19, 1984, 98 Stat. 2509.

EAST COAST TRIDENT BASE AND MX MISSILE SYSTEM SITES; USE OF FUNDS APPROPRIATED TO DEPARTMENT OF DEFENSE; ASSISTANCE TO NEARBY COMMUNITIES TO HELP MEET COSTS OF INCREASED MUNICIPAL SERVICES

Pub. L. 96–418, title VIII, § 802, Oct. 10, 1980, 94 Stat. 1775, as amended by Pub. L. 97–99, title IX, § 904(b), Dec. 23, 1981, 95 Stat. 1382; Pub. L. 98–115, title VIII, § 805, Oct. 11, 1983, 97 Stat. 785; Pub. L. 101–510, div. A, title XIII, § 1322(f), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) The Secretary of Defense (hereinafter in this section referred to as the 'Secretary') may assist communities located near MX Missile System sites and communities located near the East Coast Trident Base, and the States in which such communities are located, in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, or operation of the MX Missile System or the East Coast Trident Base, as the case may be, and that an unfair and excessive financial burden will be incurred by such communities, or the States in which such communities are located, as a result of such increased need for such services and facilities.

''(b)(1) Whenever possible, the Secretary shall carry out the program of assistance authorized under this section through existing Federal programs. In carrying out such program of assistance, the Secretary may—

''(A) supplement funds made available under existing Federal programs through a direct transfer of funds from the Secretary to the department or agency concerned in such amounts as the Secretary considers necessary;

''(B) provide financial assistance to communities described in subsection (a) to help such communities pay their share of the costs under such programs;

''(C) guarantee State or municipal indebtedness, and make interest payments, in whole or in part, for State or municipal indebtedness, for improved public facilities related to the MX Missile System site or the East Coast Trident Base, as the case may be; and

''(D) make direct grants to or on behalf of communities described in subsection (a) in cases in which Federal programs (or funds for such programs) do not exist or are not sufficient to meet the costs of providing increased municipal services and facilities to the residents of such communities.

''(2) The head of each department and agency shall cooperate fully with the Secretary in carrying out the provisions of this section on a priority basis.

''(3) Notwithstanding any other provision of law, the Secretary, in cooperation with the heads of other departments and agencies of the Federal Government, may provide assistance under this section in anticipation of the work to be carried out in connection with the MX Missile System sites or the East Coast Trident Base, as the case may be.

''(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary shall consult with the head of the department or agency concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration—

''(1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population;

''(2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community;

''(3) the initial capitalization required for municipal sewer and water systems;

''(4) the initial operating cost for upgrading municipal services; and

''(5) such other pertinent factors as the Secretary considers appropriate.

''(d) Funds appropriated to the Department of Defense for carrying out the MX Missile System deployment program and the East Coast Trident Base may, to the extent specifically authorized in Military Construction Authorization Acts, be used by the Secretary to provide assistance under this section.''

MX MISSILE AND BASING MODE

Pub. L. 96–342, title II, § 202, Sept. 8, 1980, 94 Stat. 1079, provided that:

''(a) The Congress finds that a survivable land-based intercontinental ballistic missile (ICBM) system is vital to the security of the United States and to a stable strategic balance between the United States and the Soviet Union and that timely deployment of a new basing mode is essential to the survivability of this Nation's land-based intercontinental ballistic missiles. It is, therefore, the purpose of this section to commit the Congress to the development and deployment of the MX missile system, consisting of 200 missiles and 4,600 hardened shelters, and to insure that deployment of the entire MX system is carried out as soon as practicable.

''(b) The Secretary of Defense shall proceed immediately with the full-scale engineering development of the MX missile and a Multiple Protective Structure (MPS) basing mode and shall continue such development in a manner that will achieve an Initial Operational Capability of such missile and basing mode not later than December 31, 1986.

''(c) Notwithstanding any other provision of law, the initial phase of construction shall be limited to 2,300 protective shelters for the MX missile in the initial deployment area.

''(d) In accordance with the finding of the Congress expressed in subsection (a), a full system of at least 4,600 protective shelters may be deployed in the initial deployment area if, after completion of a study to be conducted by the Secretary of Defense of an alternate site for a portion of the system, it is determined by the Congress that adverse cost, military considerations, or other reasons preclude split basing.''

DEVELOPMENT OF MX MISSILE SYSTEM

Pub. L. 96–29, title II, § 202, June 27, 1979, 93 Stat. 79, provided that:

''(a) It is the sense of the Congress that maintaining a survivable land-based intercontinental ballistic missile system is vital to the security of the United States and that development of a new basing mode for land-based intercontinental ballistic missiles is necessary to assure the survivability of the land-based system. To this end, the development of the MX missile, together with a new basing mode for such missile, should proceed so as to achieve Initial Operational Capability (IOC) for both such missile and such basing mode at the earliest practicable date.

''(b) In addition, it is the sense of the Congress that the basing mode for the MX missile should be restricted to location on the least productive land available that is suitable for such purpose.

''(c) In accordance with the sense of Congress expressed in subsection (a), the Secretary of Defense shall proceed immediately with full scale engineering development of the missile basing mode known as the Multiple Protective Structure (MPS) system concurrently with full scale engineering development of the MX missile, unless and until the Secretary of Defense certifies to the Congress that an alternative basing mode is militarily or technologically superior to, and is more cost effective than, the MPS system or the President informs the Congress that in his view the MPS system is not consistent with United States national security interests.

''(d) Nothing in this section shall be construed to prohibit or restrict the study of alternative basing modes for land-based intercontinental ballistic missiles.''

REPORTS TO CONGRESS OF ACQUISITIONS FOR MAJOR DEFENSE SYSTEMS

Pub. L. 94–106, title VIII, § 811, Oct. 7, 1975, 89 Stat. 539, as amended by Pub. L. 96–107, title VIII, § 809, Nov. 9, 1979, 93 Stat. 815; Pub. L. 97–86, title IX, § 917(e), Dec. 1, 1981, 95 Stat. 1131, which required reports to Congress respecting acquisitions of major defense systems, including total program acquisition unit costs, was repealed by Pub. L. 97–252, title XI, § 1107(b), Sept. 8, 1982, 96 Stat. 746, effective Jan. 1, 1983, as provided in section 1107(c) of Pub. L. 97–252, set out as an Effective Date note under section 2432 of this title. See sections 2432 and 2433 of this title.

TRIDENT SUPPORT SITE, BANGOR, WASHINGTON; FINANCIAL AID TO LOCAL COMMUNITIES; REPORTS

Pub. L. 93–552, title VI, § 608, Dec. 27, 1974, 88 Stat. 1763, provided:

''(a) The Secretary of Defense is authorized to assist communities located near the TRIDENT Support Site Bangor, Washington, in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, testing, and operation of the TRIDENT Weapon System and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities.

''(b) The Secretary of Defense shall carry out the provisions of this section through existing Federal programs. The Secretary is authorized to supplement funds made available under such Federal programs to the extent necessary to carry out the provisions of this section, and is authorized to provide financial assistance to communities described in subsection (a) of this section to help such communities pay their share of the costs under such programs. The heads of all departments and agencies concerned shall cooperate fully with the Secretary of Defense in carrying out the provisions of this section on a priority basis.

''(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary of Defense shall consult with the head of the department or agency of the Federal Government concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration (1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population, (2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community, and (3) such other pertinent factors as the Secretary of Defense deems appropriate.

''(d) Any funds appropriated to the Department of Defense for the fiscal year beginning July 1, 1974, for carrying out the TRIDENT Weapon System shall be utilized by the Secretary of Defense in carrying out the provisions of this section to the extent that funds are unavailable under other Federal programs. Funds appropriated to the Department of Defense for any fiscal year beginning after June 30, 1975, for carrying out the TRIDENT Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provision of this section to the extent that funds are unavailable under other Federal programs.

''(e) The Secretary shall transmit to the Committees on Armed Services of the Senate and the House of Representatives semiannual reports indicating the total amount expended in the case of each local community which was provided assistance under the authority of this section during the preceding six-month period, the specific projects for which assistance was provided during such period, and the total amount provided for each such project during such period.''

§ 2431a. Acquisition strategy

(a) ACQUISITION STRATEGY REQUIRED.—There shall be an acquisition strategy for each major defense acquisition program, each major automated information system, and each major system approved by a milestone decision authority.

(b) RESPONSIBLE OFFICIAL.—For each acquisition strategy required by subsection (a), the Under Secretary of Defense for Acquisition, Technology, and Logistics is responsible for issuing and maintaining the requirements for—

(1) the content of the strategy; and

(2) the review and approval process for the strategy.

(c) CONSIDERATIONS.—(1) In issuing requirements for the content of an acquisition strategy for a major defense acquisition program, major automated information system, or major system, the Under Secretary shall ensure that—

(A) the strategy clearly describes the proposed top-level business and technical management approach for the program or system, in sufficient detail to allow the milestone decision authority to assess the viability of the proposed approach, the method of implementing laws and policies, and program objectives;

(B) the strategy contains a clear explanation of how the strategy is designed to be implemented with available resources, such as time, funding, and management capacity;

(C) the strategy is tailored to address program requirements and constraints; and

(D) the strategy considers the items listed in paragraph (2).

(2) Each strategy shall, where appropriate, consider the following:

(A) An approach that delivers required capability in increments, each depending on available mature technology, and that recognizes up front the need for future capability improvements.

(B) Acquisition approach, including industrial base considerations in accordance with section 2440 of this title.

(C) Risk management, including such methods as competitive prototyping at the system, subsystem, or component level, in accordance with section 2431b of this title.

(D) Business strategy, including measures to ensure competition at the system and subsystem level throughout the life-cycle of the program or system in accordance with section 2337 of this title.

(E) Contracting strategy, including—

(i) contract type and how the type selected relates to level of program risk in each acquisition phase;

(ii) how the plans for the program or system to reduce risk enable the use of fixed-price elements in subsequent contracts and the timing of the use of those fixed price elements;

(iii) market research; and

(iv) consideration of small business participation.

(F) Intellectual property strategy in accordance with section 2320 of this title.

(G) International involvement, including foreign military sales and cooperative opportunities, in accordance with section 2350a of this title.

(H) Multiyear procurement in accordance with section 2306b of this title.

(I) Integration of current intelligence assessments into the acquisition process.

(J) Requirements related to logistics, maintenance, and sustainment in accordance with sections 2464 and 2466 of this title.

(d) REVIEW.—(1) Subject to the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, the milestone decision authority shall review and approve, as appropriate, the acquisition strategy for a major defense acquisition program, major automated information system, or major system at each of the following times:

(A) Milestone A approval.

(B) The decision to release the request for proposals for development of the program or system.

(C) Milestone B approval.

(D) Each subsequent milestone.

(E) Review of any decision to enter into full-rate production.

(F) When there has been—

(i) a significant change to the cost of the program or system;

(ii) a critical change to the cost of the program or system;

(iii) a significant change to the schedule of the program or system; or

(iv) a significant change to the performance of the program or system.

(G) Any other time considered relevant by the milestone decision authority.

(2) If the milestone decision authority revises an acquisition strategy for a program or system, the milestone decision authority shall provide notice of the revision to the congressional defense committees.

(e) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' has the meaning provided in section 2430 of this title.

(2) The term ''major system'' has the meaning provided in section 2302(5) of this title.

(3) The term ''Milestone A approval'' means a decision to enter into technology maturation and risk reduction pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(4) The term ''Milestone B approval'' has the meaning provided in section 2366(e)(7) of this title.

(5) The term ''milestone decision authority'', with respect to a major defense acquisition program, major automated information system, or major system, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or system, including authority to approve entry of the program or system into the next phase of the acquisition process.

(6) The term ''management capacity'', with respect to a major defense acquisition program, major automated information system, or major system, means the capacity to manage the program or system through the use of highly qualified organizations and personnel with appropriate experience, knowledge, and skills.

(7) The term ''significant change to the cost'', with respect to a major defense acquisition program or major system, means a significant cost growth threshold, as that term is defined in section 2433(a)(4) of this title.

(8) The term ''critical change to the cost'', with respect to a major defense acquisition program or major system, means a critical cost growth threshold, as that term is defined in section 2433(a)(5) of this title.

(9) The term ''significant change to the schedule'', with respect to a major defense acquisition program, major automated information system, or major system, means any schedule delay greater than six months in a reported event.

(Added Pub. L. 114–92, div. A, title VIII, § 821(a)(1), Nov. 25, 2015, 129 Stat. 897.)

§ 2431b. Risk management and mitigation in major defense acquisition programs and major systems

(a) REQUIREMENT.—The Secretary of Defense shall ensure that the initial acquisition strategy (required under section 2431a of this title) approved by the milestone decision authority and any subsequent revisions include the following:

(1) A comprehensive approach for managing and mitigating risk (including technical, cost, and schedule risk) during each of the following periods or when determined appropriate by the milestone decision authority:

(A) The period preceding engineering manufacturing development, or its equivalent.

(B) The period preceding initial production.

(C) The period preceding full-rate production.

(2) An identification of the major sources of risk in each of the periods listed in paragraph (1) to improve programmatic decisionmaking and appropriately minimize and manage program concurrency.

(b) APPROACH TO MANAGE AND MITIGATE RISKS.—The comprehensive approach to manage and mitigate risk included in the acquisition strategy for purposes of subsection (a)(1) shall, at a minimum, include consideration of risk mitigation techniques such as the following:

(1) Prototyping (including prototyping at the system, subsystem, or component level and competitive prototyping, where appropriate) and, if prototyping at either the system, subsystem, or component level is not used, an explanation of why it is not appropriate.

(2) Modeling and simulation, the areas that modeling and simulation will assess, and identification of the need for development of any new modeling and simulation tools in order to support the comprehensive strategy.

(3) Technology demonstrations and decision points for disciplined transition of planned

technologies into programs or the selection of alternative technologies.

(4) Multiple design approaches.

(5) Alternative designs, including any designs that meet requirements but do so with reduced performance.

(6) Phasing of program activities or related technology development efforts in order to address high-risk areas as early as feasible.

(7) Manufacturability and industrial base availability.

(8) Independent risk element assessments by outside subject matter experts.

(9) Schedule and funding margins for identified risks.

(c) PREFERENCE FOR PROTOTYPING.—To the maximum extent practicable and consistent with the economical use of available financial resources, the milestone decision authority for each major defense acquisition program shall ensure that the acquisition strategy for the program provides for—

(1) the production of competitive prototypes at the system or subsystem level before Milestone B approval; or

(2) if the production of competitive prototypes is not practicable, the production of single prototypes at the system or subsystem level.

(d) DEFINITIONS.—In this section, the terms ''major defense acquisition program'' and ''major system'' have the meanings provided in section 2431a of this title.

(Added Pub. L. 114–92, div. A, title VIII, § 822(a)(1), Nov. 25, 2015, 129 Stat. 900.)

§ 2432. Selected Acquisition Reports

(a) In this section:

(1) The term ''program acquisition unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total cost for development and procurement of, and system-specific military construction for, the acquisition program, divided by (B) the number of fully-configured end items to be produced for the acquisition program.

(2) The term ''procurement unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total of all funds programmed to be available for obligation for procurement for the program, divided by (B) the number of fully-configured end items to be procured.

(3) The term ''major contract'', with respect to a major defense acquisition program, means each of the six largest prime, associate, or Government-furnished equipment contracts under the program that is in excess of $40,000,000 and that is not a firm, fixed price contract.

(4) The term ''full life-cycle cost'', with respect to a major defense acquisition program, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(b)(1) The Secretary of Defense shall submit to Congress at the end of each fiscal-year quarter a report on current major defense acquisition programs. Except as provided in paragraphs (2) and (3), each such report shall include a status report on each defense acquisition program that at the end of such quarter is a major defense acquisition program. Reports under this section shall be known as Selected Acquisition Reports.

(2) A status report on a major defense acquisition program need not be included in the Selected Acquisition Report for the second, third, or fourth quarter of a fiscal year if such a report was included in a previous Selected Acquisition Report for that fiscal year and during the period since that report there has been—

(A) less than a 15 percent increase in program acquisition unit cost and current procurement unit cost for the program (or for each designated subprogram under the program); and

(B) less than a six-month delay in any program schedule milestone shown in the Selected Acquisition Report.

(3)(A) The Secretary of Defense may waive the requirement for submission of Selected Acquisition Reports for a program for a fiscal year if—

(i) the program has not entered system development and demonstration;

(ii) a reasonable cost estimate has not been established for such program; and

(iii) the system configuration for such program is not well defined.

(B) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each waiver under subparagraph (A) for a program for a fiscal year not later than 60 days before the President submits the budget to Congress pursuant to section 1105 of title 31 in that fiscal year.

(c)(1) Each Selected Acquisition Report for the first quarter for a fiscal year shall include—

(A) the same information, in detailed and summarized form, as is provided in reports submitted under section 2431 of this title;

(B) for each major defense acquisition program or designated major subprogram included in the report—

(i) the Baseline Estimate (as that term is defined in section 2433(a)(2) of this title), along with the associated risk and sensitivity analysis of that estimate;

(ii) the original Baseline Estimate (as that term is defined in section 2435(d)(1) of this title), along with the associated risk and sensitivity analysis of that estimate;

(iii) if the original Baseline Estimate was adjusted or revised pursuant to section 2435(d)(2) of this title, such adjusted or revised estimate, along with the associated risk and sensitivity analysis of that estimate; and

(iv) the primary risk parameters associated with the current procurement cost for the program (as that term is used in section 2432(e)(4) of this title);

(C) a summary of the history of significant developments from the date each major defense acquisition program or designated major subprogram included in the report was first included in a Selected Acquisition Report and

program highlights since the last Selected Acquisition Report;

(D) the significant schedule and technical risks for each such program or subprogram, identified at each major milestone and as of the quarter for which the current report is submitted;

(E) the current program acquisition cost and program acquisition unit cost for each such program or subprogram included in the report and the history of those costs from the December 2001 reporting period to the end of the quarter for which the current report is submitted;

(F) the current procurement unit cost for each such program or subprogram included in the report and the history of that cost from the December 2001 reporting period to the end of the quarter for which the current report is submitted; and

(G) such other information as the Secretary of Defense considers appropriate.

(2) Each Selected Acquisition Report for the first quarter of a fiscal year shall be designed to provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the information such Committees need to perform their oversight functions. Whenever the Secretary of Defense proposes to make changes in the content of a Selected Acquisition Report, the Secretary shall submit a notice of the proposed changes to such committees. The changes shall be considered approved by the Secretary, and may be incorporated into the report, only after the end of the 60-day period beginning on the date on which the notice is received by those committees.

(3) In addition to the material required by paragraphs (1) and (2), each Selected Acquisition Report for the first quarter of a fiscal year shall include the following:

(A) A full life-cycle cost analysis for each major defense acquisition program and each designated major subprogram included in the report that is in the system development and demonstration stage or has completed that stage. The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.

(B) If the system that is included in that major defense acquisition program has an antecedent system, a full life-cycle cost analysis for that system.

(4) Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.

(d)(1) Each Selected Acquisition Report for the second, third, and fourth quarters of a fiscal year shall include—

(A) with respect to each major defense acquisition program that was included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (e); and

(B) with respect to each major defense acquisition program that was not included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (c).

(2) Selected Acquisition Reports for the second, third, and fourth quarters of a fiscal year shall be known as Quarterly Selected Acquisition Reports.

(e) Information to be included under this subsection in a Quarterly Selected Acquisition Report with respect to a major defense acquisition program is as follows:

(1) The quantity of items to be purchased under the program.

(2) The program acquisition cost.

(3) The program acquisition unit cost for the program (or for each designated major subprogram under the program).

(4) The current procurement cost for the program.

(5) The current procurement unit cost for the program (or for each designated major subprogram under the program).

(6) The reasons for any change in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost or in program schedule from the previous Selected Acquisition Report.

(7) The reasons for any significant changes (from the previous Selected Acquisition Report) in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

(8) The major contracts under the program and designated major subprograms under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(9) Program highlights since the last Selected Acquisition Report.

(f) Each comprehensive annual Selected Acquisition Report shall be submitted within 45 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each Quarterly Selected Acquisition Report shall be submitted within 45 days after the end of the fiscal-year quarter.

(g) The requirements of this section with respect to a major defense acquisition program or designated major subprogram shall cease to apply after 90 percent of the items to be delivered to the United States under the program or subprogram (shown as the total quantity of items to be purchased under the program or subprogram in the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program or subprogram have been made.

(h)(1) Total program reporting under this section shall apply to a major defense acquisition program when funds have been appropriated for such program and the Secretary of Defense has decided to proceed to system development and demonstration of such program. Reporting may be limited to the development program as provided in paragraph (2) before a decision is made by the Secretary of Defense to proceed to system development and demonstration if the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed

Services of the House of Representatives of the intention to submit a limited report under this subsection not less than 15 days before a report is due under this section.

(2) A limited report under this subsection shall include the following:

(A) The same information, in detail and summarized form, as is provided in reports submitted under subsections (b)(1) and (b)(3) of section 2431 of this title.

(B) Reasons for any change in the development cost and schedule.

(C) The major contracts under the development program and designated major subprograms under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(D) Program highlights since the last Selected Acquisition Report.

(E) Other information as the Secretary of Defense considers appropriate.

(3) The submission requirements for a limited report under this subsection shall be the same as for quarterly Selected Acquisition Reports for total program reporting.

(Added Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; amended Pub. L. 98–525, title XII, § 1242(a), Oct. 19, 1984, 98 Stat. 2606; Pub. L. 99–145, title XII, § 1201, Nov. 8, 1985, 99 Stat. 715; renumbered § 2432 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(13), (g)(7), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 961(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(a), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(b)(3), (k)(2), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XII, § 1233(a)(1), title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1161, 1175; Pub. L. 101–189, div. A, title VIII, § 811(c), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XIV, §§ 1407(a)–(c), 1484(f)(4), Nov. 5, 1990, 104 Stat. 1681, 1717; Pub. L. 102–25, title VII, § 701(f)(3), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–190, div. A, title VIII, § 801(b)(2), title X, § 1061(a)(14), Dec. 5, 1991, 105 Stat. 1412, 1473; Pub. L. 102–484, div. A, title VIII, § 817(c), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 103–355, title III, § 3002(a)(1), (b)–(h), Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title VIII, § 806, Sept. 23, 1996, 110 Stat. 2606; Pub. L. 105–85, div. A, title VIII, § 841(c), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 108–136, div. A, title X, § 1045(a)(6), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 108–375, div. A, title VIII, § 801(b)(2), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 109–364, div. A, title X, § 1071(g)(10), Oct. 17, 2006, 120 Stat. 2402; Pub. L. 110–417, [div. A], title VIII, § 811(b), Oct. 14, 2008, 122 Stat. 4521; Pub. L. 112–81, div. A, title VIII, § 812, Dec. 31, 2011, 125 Stat. 1491; Pub. L. 113–66, div. A, title VIII, § 812(a), Dec. 26, 2013, 127 Stat. 807; Pub. L. 113–291, div. A, title X, § 1071(g)(2), Dec. 19, 2014, 128 Stat. 3511.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2014—Subsec. (c)(1)(E). Pub. L. 113–291, § 1071(g)(2), amended Pub. L. 113–66, § 812(a)(3)(B). See 2013 Amendment note below.

2013—Subsec. (c)(1)(B) to (D). Pub. L. 113–66, § 812(a)(2), added subpars. (B) to (D). Former subpars. (B) to (D) redesignated (E) to (G), respectively.

Subsec. (c)(1)(E). Pub. L. 113–66, § 812(a)(3)(B), as amended by Pub. L. 113–291, § 1071(g)(2), inserted ''program acquisition cost and'' after ''current'' the first place appearing.

Pub. L. 113–66, § 812(a)(1), (3)(A), (C), (D), redesignated subpar. (B) as (E) and substituted ''such program or subprogram'' for ''major defense acquisition program or designated major subprogram'', ''those costs'' for ''that cost'', and ''December 2001 reporting period'' for ''date the program or subprogram was first included in a Selected Acquisition Report''.

Subsec. (c)(1)(F). Pub. L. 113–66, § 812(a)(1), (4), redesignated subpar. (C) as (F) and substituted ''such program or subprogram'' for ''major defense acquisition program or designated major subprogram'' and ''December 2001 reporting period'' for ''date the program or subprogram was first included in a Selected Acquisition Report''.

Subsec. (c)(1)(G). Pub. L. 113–66, § 812(a)(1), redesignated subpar. (D) as (G).

2011—Subsec. (f). Pub. L. 112–81 substituted ''45 days after the date'' for ''60 days after the date''.

2008—Subsec. (b)(2)(A). Pub. L. 110–417, § 811(b)(1), inserted ''for the program (or for each designated subprogram under the program)'' after ''procurement unit cost''.

Subsec. (c)(1)(B). Pub. L. 110–417, § 811(b)(2)(A), inserted ''or designated major subprogram'' after ''for each major defense acquisition program'' and ''or subprogram'' after ''the program''.

Subsec. (c)(1)(C). Pub. L. 110–417, § 811(b)(2)(B), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''the program''.

Subsec. (c)(3)(A). Pub. L. 110–417, § 811(b)(2)(C), inserted ''and each designated major subprogram'' after ''for each major defense acquisition program''.

Subsec. (e)(3). Pub. L. 110–417, § 811(b)(3)(A), inserted ''for the program (or for each designated major subprogram under the program)'' before period at end.

Subsec. (e)(5). Pub. L. 110–417, § 811(b)(3)(B), inserted ''(or for each designated major subprogram under the program)'' before period at end.

Subsec. (e)(7). Pub. L. 110–417, § 811(b)(3)(C), inserted ''or subprogram'' after ''of the program'' wherever appearing.

Subsec. (e)(8). Pub. L. 110–417, § 811(b)(3)(D), inserted ''and designated major subprograms under the program'' after ''the program''.

Subsec. (g). Pub. L. 110–417, § 811(b)(4), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''the program'' wherever appearing.

Subsec. (h)(2)(C). Pub. L. 110–417, § 811(b)(5), inserted ''and designated major subprograms under the program'' after ''the development program''.

2006—Subsec. (e)(7) to (9). Pub. L. 109–364 made technical correction to directory language of Pub. L. 108–375, § 801(b)(2). See 2004 Amendment note below.

2004—Subsec. (e)(7) to (9). Pub. L. 108–375, § 801(b)(2), as amended by Pub. L. 109–364, added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

2003—Subsec. (h)(1). Pub. L. 108–136 inserted ''program'' after ''for such'' in first sentence.

2001—Subsecs. (b)(3)(A)(i), (c)(3)(A), (h)(1). Pub. L. 107–107 substituted ''system development and demonstration'' for ''engineering and manufacturing development'' wherever appearing.

1999—Subsecs. (b)(3)(B), (c)(2), (h)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (h)(2)(D) to (F). Pub. L. 105–85 redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: ''The completion status of the development program expressed—

''(i) as the percentage that the number of years for which funds have been appropriated for the development program is of the number of years for which it is planned that funds will be appropriated for the program; and

''(ii) as the percentage that the amount of funds that have been appropriated for the development program is of the total amount of funds which it is planned will be appropriated for the program.''

1996—Subsec. (b)(3)(B). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (c)(1). Pub. L. 104–201, §806(1), struck out ''and'' at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c)(2). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (e)(8), (9). Pub. L. 104–201, §806(2), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: ''The completion status of the program (A) expressed as the percentage that the number of years for which funds have been appropriated for the program is of the number of years for which it is planned that funds will be appropriated for the program, and (B) expressed as the percentage that the amount of funds that have been appropriated for the program is of the total amount of funds which it is planned will be appropriated for the program.''

Subsec. (h)(1). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (a)(2). Pub. L. 103–355, §3002(a)(1), struck out ''for a fiscal year, reduced by the amount of funds programmed to be available for obligation for such fiscal year for advanced procurement for such program in any subsequent year and increased by any amount appropriated in years before such fiscal year for advanced procurement for such program in such fiscal year'' after ''procurement for the program'' in cl. (A), ''with such funds during such fiscal year'' after ''procured'' in cl. (B), and last sentence which read as follows: ''If for any fiscal year the funds appropriated, or the number of fully-configured end items to be purchased, differ from those programmed, the procurement unit cost shall be revised to reflect the appropriated amounts and quantities.''

Subsec. (a)(3). Pub. L. 103–355, §3002(b), inserted before period at end ''and that is not a firm, fixed price contract''.

Subsec. (a)(4). Pub. L. 103–355, §3002(c), substituted ''means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.'' for ''has the meaning given the term 'cost of the program' in section 2434(b)(2) of this title.''

Subsec. (b)(3)(A)(i). Pub. L. 103–355, §3002(h)(1), struck out ''full scale development or'' before ''engineering''.

Subsec. (c)(2). Pub. L. 103–355, §3002(d), substituted second sentence for former second sentence which read as follows: ''The Secretary of Defense may approve changes in the content of the Selected Acquisition Report if the Secretary provides such Committees with written notification of such changes at least 60 days before the date of the report that incorporates the changes.''

Subsec. (c)(3)(A). Pub. L. 103–355, §3002(f)(2), (h)(2), substituted ''engineering and manufacturing'' for ''full-scale engineering'' and inserted at end ''The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.''

Subsec. (c)(3)(C). Pub. L. 103–355, §3002(e), struck out subpar. (C) which required production information for each major defense acquisition program included in report that is produced at rate of six units or more per year.

Subsec. (c)(5). Pub. L. 103–355, §3002(f)(1), struck out par. (5) which read as follows: ''The Secretary of Defense shall ensure that paragraph (4) of subsection (a) is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.''

Subsec. (f). Pub. L. 103–355, §3002(g), struck out last sentence which read as follows: ''A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress.''

Subsec. (h)(1). Pub. L. 103–355, §3002(h)(3), substituted ''engineering and manufacturing'' for ''full-scale engineering'' in two places.

1992—Subsec. (a)(3). Pub. L. 102–484, §817(c)(1), added par. (3) and struck out former par. (3) which read as follows: ''The term 'major contract', with respect to a major defense acquisition program, means (A) each prime contract under the program, and (B) each associate or Government-furnished equipment contract under the program that is one of the six largest contracts under the program in dollar amount and that is in excess of $40,000,000.''

Subsec. (b)(3). Pub. L. 102–484, §817(c)(2), added par. (3) and struck out former par. (3) which read as follows: ''A status report on a particular major defense acquisition program need not be included in any Selected Acquisition Report with the approval of the Committees on Armed Services of the Senate and House of Representatives.''

Subsec. (c)(2). Pub. L. 102–484, §817(c)(3), added sentence at end and struck out former last sentence which read as follows: ''A change in the content of the Selected Acquisition Report for the first quarter of a fiscal year from the content as reported for the first quarter of the previous fiscal year may not be made until appropriate officials of the Department of Defense consult with such Committees regarding the proposed changes.''

Subsec. (c)(3)(C)(i) to (vii). Pub. L. 102–484, §817(c)(4), added cls. (i) to (vii) and struck out former cls. (i) to (vii) which contained similar specification and estimation requirements.

1991—Subsec. (a)(4). Pub. L. 102–190, §801(b)(2), substituted ''2434(b)(2)'' for ''2434(c)(2)''.

Subsec. (c)(5). Pub. L. 102–25 substituted ''subsection (a)'' for ''section 2432(a) of title 10, United States Code, as added by subsection (a)(2),''.

Subsec. (h)(2)(A). Pub. L. 102–190, §1061(a)(14), substituted ''(b)(1) and (b)(3)'' for ''(c)(1) and (c)(3)''.

1990—Subsec. (a)(4). Pub. L. 101–510, §1407(b), added par. (4).

Subsec. (c)(3). Pub. L. 101–510, §1484(f)(4)(A), substituted ''include the following:'' for ''include—'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 101–510, §1407(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a full life-cycle cost analysis for each major defense acquisition program included in the report that—

''(i) is in the full-scale engineering development stage or has completed that stage; and

''(ii) was first included in a Selected Acquisition Report for a quarter after the first quarter of fiscal year 1985;''.

Subsec. (c)(3)(B). Pub. L. 101–510, §1484(f)(4)(B), (C), substituted ''If'' for ''if'' and a period for ''; and''.

Subsec. (c)(3)(C). Pub. L. 101–510, §1484(f)(4)(B), (D), substituted ''Production'' for ''production'' and ''program) the following:'' for ''program)—'' in introductory

provisions, ''Specification'' for ''specification'' in cls. (i) to (iv), ''Estimation'' for ''estimation'' in cls. (v) to (vii), a period for a semicolon in cls. (i) to (v), and a period for ''; and'' in cl. (vi).

Subsec. (c)(5). Pub. L. 101–510, § 1407(c), added par. (5).

1989—Subsec. (b)(2)(A). Pub. L. 101–189 substituted ''15 percent increase in program acquisition unit cost and current procurement unit cost'' for ''5 percent change in total program cost''.

1987—Pub. L. 100–180, § 1314(a)(1), made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

Subsec. (a). Pub. L. 100–26, § 7(b)(3)(A), as amended by Pub. L. 100–180, § 1233(a)(1), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which defined ''major defense acquisition program''.

Pub. L. 100–26, § 7(k)(2)(A), inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

Subsec. (a)(2). Pub. L. 100–26, § 7(b)(3)(B), substituted ''programmed'' for ''programed'' wherever appearing.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139a of this title as this section.

Pub. L. 99–433, § 110(d)(13), struck out ''Oversight of cost growth in major programs:'' before ''Selected Acquisition Reports'' in section catchline.

Subsec. (a)(3). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(a)(1)], Pub. L. 99–661, § 961(a)(1), amended par. (3) identically, inserting provision that if for any fiscal year the funds appropriated, or the number of fully-configured end items to be purchased, differ from those programmed, the procurement unit cost shall be revised to reflect the appropriated amounts and quantities.

Subsec. (a)(4). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(a)(2)], Pub. L. 99–661, § 961(a)(2), amended par. (4) identically, substituting ''$40,000,000'' for ''$2,000,000''.

Subsec. (b)(2)(B). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(a)(3)], Pub. L. 99–661, § 961(a)(3), amended subpar. (B) identically, substituting ''six-month'' for ''three-month''.

Subsec. (c)(1). Pub. L. 99–433, § 110(g)(7), substituted ''section 2431'' for ''section 139''.

Subsec. (c)(2). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(a)(4)], Pub. L. 99–661, § 961(a)(4), amended subsec. (c) identically, enacting a new par. (2) and striking out former par. (2) which read as follows: ''Each Selected Acquisition Report for the first quarter of a fiscal year shall be prepared and submitted with the same content as was used for the Selected Acquisition Report for the first quarter of fiscal year 1984.''

Subsec. (c)(3)(C). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(a)(5)], Pub. L. 99–661, § 961(a)(5), amended subpar. (C) identically, inserting in provision preceding cl. (i) ''that is produced at a rate of six units or more per year'' after ''report''.

Subsec. (h). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(a)(6)], Pub. L. 99–661, § 961(a)(6), amended section identically, adding subsec. (h).

1985—Subsec. (c). Pub. L. 99–145 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each Selected Acquisition Report for the first quarter of a fiscal year shall include (1) the same information, in detailed and summarized form, as is provided in reports submitted under section 139 of this title, (2) the current program acquisition unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted, and (3) such other information as the Secretary of Defense considers appropriate. Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.''

1984—Subsec. (a)(3). Pub. L. 98–525, § 1242(a)(1), substituted ''funds programed to be available for obligation for procurement'' for ''procurement funds appropriated'' and ''of funds programed to be available for obligation'' for ''of funds appropriated''.

Subsec. (a)(4). Pub. L. 98–525, § 1242(a)(2), inserted ''and that is in excess of $2,000,000''.

Subsec. (b)(2). Pub. L. 98–525, § 1242(a)(3), substituted ''during the period since that report there has been—(A) less than a 5 percent change in total program cost; and (B) less than a three-month delay in any program schedule milestone shown in the Selected Acquisition Report'' for ''there has been no change in program cost, performance, or schedule since the most recent such report''.

Subsec. (f). Pub. L. 98–525, § 1242(a)(4), substituted: ''60'' for ''30'', ''45'' for ''30, and ''A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress'' for ''If a preliminary report is submitted for the comprehensive annual Selected Acquisition Report in any year, the final report shall be submitted within 15 days after the submission of the preliminary report''.

Subsec. (g). Pub. L. 98–525, § 1242(a)(5), added subsec. (g).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title X, § 1071(g), Dec. 19, 2014, 128 Stat. 3511, provided that the amendment made by section 1071(g)(2) is effective as of Dec. 26, 2013, and as if included in Pub. L. 113–66 as enacted.

EFFECTIVE DATE OF 2013 AMENDMENT; PHASE-IN OF ADDITIONAL INFORMATION REQUIREMENTS

Pub. L. 113–66, div. A, title VIII, § 812(b), Dec. 26, 2013, 127 Stat. 807, provided that: ''Section 2432(c)(1) of title 10, United States Code, as amended by subsection (a), shall apply to Selected Acquisition Reports after the date of the enactment of this Act [Dec. 26, 2013] as follows:

''(1) For the December 2014 reporting period, to Selected Acquisition Reports for five major defense acquisition programs or designated major subprograms, as determined by the Secretary.

''(2) For the December 2019 reporting period and each reporting period thereafter, to Selected Acquisition Reports for all major defense acquisition programs or designated major subprograms.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(10) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title VIII, § 801(c), Oct. 28, 2004, 118 Stat. 2004, provided that: ''The amendments made by this section [amending this section and section 2433 of this title] shall take effect on the date occurring 60 days after the date of the enactment of this Act [Oct. 28, 2004], and shall apply with respect to reports due to be submitted to Congress on or after such date.''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title XIV, § 1407(d), Nov. 5, 1990, 104 Stat. 1681, as amended by Pub. L. 102–25, title VII, § 704(a)(8), Apr. 6, 1991, 105 Stat. 119, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect with respect to Selected Acquisition Reports submitted under section 2432 of title 10, United States Code, after December 31, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 1233(a)(1) of Pub. L. 100–180 applicable as if included in enactment of the Defense Technical Corrections Act of 1987, Pub. L. 100–26, see section 1233(c) of Pub. L. 100–180, set out as a note under section 101 of this title.

Amendment by section 1314(a)(1) of Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 961(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, Pub. L. 99–591, § 101(c) [title X, § 961(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(c), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2433 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE

Pub. L. 97–252, title XI, § 1107(c), Sept. 8, 1982, 96 Stat. 746, provided that: ''Sections 139a and 139b [now 2432 and 2433] of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1983, and shall apply beginning with respect to reports for the first quarter of fiscal year 1983. The repeal made by subsection (b) [repealing Pub. L. 94–106, as amended, set out as Reports to Congress of Acquisitions for Major Defense Systems note under section 2431 of this title] shall take effect on January 1, 1983.''

SELECTED ACQUISITION REPORTS FOR CERTAIN PROGRAMS

Pub. L. 100–180, div. A, title I, § 127, Dec. 4, 1987, 101 Stat. 1044, as amended by Pub. L. 102–484, div. A, title VIII, § 817(a), Oct. 23, 1992, 106 Stat. 2454, provided that:

''(a) SAR COVERAGE FOR ATB, ACM, AND ATA PROGRAMS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives, in accordance with the provisions of subsection (b) of section 2432 of title 10, United States Code, a Selected Acquisition Report with respect to each program referred to in subsection (b), notwithstanding that such a report would not otherwise be required under section 2432 of title 10, United States Code.

''(b) COVERED PROGRAMS.—Subsection (a) applies to the Advanced Technology Bomber program, the Advanced Cruise Missile program, and the Advanced Tactical Aircraft program.

''(c) SELECTED ACQUISITION REPORT DEFINED.—As used in subsection (a), the term 'Selected Acquisition Report' means a report containing the information referred to in section 2432 of title 10, United States Code.''

SENSE OF CONGRESS ON PREPARATION OF CERTAIN ECONOMIC IMPACT AND EMPLOYMENT INFORMATION CONCERNING NEW ACQUISITION PROGRAMS

Pub. L. 100–180, div. A, title VIII, § 825, Dec. 4, 1987, 101 Stat. 1134, related to the sense of Congress on preparation of certain economic impact and employment information concerning new acquisition programs, prior to repeal by Pub. L. 104–106, div. D, title XLIII, § 4321(i)(4), Feb. 10, 1996, 110 Stat. 676.

DURATION OF ASSIGNMENT OF PROGRAM MANAGERS FOR MAJOR PROGRAMS

Pub. L. 98–525, title XII, § 1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100–26, § 11(a)(1), Apr. 21, 1987, 101 Stat. 288, which related to waivable minimum four-year tour of duty of program managers for major defense acquisition programs, was repealed and restated in section 2435(c) of this title by Pub. L. 100–370, § 1(i), July 19, 1988, 102 Stat. 848.

§ 2433. Unit cost reports

(a) In this section:

(1) Except as provided in section 2430a(d) of this title, the terms ''program acquisition unit cost'', ''procurement unit cost'', and ''major contract'' have the same meanings as provided in section 2432(a) of this title.

(2) The term ''Baseline Estimate'', with respect to a unit cost report that is submitted under this section to the service acquisition executive designated by the Secretary concerned on a major defense acquisition program or designated major subprogram, means the cost estimate included in the baseline description for the program or subprogram under section 2435 of this title.

(3) The term ''procurement program'' means a program for which funds for procurement are authorized to be appropriated in a fiscal year.

(4) The term ''significant cost growth threshold'' means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 15 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 15 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(5) The term ''critical cost growth threshold'' means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 25 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 25 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(6) The term ''original Baseline Estimate'' has the same meaning as provided in section 2435(d) of this title.

(b) The program manager for a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, on a quarterly basis, submit to the service acquisition executive designated by the Secretary concerned a written report on the unit costs of the program (or of each designated major subprogram under the program). Each report shall be submitted not more than 30 calendar days after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):

(1) The program acquisition unit cost for the program (or for each designated major subprogram under the program).

(2) In the case of a procurement program, the procurement unit cost for the program (or for each designated major subprogram under the program).

(3) Any cost variance or schedule variance in a major contract under the program since the contract was entered into.

(4) Any changes from program schedule milestones or program performances reflected in the baseline description established under section 2435 of this title that are known, expected, or anticipated by the program manager.

(5) Any significant changes in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

(c) If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under subsection (b) determines at any time during a quarter that there is reasonable cause to believe that the program acquisition unit cost for the program (or for a designated major subprogram under the program) or the procurement unit cost for the program (or for such a subprogram), as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold; and if a unit cost report indicating an increase of such percentage or more has not previously been submitted to the service acquisition executive designated by the Secretary concerned, then the program manager shall immediately submit to such service acquisition executive a unit cost report containing the information, determined as of the date of the report, required under subsection (b).

(d)(1) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program or any designated major subprogram under the program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(2) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program or any designated major subprogram under the program that is a procurement program, the service acquisition executive, in addition to the determination under paragraph (1), shall determine whether the procurement unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(3) If, based upon the service acquisition executive's determination, the Secretary concerned determines that the current program acquisition unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that the procurement unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary shall notify Congress in writing of such determination and of the increase with respect to the program or subprogram concerned. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.

(e)(1)(A) Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program or designated major subprogram has increased by a percentage equal to or greater than the significant cost growth threshold for the program or subprogram, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The report shall include the information described in section 2432(e) of this title and shall be submitted in accordance with section 2432(f) of this title.

(B) Whenever the Secretary makes a determination referred to in subparagraph (A) in the case of a major defense acquisition program or designated major subprogram during the second quarter of a fiscal year and before the date on which the President transmits the budget for the following fiscal year to Congress pursuant to section 1105 of title 31, the Secretary is not re-

quired to file a Selected Acquisition Report under subparagraph (A) but shall include the information described in subsection (g) regarding that program or subprogram in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(2) If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense shall take actions consistent with the requirements of section 2433a of this title.

(3) If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program. The prohibition on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under paragraph (1) or (2)(B) with respect to that program, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in subsection (d)); or

(B) on which Congress has received both the Selected Acquisition Report under paragraph (1) or (2)(B) and the certification of the Secretary of Defense under paragraph (2)(A) with respect to that program, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under subsection (d)).

(f) Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars (as described in section 2430 of this title).

(g)(1) Except as provided in paragraph (2), each report under subsection (e) with respect to a major defense acquisition program shall include the following:

(A) The name of the major defense acquisition program.

(B) The date of the preparation of the report.

(C) The program phase as of the date of the preparation of the report.

(D) The estimate of the program acquisition cost for the program (and for each designated major subprogram under the program) as shown in the Selected Acquisition Report in which the program or subprogram was first included, expressed in constant base-year dollars and in current dollars.

(E) The current program acquisition cost for the program (and for each designated major subprogram under the program) in constant base-year dollars and in current dollars.

(F) A statement of the reasons for any increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(G) The completion status of the program and each designated major subprogram under the program (i) expressed as the percentage that the number of years for which funds have been appropriated for the program or subprogram is of the number of years for which it is planned that funds will be appropriated for the program or subprogram, and (ii) expressed as the percentage that the amount of funds that have been appropriated for the program or subprogram is of the total amount of funds which it is planned will be appropriated for the program or subprogram.

(H) The fiscal year in which information on the program and each designated major subprogram under the program was first included in a Selected Acquisition Report (referred to in this paragraph as the ''base year'') and the date of that Selected Acquisition Report in which information on the program or subprogram was first included.

(I) The type of the Baseline Estimate that was included in the baseline description under section 2435 of this title and the date of the Baseline Estimate.

(J) The current change and the total change, in dollars and expressed as a percentage, in the program acquisition unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars.

(K) The current change and the total change, in dollars and expressed as a percentage, in the procurement unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars and the procurement unit cost for the program (or for each designated major subprogram under the program) for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

(L) The quantity of end items to be acquired under the program and the current change and total change, if any, in that quantity.

(M) The identities of the military and civilian officers responsible for program management and cost control of the program.

(N) The action taken and proposed to be taken to control future cost growth of the program.

(O) Any changes made in the performance or schedule milestones of the program and the extent to which such changes have contributed to the increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(P) The following contract performance assessment information with respect to each major contract under the program or subprogram:

(i) The name of the contractor.

(ii) The phase that the contract is in at the time of the preparation of the report.

(iii) The percentage of work under the contract that has been completed.

(iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

(v) The percentage by which the contract is currently ahead of or behind schedule.

(vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the program and any designated major subprogram under the program, contributing to the changes identified and a discussion of the effect these occurrences will have on future program costs and the program schedule.

(Q) In any case in which one or more problems with the software component of the program or any designated major subprogram under the program significantly contributed to the increase in program unit costs, the action taken and proposed to be taken to solve such problems.

(2) If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program or designated major subprogram that results in a report under this subsection is due to termination or cancellation of the entire program or subprogram, only the information specified in clauses (A) through (F) of paragraph (1) and the percentage change in program acquisition unit cost or procurement unit cost that resulted in the report need be included in the report. The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program or subprogram.

(h) Reporting under this section shall not apply if a program has received a limited reporting waiver under section 2432(h) of this title.

(Added Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; amended Pub. L. 98–94, title XII, § 1268(1), Sept. 24, 1983, 97 Stat. 705; Pub. L. 98–525, title XII, § 1242(b), Oct. 19, 1984, 98 Stat. 2607; Pub. L. 99–145, title XIII, § 1303(a)(2), Nov. 8, 1985, 99 Stat. 738; renumbered § 2433 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(14), (g)(8), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, and Pub. L. 99–591, § 101(c) [title X, § 961(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(b), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(b)(4), (k)(7), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 101–510, div. A, title XIV, § 1484(k)(10), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title VIII, § 817(d), Oct. 23, 1992, 106 Stat. 2456; Pub. L. 103–35, title II, § 201(i)(2), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title III, §§ 3002(a)(2), 3003, Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 105–85, div. A, title VIII, § 833, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 108–375, div. A, title VIII, § 801(a), (b)(1), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 109–163, div. A, title VIII, § 802(a)–(c), (d)(2), Jan. 6, 2006, 119 Stat. 3367–3370; Pub. L. 109–364, div. A, title II, § 213(a), Oct. 17, 2006, 120 Stat. 2121; Pub. L. 110–181, div. A, title IX, § 942(e), Jan. 28, 2008, 122 Stat. 288; Pub. L. 110–417, [div. A], title VIII, § 811(c), Oct. 14, 2008, 122 Stat. 4522; Pub. L. 111–23, title II, § 206(a)(3), May 22, 2009, 123 Stat. 1728; Pub. L. 111–84, div. A, title X, § 1073(c)(4), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–383, div. A, title X, § 1075(b)(34), Jan. 7, 2011, 124 Stat. 4371.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

Subsec. (a)(1). Pub. L. 111–383 substituted ''section 2430a(d)'' for ''section 2430a(c)''.

2009—Subsec. (e)(2). Pub. L. 111–23 amended par. (2) generally. Prior to amendment, par. (2) related to cost growths in major defense acquisition programs or designated major subprograms.

Subsec. (g)(1)(G). Pub. L. 111–84 made technical amendment to directory language of Pub. L. 110–417, § 811(c)(6)(A)(iv)(I). See 2008 Amendment note below.

2008—Subsec. (a)(1). Pub. L. 110–417, § 811(c)(1)(A), substituted ''Except as provided in section 2430a(c) of this title, the terms'' for ''The terms''.

Subsec. (a)(2). Pub. L. 110–417, § 811(c)(1)(B), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''the program''.

Subsec. (a)(4), (5). Pub. L. 110–417, § 811(c)(1)(C), (D), inserted ''or designated major defense subprogram'' after ''major defense acquisition program'' wherever appearing and ''or subprogram'' after ''for the program'' wherever appearing.

Subsec. (b). Pub. L. 110–417, § 811(c)(2)(A), inserted ''(or of each designated major subprogram under the program)'' after ''unit costs of the program'' in introductory provisions.

Subsec. (b)(1), (2). Pub. L. 110–417, § 811(c)(2)(B), (C), inserted ''for the program (or for each designated major subprogram under the program)'' before period at end.

Subsec. (b)(5). Pub. L. 110–417, § 811(c)(2)(D), inserted ''or subprogram'' after ''software component of the program'' wherever appearing.

Subsec. (c). Pub. L. 110–417, § 811(c)(3), substituted ''the program acquisition unit cost for the program (or for a designated major subprogram under the program) or the procurement unit cost for the program (or for such a subprogram)'' for ''the program acquisition unit cost for the program or the procurement unit cost for the program'' and struck out ''for the program'' after ''significant cost growth threshold''.

Subsec. (d)(1), (2). Pub. L. 110–417, § 811(c)(4)(A), (B), inserted ''or any designated major subprogram under the program'' after ''major defense acquisition program'' and ''or subprogram'' after ''for the program'' wherever appearing.

Subsec. (d)(3). Pub. L. 110–417, § 811(c)(4)(C), substituted ''the program or subprogram concerned'' for ''such program''.

Subsec. (e)(1)(A). Pub. L. 110–417, § 811(c)(5)(A)(i), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''for the program''.

Subsec. (e)(1)(B). Pub. L. 110–417, § 811(c)(5)(A)(ii), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''that program''.

Subsec. (e)(2). Pub. L. 110–417, § 811(c)(5)(B), in introductory provisions, inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''for the program''.

Pub. L. 110–181 inserted '', after consultation with the Joint Requirements Oversight Council regarding pro-

gram requirements,'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (g)(1)(D). Pub. L. 110–417, §811(c)(6)(A)(i), inserted ''(and for each designated major subprogram under the program)'' after ''for the program'' and ''or subprogram'' after ''in which the program''.

Subsec. (g)(1)(E). Pub. L. 110–417, §811(c)(6)(A)(ii), inserted ''for the program (and for each designated major subprogram under the program)'' after ''program acquisition cost''.

Subsec. (g)(1)(F). Pub. L. 110–417, §811(c)(6)(A)(iii), inserted ''for the program (or for any designated major subprogram under the program)'' before period at end.

Subsec. (g)(1)(G). Pub. L. 110–417, §811(c)(6)(A)(iv)(I), as amended by Pub. L. 111–84, inserted ''and each designated major subprogram under the program'' after ''of the program''.

Subsec. (g)(1)(G)(i), (ii). Pub. L. 110–417, §811(c)(6)(A)(iv)(II), inserted ''or subprogram'' after ''for the program'' in two places.

Subsec. (g)(1)(H). Pub. L. 110–417, §811(c)(6)(A)(v), inserted ''and each designated major subprogram under the program'' after ''year in which information on the program'' and ''or subprogram'' after ''Report in which information on the program''.

Subsec. (g)(1)(J). Pub. L. 110–417, §811(c)(6)(A)(vi), inserted ''for the program (or for each designated major subprogram under the program)'' after ''program acquisition unit cost''.

Subsec. (g)(1)(K). Pub. L. 110–417, §811(c)(6)(A)(vii), inserted ''for the program (or for each designated major subprogram under the program)'' after ''procurement unit cost'' in two places.

Subsec. (g)(1)(O). Pub. L. 110–417, §811(c)(6)(A)(viii), inserted ''for the program (or for any designated major subprogram under the program)'' before period at end.

Subsec. (g)(1)(P). Pub. L. 110–417, §811(c)(6)(A)(ix), inserted ''or subprogram'' after ''the program'' in introductory provisions and ''and any designated major subprogram under the program'' after ''major contracts of the program'' in cl. (vi).

Subsec. (g)(1)(Q). Pub. L. 110–417, §811(c)(6)(A)(x), inserted ''or any designated major subprogram under the program'' after ''the program''.

Subsec. (g)(2). Pub. L. 110–417, §811(c)(6)(B), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''the entire program'' and after ''cancellation of a program''.

2006—Subsec. (a)(4), (5). Pub. L. 109–163, §802(a), added pars. (4) and (5).

Subsec. (a)(6). Pub. L. 109–163, §802(d)(2), added par. (6).

Subsec. (c). Pub. L. 109–163, §802(b)(1), substituted ''cause to believe that the program acquisition unit cost for the program or the procurement unit cost for the program, as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold for the program'' for ''cause to believe—

''(1) that the program acquisition unit cost for the program has increased by at least 15 percent over the program acquisition unit cost for the program as shown in the Baseline Estimate; or

''(2) in the case of a major defense acquisition program that is a procurement program, that the procurement unit cost for the program has increased by at least 15 percent over the procurement unit cost for the program as reflected in the Baseline Estimate''.

Subsec. (d)(1). Pub. L. 109–163, §802(b)(2)(A), substituted ''by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program'' for ''by at least 15 percent, or by at least 25 percent, over the program acquisition unit cost for the program as shown in the Baseline Estimate''.

Subsec. (d)(2). Pub. L. 109–163, §802(b)(2)(B), substituted ''by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program'' for ''by at least 15 percent, or by at least 25 percent, over the procurement unit cost for the program as reflected in the Baseline Estimate''.

Subsec. (d)(3). Pub. L. 109–163, §802(b)(2)(C), substituted ''by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that'' for ''by at least 15 percent, or by at least 25 percent, as determined under paragraph (1) or that'' and ''by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary'' for ''by at least 15 percent, or by at least 25 percent, as determined under paragraph (2), the Secretary''.

Subsec. (e)(1)(A). Pub. L. 109–163, §802(b)(3)(A), substituted ''by a percentage equal to or greater than the significant cost growth threshold for the program'' for ''by at least 15 percent''.

Subsec. (e)(2). Pub. L. 109–163, §802(c), redesignated subpar. (B) as (C) and substituted ''the Secretary of Defense shall—'', par. (A) and introductory provisions of par. (B) for ''the Secretary of Defense shall submit to Congress, before the end of the 30-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title—

''(A) a written certification, stating that—''.

Pub. L. 109–163, §802(b)(3)(B), in introductory provisions, struck out ''percentage increase in the'' before ''program acquisition'' and substituted ''increases by a percentage equal to or greater than the critical cost growth threshold for the program'' for ''exceeds 25 percent''.

Subsec. (e)(2)(A). Pub. L. 109–364 added cl. (i) and redesignated former cls. (i) to (iii) as (ii) to (iv), respectively.

Subsec. (e)(3). Pub. L. 109–163, §802(b)(3)(C)(ii), substituted ''by a percentage equal to or greater than the critical cost growth threshold'' for ''of at least 25 percent'' in introductory provisions and subpar. (B).

Pub. L. 109–163, §802(b)(3)(C)(i), substituted ''by a percentage equal to or greater than the significant cost growth threshold'' for ''of at least 15 percent'' in introductory provisions and subpar. (A).

2004—Subsec. (b)(5). Pub. L. 108–375, §801(a), added par. (5).

Subsec. (g)(1)(Q). Pub. L. 108–375, §801(b)(1), added subpar. (Q).

1997—Subsec. (c). Pub. L. 105–85, §833(a), in concluding provisions, struck out ''during the current fiscal year (other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' after ''designated by the Secretary concerned''.

Subsec. (c)(1) to (3). Pub. L. 105–85, §833(b), inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), and struck out par. (3), which read as follows: ''that cost variances or schedule variances of a major contract under the program have resulted in an increase in the cost of the contract of at least 15 percent over the cost of the contract as of the time the contract was made;''.

Subsec. (d)(3). Pub. L. 105–85, §833(c), struck out ''(for the first time since the beginning of the current fiscal year)'' after ''the Secretary concerned determines''.

1994—Subsec. (a)(2). Pub. L. 103–355, §3003(a)(1)(A), substituted ''Baseline Estimate'' for ''Baseline Selected Acquisition Report'' and ''cost estimate included in the baseline description for the program under section 2435 of this title.'' for ''Selected Acquisition Report in which information on the program is first included or the comprehensive annual Selected Acquisition Report for the fiscal year immediately before the fiscal year containing the quarter with respect to which the unit cost report is submitted, whichever is later.''

Subsec. (a)(4). Pub. L. 103–355, §3003(a)(1)(B), struck out par. (4) which defined ''Baseline Report''.

Subsec. (b)(3). Pub. L. 103–355, §3003(b), substituted ''contract was entered into'' for ''Baseline Report was submitted''.

Subsec. (c). Pub. L. 103–355, §§3002(a)(2)(A), 3003(a)(2)(A), (c), struck out par. (1) designation and par. (2), redesignated subpars. (A) to (C) as pars. (1) to

(3), respectively, substituted ''Baseline Estimate'' for ''Baseline Report'' in pars. (1) and (2), and struck out ''current'' before ''procurement unit cost'' in par. (2). Prior to amendment, former par. (2) related to submission of unit cost reports by major defense acquisition program manager to service acquisition executive designated by Secretary of Defense in certain circumstances.

Subsec. (d)(1). Pub. L. 103–355, § 3003(a)(2)(B), substituted ''Baseline Estimate'' for ''Baseline Report''.

Subsec. (d)(2). Pub. L. 103–355, §§ 3002(a)(2)(B), 3003(a)(2)(B), struck out ''current'' before ''procurement unit cost'' and substituted ''Baseline Estimate'' for ''Baseline Report''.

Subsec. (d)(3). Pub. L. 103–355, § 3002(a)(2)(B), struck out ''current'' before ''procurement unit cost''.

Subsec. (e)(1)(A), (2). Pub. L. 103–355, § 3002(a)(2)(C), struck out ''current'' before ''procurement unit cost''.

Subsec. (f). Pub. L. 103–355, § 3003(d), substituted ''be stated in terms of constant base year dollars (as described in section 2430 of this title)'' for ''include expected inflation''.

Subsec. (g)(1)(I). Pub. L. 103–355, § 3003(e), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report.''

1993—Subsec. (e)(3). Pub. L. 103–35 substituted ''an increase of at least 15 percent'' for ''a at least 15 percent increase'' in introductory provisions and in subpar. (A), and substituted ''an increase of at least 25 percent'' for ''a at least 25 percent increase'' in introductory provisions and in subpar. (B).

1992—Subsec. (a)(4)(C). Pub. L. 102–484, § 817(d)(1), substituted ''(e)(2)(B)'' for ''(e)(2)(B)(ii)''.

Subsec. (b). Pub. L. 102–484, § 817(d)(2), substituted ''30 calendar days'' for ''7 days (excluding Saturdays, Sundays, and legal public holidays)'' in second sentence.

Subsec. (c)(1)(A), (B), (2)(A), (B). Pub. L. 102–484, § 817(d)(3), substituted ''at least'' for ''more than''.

Subsec. (d)(1), (2). Pub. L. 102–484, § 817(d)(4)(A), substituted ''at least'' for ''more than'' wherever appearing.

Subsec. (d)(3). Pub. L. 102–484, § 817(d)(4)(B), substituted ''at least'' for ''more than'' wherever appearing and ''program. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.'' for ''program within 30 days after the date on which the service acquisition executive reports his determination of such increase in such unit cost to the Secretary and shall include in such notification the date on which the determination was made.''

Subsec. (e)(1)(A). Pub. L. 102–484, § 817(d)(5)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the current program acquisition cost of a major defense acquisition program has increased by more than 15 percent, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination and such report shall include the information described in section 2432(e) of this title. The report shall be submitted within 45 days after the end of that quarter.''

Subsec. (e)(2). Pub. L. 102–484, § 817(d)(5)(B), substituted ''program acquisition unit cost or current procurement unit cost'' for ''current program acquisition cost''.

Subsec. (e)(3). Pub. L. 102–484, § 817(d)(5)(C), substituted ''at least'' for ''more than'' wherever appearing.

1990—Subsec. (c). Pub. L. 101–510 struck out ''the'' before ''such service acquisition executive'' wherever appearing.

1989—Subsec. (a)(2). Pub. L. 101–189, § 811(a)(1)(A), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned''.

Subsec. (a)(4). Pub. L. 101–189, § 811(a)(1)(B)(i), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned'' in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 101–189, § 811(a)(1)(B)(ii), substituted ''Selected Acquisition Report submitted under subsection (e)(2)(B) that includes information on'' for ''unit cost report submitted under subsection (e)(2)(B)(ii) with respect to''.

Subsec. (a)(4)(B). Pub. L. 101–189, § 811(a)(1)(B)(iii), substituted ''subsection (e)(2)(B) with respect to the program during that three-quarter period, the most recent Selected Acquisition Report submitted under subsection (e)(1) that includes information on the program'' for ''subsection (e)(2)(B)(ii) with respect to the program during that three-quarter period, the most recent unit cost report submitted under subsection (e)(1) with respect to the program''.

Subsec. (b). Pub. L. 101–189, § 811(a)(2)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The program manager for a defense acquisition program that as of the end of a fiscal-year quarter is a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, after the end of that quarter, submit to the Secretary concerned a written report on the unit costs of the program. Each report for the first quarter of a fiscal year shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):''.

Subsec. (b)(4). Pub. L. 101–189, § 811(a)(2)(B), substituted ''description established under section 2435 of this title'' for ''Selected Acquisition Report''.

Subsec. (c)(1). Pub. L. 101–189, § 811(a)(3)(A), in introductory provisions, struck out ''fiscal-year'' after ''time during a'', and in concluding provisions, inserted ''the service acquisition executive designated by'' before ''the Secretary concerned during'' and substituted ''(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' for ''(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)'' and ''such service acquisition executive a unit'' for ''Secretary concerned a unit''.

Subsec. (c)(2). Pub. L. 101–189, § 811(a)(3)(B), in introductory provisions, inserted ''the service acquisition executive designated by'' before ''the Secretary concerned a unit'' and substituted ''(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' for ''(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)'', and in cls. (A), (B), and (C), and concluding provisions, substituted ''such service acquisition executive'' for ''Secretary concerned''.

Subsec. (d)(1). Pub. L. 101–189, § 811(a)(4)(A), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned'' and substituted ''service acquisition executive shall determine'' for ''Secretary shall determine''.

Subsec. (d)(2). Pub. L. 101–189, § 811(a)(4)(B), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned under'' and substituted ''service acquisition executive, in addition to the determination under paragraph (1), shall determine'' for ''Secretary concerned shall, in addition to the determination under paragraph (1), determine''.

Subsec. (d)(3). Pub. L. 101–189, § 811(a)(4)(C), substituted par. (3) consisting of a single par., for former par. (3) consisting of subpars. (A) and (B).

Subsec. (e)(1), (2). Pub. L. 101–189, §811(a)(5)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which contained exceptions to the prohibitions in subsec. (d)(3)(B)(i) and (ii).

Subsec. (e)(3). Pub. L. 101–189, §811(a)(5)(B), in introductory provisions, inserted ''If a determination of a more than 15 percent increase is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of a more than 25 percent increase is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program.'' and struck out ''in subsection (d)(3)(B)'' after ''prohibition'', in subpar. (A), substituted ''Selected Acquisition Report'' for ''report of the Secretary concerned'' and ''(2)(B)'' for ''(2)(B)(ii)'', and in subpar. (B), substituted ''Selected Acquisition Report'' for ''report of the Secretary concerned'', ''(2)(B)'' for ''(2)(B)(ii)'', and ''(2)(A)'' for ''(2)(B)(i)''.

Subsec. (g)(2). Pub. L. 101–189, §811(a)(6), inserted at end ''The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program.''

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, §101(a)(5). See 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 100–26, §7(b)(4), substituted ''(1) The terms 'program' '' for ''(1) 'Major defense acquisition program', 'program' ''.

Subsec. (a)(2). Pub. L. 100–26, §7(k)(7)(A), inserted ''The term'' after par. designation.

Subsec. (a)(3). Pub. L. 100–26, §7(k)(7)(B), substituted ''The term 'procurement' '' for '' 'Procurement' ''.

Subsec. (a)(4). Pub. L. 100–26, §7(k)(7)(A), inserted ''The term'' after par. designation.

1986—Pub. L. 99–433, §101(a)(5), as amended by Pub. L. 100–180, §1314(a)(1), renumbered section 139b of this title as this section.

Pub. L. 99–433, §110(d)(14), substituted ''Unit cost reports'' for ''Oversight of cost growth of major programs: unit cost reports'' in section catchline.

Subsec. (a)(1). Pub. L. 99–433, §110(g)(8)(A), substituted ''section 2432(a)'' for ''section 139a(a)''.

Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(b)(1)], Pub. L. 99–661, §961(b)(1), amended subsec. (b) identically, inserting ''(excluding Saturdays, Sundays, and legal public holidays)'' in two places in second sentence.

Pub. L. 99–433, §110(g)(8)(B), substituted ''section 2432(b)(3)'' for ''section 139a(b)(3)'' in first sentence.

Subsec. (h). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(b)(2)], Pub. L. 99–661, §961(b)(2), amended section identically, adding subsec. (h).

1985—Subsec. (d)(3)(B)(i). Pub. L. 99–145 inserted ''percent'' after ''15''.

1984—Subsec. (a)(4). Pub. L. 98–525, §1242(b)(1), added par. (4).

Subsec. (b). Pub. L. 98–525, §1242(b)(2)(A), (B), struck out ''not more than 7 days'' before ''after the end of that quarter'' and inserted ''Each report for the first quarter of a fiscal year shall be submitted not more than 7 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days after the end of that quarter.''

Subsec. (b)(3). Pub. L. 98–525, §1242(b)(2)(C), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (c)(1)(A), (B). Pub. L. 98–525, §1242(b)(3), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (d)(1), (2). Pub. L. 98–525, §1242(b)(4)(A), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (d)(3)(B). Pub. L. 98–525, §1242(b)(4)(B)(i), substituted ''funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program'' for ''additional funds may not be obligated in connection with such program''.

Subsec. (d)(3)(B)(i). Pub. L. 98–525, §1242(b)(4)(B)(ii), struck out ''but less than 25 percent'' after ''more than 15''.

Subsec. (e)(1). Pub. L. 98–525, §1242(b)(5)(A), substituted ''subsection (d)(3)(B)(i)'' for ''subsection (d)(3)(B)'' and inserted ''more than'' before ''15 percent''.

Subsec. (e)(2). Pub. L. 98–525, §1242(b)(5)(B), substituted ''subsection (d)(3)(B)(ii)'' for ''subsection (d)(3)(B)'' and inserted ''more than'' before ''25 percent''.

Subsec. (e)(2)(A). Pub. L. 98–525, §1242(b)(5)(B)(iii), inserted ''and the Secretary concerned submits to Congress, before the end of the 30-day period referred to in subsection (d)(3)(B)(i), a report containing the information described in subsection (g)''.

Subsec. (e)(2)(B). Pub. L. 98–525, §1242(b)(5)(B)(iv), substituted ''subsection (d)(3)(B)(ii)'' for ''such subsection''.

Subsec. (e)(3). Pub. L. 98–525, §1242(b)(5)(C), substituted ''at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

''(A) on which Congress receives the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) with respect to that program, in the case of a determination of a more than 15 percent increase (as determined in subsection (d)); or

''(B) on which Congress has received both the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) and the certification of the Secretary of Defense under paragraph (2)(B)(i) with respect to that program, in the case of a more than 25 percent increase (as determined under subsection (d)).'',

for ''in the case of a program to which it would otherwise apply if, after such prohibition has taken effect, the Committees on Armed Services of the Senate and House of Representatives waive the prohibition with respect to such program.''

Subsec. (g)(1)(I). Pub. L. 98–525, §1242(b)(6)(A), substituted ''The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report'' for ''The date of the baseline Selected Acquisition Report''.

Subsec. (g)(1)(K). Pub. L. 98–525, §1242(b)(6)(B), required the report to include the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

1983—Subsec. (g)(2). Pub. L. 98–94 substituted ''procurement'' for ''procurment''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(4) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VIII, §802(e), Jan. 6, 2006, 119 Stat. 3370, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 2435 of this title] shall take effect on the date of the enactment of this Act [Jan. 6, 2006], and shall apply with respect to any major defense acquisition program for which an original Baseline Estimate is first established before, on, or after that date.

''(2) APPLICABILITY TO CURRENT MAJOR DEFENSE ACQUISITION PROGRAMS.—In the case of a major defense acquisition program for which the program acquisition unit cost or procurement unit cost, as applicable, exceeds the original Baseline Estimate for the program by more than 50 percent on the date of the enactment of this Act—

''(A) the current Baseline Estimate for the program as of such date of enactment is deemed to be the original Baseline Estimate for the program for purposes of section 2433 of title 10, United States Code (as amended by this section); and

''(B) each Selected Acquisition Report submitted on the program after the date of the enactment of this Act shall reflect each of the following:

''(i) The original Baseline Estimate, as first established for the program, without adjustment or revision.

''(ii) The Baseline Estimate for the program that is deemed to be the original Baseline Estimate for the program under subparagraph (A).

''(iii) The current original Baseline Estimate for the program as adjusted or revised, if at all, in accordance with subsection (d)(2) of section 2435 of title 10, United States Code (as added by subsection (d) of this section).''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective on the date occurring 60 days after Oct. 28, 2004, and applicable with respect to reports due to be submitted to Congress on or after that date, see section 801(c) of Pub. L. 108–375, set out as a note under section 2432 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 effective Jan. 1, 1987, see section 101(c) [§ 961(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 961(c) of Pub. L. 99–661, set out as a note under section 2432 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1983, and applicable beginning with respect to reports for first quarter of fiscal year 1983, see section 1107(c) of Pub. L. 97–252, set out as a note under section 2432 of this title.

§ 2433a. Critical cost growth in major defense acquisition programs

(a) REASSESSMENT OF PROGRAM.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated subprogram (as determined by the Secretary under section 2433(d) of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

(1) determine the root cause or causes of the critical cost growth in accordance with applicable statutory requirements and Department of Defense policies, procedures, and guidance; and

(2) in consultation with the Director of Cost Assessment and Program Evaluation, carry out an assessment of—

(A) the projected cost of completing the program if current requirements are not modified;

(B) the projected cost of completing the program based on reasonable modification of such requirements;

(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

(D) the need to reduce funding for other programs due to the growth in cost of the program.

(b) PRESUMPTION OF TERMINATION.—(1) After conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary shall terminate the program unless the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title is required to be submitted under section 2432(f) of this title, a written certification in accordance with paragraph (2).

(2) A certification described by this paragraph with respect to a major defense acquisition program is a written certification that—

(A) the continuation of the program is essential to the national security;

(B) there are no alternatives to the program which will provide acceptable capability to meet the joint military requirement (as defined in section 181(g)(1) of this title) at less cost;

(C) the new estimates of the program acquisition unit cost or procurement unit cost have been determined by the Director of Cost Assessment and Program Evaluation to be reasonable;

(D) the program is a higher priority than programs whose funding must be reduced to accommodate the growth in cost of the program; and

(E) the management structure for the program is adequate to manage and control program acquisition unit cost or procurement unit cost.

(3) A written certification under paragraph (2) shall be accompanied by a report presenting the root cause analysis and assessment carried out pursuant to subsection (a) and the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), together with supporting documentation.

(c) ACTIONS IF PROGRAM NOT TERMINATED.—(1) If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b), the Secretary shall—

(A) restructure the program in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a), and ensures that the program has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

(B) rescind the most recent Milestone approval for the program and withdraw any associated certification under section 2366a or 2366b of this title;

(C) require a new Milestone approval for the program before taking any contract action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the program, except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the program can be restructured as intended by the Secretary without unnecessarily wasting resources;

(D) include in the report specified in paragraph (2) a description of all funding changes made as a result of the growth in cost of the program, including reductions made in funding for other programs to accommodate such cost growth; and

(E) conduct regular reviews of the program in accordance with the requirements of section 205 of the Weapon Systems Acquisition Reform Act of 2009.

(2) For purposes of paragraph (1)(D), the report specified in this paragraph is the first Selected Acquisition Report for the program submitted pursuant to section 2432 of this title after the President submits a budget pursuant to section 1105 of title 31, in the calendar year following the year in which the program was restructured.

(3)(A) The requirements of subparagraphs (B), (C), and (E) of paragraph (1) shall not apply to a program or subprogram if—

(i) the Milestone Decision Authority determines in writing, on the basis of a cost assessment and root cause analysis conducted pursuant to subsection (a), that—

(I) but for a change in the quantity of items to be purchased under the program or subprogram, the program acquisition unit cost or procurement unit cost for the program or subprogram would not have increased by a percentage equal to or greater than the cost growth thresholds for the program or subprogram set forth in subparagraph (B); and

(II) the change in quantity of items described in subclause (I) was not made as a result of an increase in program cost, a delay in the program, or a problem meeting program requirements;

(ii) the Secretary determines in writing that the cost to the Department of Defense of complying with such requirements is likely to exceed the benefits to the Department of complying with such requirements; and

(iii) the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title is required to be submitted under section 2432(f) of this title—

(I) a copy of the written determination under clause (i) and an explanation of the basis for the determination; and

(II) a copy of the written determination under clause (ii) and an explanation of the basis for the determination.

(B) The cost growth thresholds specified in this subparagraph are as follows:

(i) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(I) 5 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(ii) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(I) 5 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(d) ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a written report setting forth—

(1) an explanation of the reasons for terminating the program;

(2) the alternatives considered to address any problems in the program; and

(3) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

(Added Pub. L. 111–23, title II, §206(a)(1), May 22, 2009, 123 Stat. 1726; amended Pub. L. 111–383, div. A, title X, §1075(b)(35), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–81, div. A, title VIII, §§801(e)(4), 831, Dec. 31, 2011, 125 Stat. 1484, 1503; Pub. L. 112–239, div. A, title VIII, §813, Jan. 2, 2013, 126 Stat. 1829.)

REFERENCES IN TEXT

Section 205 of the Weapon Systems Acquisition Reform Act of 2009, referred to in subsec. (c)(1)(E), is section 205 of Pub. L. 111–23, which amended section 2366b of this title and enacted provisions set out as notes under this section and section 2366b of this title.

AMENDMENTS

2013—Subsec. (c)(3)(A). Pub. L. 112–239 substituted ''subparagraphs (B), (C), and (E)'' for ''subparagraphs (B) and (C)'' in introductory provisions.

2011—Subsec. (b)(2)(B). Pub. L. 111–383 substituted ''section 181(g)(1)'' for ''section 181(g)((1)''.

Subsec. (c)(1)(B), (C). Pub. L. 112–81, §801(e)(4), struck out '', or Key Decision Point approval in the case of a space program,'' after ''Milestone approval''.

Subsec. (c)(3). Pub. L. 112–81, §831, added par. (3).

REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH

Pub. L. 111–23, title II, §205(c), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111–383, div. A, title VIII, §813(e), title X, §1075(k)(2), Jan. 7, 2011, 124 Stat. 4266, 4378, provided that: ''The official designated to perform oversight of performance assessment pursuant to section 103 of this Act [set out as a note under section 2430 of this title], shall assess the performance of each major defense acquisition program that has exceeded critical cost growth thresholds established pursuant to section 2433(e) of title 10, United States Code, but has not been terminated in accordance with section 2433a of such title (as added by section 206(a) of this Act) not less often than semi-annually until one year after the date on which such program receives a new milestone approval, in accordance with section 2433a(c)(1)(C) of such title (as so added). The results of reviews performed under this subsection shall be reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics and summarized in the next annual report of such designated official.''

[Pub. L. 111–383, div. A, title VIII, § 813(e), Jan. 7, 2011, 124 Stat. 4266, provided that the amendment made by section 813(e) to section 205(c) of Pub. L. 111–23, set out above, is effective as of May 22, 2009, and as if included in Pub. L. 111–23, as enacted.]

[For definition of ''major defense acquisition program'' as used in section 205(c) of Pub. L. 111–23, set out above, see section 2(2) of Pub. L. 111–23, set out as a note under section 2430 of this title.]

§ 2434. Independent cost estimates

(a) REQUIREMENT FOR APPROVAL.—(1) The Secretary of Defense may not approve the system development and demonstration, or the production and deployment, of a major defense acquisition program unless an independent estimate of the full life-cycle cost of the program has been considered by the Secretary.

(2) The provisions of this section shall apply to any major subprogram of a major defense acquisition program (as designated under section 2430a(a)(1) of this title) in the same manner as those provisions apply to a major defense acquisition program, and any reference in this section to a program shall be treated as including such a subprogram.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require that the independent estimate of the full life-cycle cost of a program—

(1) be prepared or approved by the Director of Cost Assessment and Program Evaluation; and

(2) include all costs of development, procurement, military construction, operations and support, and trained manpower to operate, maintain, and support the program upon full operational deployment, without regard to funding source or management control.

(Added Pub. L. 98–94, title XII, § 1203(a)(1), Sept. 24, 1983, 97 Stat. 682, § 139c; renumbered § 2434 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(15), (g)(9), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–661, div. A, title XII, § 1208(a)–(c)(1), Nov. 14, 1986, 100 Stat. 3975; Pub. L. 100–26, § 7(b)(5), Apr. 21, 1987, 101 Stat. 279; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A, title V, § 525, Sept. 29, 1988, 102 Stat. 1975; Pub. L. 102–190, div. A, title VIII, § 801(a), (b)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 103–355, title III, § 3004, Oct. 13, 1994, 108 Stat. 3330; Pub. L. 104–106, div. A, title VIII, § 814, Feb. 10, 1996, 110 Stat. 395; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 111–23, title I, § 101(d)(5), May 22, 2009, 123 Stat. 1710; Pub. L. 111–383, div. A, title VIII, § 814(e), Jan. 7, 2011, 124 Stat. 4267; Pub. L. 114–92, div. A, title VIII, § 831(a)–(c)(1), Nov. 25, 2015, 129 Stat. 912.)

AMENDMENTS

2015—Pub. L. 114–92, § 831(c)(1), substituted ''Independent cost estimates'' for ''Independent cost estimates; operational manpower requirements'' in section catchline.

Subsec. (a)(1). Pub. L. 114–92, § 831(a), substituted ''has'' for ''and a manpower estimate for the program have''.

Subsec. (b). Pub. L. 114–92, § 831(b), substituted ''shall require'' for ''shall require—''; struck out par. (1) designation before ''that the independent''; redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins; in par. (2), substituted ''operations and support, and trained manpower to operate, maintain, and support the program upon full operational deployment,'' for ''and operations and support,'' and period at end for ''; and''; and struck out former par. (2) which read as follows: ''that the manpower estimate include an estimate of the total number of personnel required—

''(A) to operate, maintain, and support the program upon full operational deployment; and

''(B) to train personnel to carry out the activities referred to in subparagraph (A).''

2011—Subsec. (a). Pub. L. 111–383 designated existing provisions as par. (1) and added par. (2).

2009—Subsec. (b)(1)(A). Pub. L. 111–23 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''be prepared—

''(i) by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; or

''(ii) if the decision authority for the program has been delegated to an official of a military department, Defense Agency, or other component of the Department of Defense, by an office or other entity that is not directly responsible for carrying out the development or acquisition of the program; and''.

2001—Subsec. (a). Pub. L. 107–107 substituted ''system development and demonstration'' for ''engineering and manufacturing development''.

1996—Subsec. (b)(1)(A). Pub. L. 104–106 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and''.

1994—Subsec. (a). Pub. L. 103–355, § 3004(b), substituted ''engineering and manufacturing development'' for ''full-scale engineering development'' and ''full life-cycle cost of the program and a manpower estimate for the program have'' for ''cost of the program, together with a manpower estimate, has''.

Subsec. (b). Pub. L. 103–355, § 3004(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) defined ''independent estimate'', ''cost of the program'', and ''manpower estimate''.

1991—Subsec. (a). Pub. L. 102–190, § 801(a), substituted ''unless an independent estimate of the cost of the program, together with a manpower estimate, has been considered by the Secretary.'' for ''unless—

''(1) an independent estimate of the cost of the program is first submitted to (and considered by) the Secretary; and

''(2) the Secretary submits a manpower estimate of the program to the Committees on Armed Services of the Senate and the House of Representatives at least 30 days in advance of such approval.''

Subsecs. (b), (c). Pub. L. 102–190, § 801(b)(1), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

''(b) EXCEPTIONS.—(1) Subsection (a)(2) shall not apply during time of war or during a national emergency declared by Congress or the President.

''(2) The 30-day period specified in subsection (a)(2) shall be reduced to 10 days in the case of a major defense acquisition program if the manpower estimate submitted by the Secretary of Defense under subsection (a)(2) with respect to that program indicates that no increase in military or civilian personnel end strengths described in subsection (c)(3)(B) will be required.''

1988—Subsec. (a)(2). Pub. L. 100–456, § 525(1), substituted ''30 days'' for ''90 days''.

Subsec. (b). Pub. L. 100–456, § 525(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 100–456, § 525(2), redesignated subsec. (b) as (c), and in par. (3)(A), substituted ''in total personnel or in'' for ''both in total personnel and''.

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

Subsec. (b). Pub. L. 100–26 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which defined ''major defense acquisition program''.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139c of this title as this section.

Pub. L. 99–661, § 1208(c)(1), substituted ''Independent cost estimates; operational manpower requirements'' for ''Independent cost estimates'' in section catchline.

Pub. L. 99–433, § 110(d)(15), substituted ''Independent cost estimates'' for ''Major defense acquisition programs: independent cost estimates'' in section catchline.

Subsec. (a). Pub. L. 99–661, § 1208(a), inserted heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (b). Pub. L. 99–661, § 1208(b)(1), inserted heading.

Subsec. (b)(1). Pub. L. 99–661, § 1208(b)(2), substituted ''The term 'Major' for ''Major''.

Pub. L. 99–433, § 110(g)(9), substituted ''section 2432(a)(1)'' for ''section 139a(a)(1)''.

Subsec. (b)(2). Pub. L. 99–661, § 1208(b)(3), substituted ''The term 'independent' for ''Independent''.

Subsec. (b)(3). Pub. L. 99–661, § 1208(b)(4), substituted ''The term 'cost'' for ''Cost''.

Subsec. (b)(4). Pub. L. 99–661, § 1208(b)(5), added par. (4).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title XII, § 1208(d), Nov. 14, 1986, 100 Stat. 3976, provided that: ''The amendments made by this section [amending this section] shall apply to approvals of full-scale engineering development and to approvals of production and deployment of major defense acquisition programs made after December 31, 1986.''

EFFECTIVE DATE

Pub. L. 98–94, title XII, § 1203(b), Sept. 24, 1983, 97 Stat. 683, provided that: ''Section 139c [now 2434] of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

REPORT TO CONGRESS ON USE OF INDEPENDENT COST ESTIMATES IN PLANNING, PROGRAMING, BUDGETING, AND SELECTION FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 99–145, title IX, § 952, Nov. 8, 1985, 99 Stat. 701, directed Secretary of Defense, not later than Apr. 1, 1986, to submit to Congress a report on the continued use of independent cost estimates in the planning, programing, budgeting, and selection process for major defense acquisition programs of the Department.

Pub. L. 98–94, title XII, § 1203(c), Sept. 24, 1983, 97 Stat. 683, directed Secretary of Defense, not later than May 1, 1984, to submit a written report to Congress on use of independent cost estimates in planning, programing, budgeting, and selection process for major defense acquisition programs in Department, such report to include an overall assessment of extent to which such estimates were adopted by Department in making decisions on the FY 1985 budget and a general explanation of why such estimates might have been modified or rejected, and a discussion of current and future initiatives to make greater or more productive use of independent cost estimates in the Department.

ALLOCATION OF ADEQUATE PERSONNEL AND FINANCIAL RESOURCES IN DEVELOPING OR ASSESSING INDEPENDENT ESTIMATES OF COSTS

Pub. L. 98–94, title XII, § 1203(d), Sept. 24, 1983, 97 Stat. 683, provided that: ''It is the sense of the Congress that the Secretary of Defense should ensure that adequate personnel and financial resources are allocated at all levels of the Department of Defense to those organizations or offices charged with developing or assessing independent estimates of the costs of major defense acquisition programs.''

§ 2435. Baseline description

(a) BASELINE DESCRIPTION REQUIREMENT.—(1) The Secretary of a military department shall establish a baseline description for each major defense acquisition program and for each designated major subprogram under the program under the jurisdiction of such Secretary.

(2) The baseline shall include sufficient parameters to describe the cost estimate (referred to as the ''Baseline Estimate'' in section 2433 of this title), schedule, performance, supportability, and any other factor of such major defense acquisition program or designated major subprogram.

(b) FUNDING LIMIT.—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense acquisition program or any designated major subprogram under the program may be obligated after the program or subprogram enters system development and demonstration without an approved baseline description unless such obligation is specifically approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(c) SCHEDULE.—A baseline description for a major defense acquisition program or any designated major subprogram under the program shall be prepared under this section—

(1) before the program or subprogram enters system development and demonstration;

(2) before the program or subprogram enters production and deployment; and

(3) before the program or subprogram enters full rate production.

(d) ORIGINAL BASELINE ESTIMATE.—(1) In this chapter, the term ''original Baseline Estimate'', with respect to a major defense acquisition program or any designated major subprogram under the program, means the baseline description established with respect to the program or subprogram under subsection (a) prepared before the program or subprogram enters system development and demonstration, or at program or subprogram initiation, whichever occurs later, without adjustment or revision (except as provided in paragraph (2)).

(2) An adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program may be treated as the original Baseline Estimate for the program or subprogram for purposes of this chapter only if the percentage increase in the program acquisition unit cost or procurement unit cost under such adjustment or revision exceeds the critical cost growth threshold for the program or sub-

program under section 2433 of this title, as determined by the Secretary of the military department concerned under subsection (d) of such section.

(3) In the event of an adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program, the Secretary of Defense shall include in the next Selected Acquisition Report to be submitted under section 2432 of this title after such adjustment or revision a notification to the congressional defense committees of such adjustment or revision, together with the reasons for such adjustment or revision.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the following:

(1) The content of baseline descriptions under this section.

(2) The submission to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition, Technology, and Logistics by the program manager for a program for which there is an approved baseline description (or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms) under this section of reports of deviations from any such baseline description of the cost, schedule, performance, supportability, or any other factor of the program or subprogram.

(3) Procedures for review of such deviation reports within the Department of Defense.

(4) Procedures for submission to, and approval by, the Secretary of Defense of revised baseline descriptions.

(Added Pub. L. 99–500, § 101(c) [title X, § 904(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–133, and Pub. L. 99–591, § 101(c) [title X, § 904(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–133; Pub. L. 99–661, div. A, title IX, formerly title IV, § 904(a)(1), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(6), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(a), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–370, § 1(i)(1), July 19, 1988, 102 Stat. 848; Pub. L. 100–456, div. A, title XII, § 1233(*l*)(4), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, § 811(b), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XII, § 1207(b), title XIV, § 1484(k)(11), Nov. 5, 1990, 104 Stat. 1665, 1719; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title III, § 3005(a), Oct. 13, 1994, 108 Stat. 3330; Pub. L. 107–107, div. A, title VIII, § 821(d), title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1182, 1225; Pub. L. 109–163, div. A, title VIII, § 802(d)(1), Jan. 6, 2006, 119 Stat. 3369; Pub. L. 109–364, div. A, title VIII, § 806, Oct. 17, 2006, 120 Stat. 2315; Pub. L. 110–417, [div. A], title VIII, § 811(d), Oct. 14, 2008, 122 Stat. 4524.)

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (c) is based on Pub. L. 98–525, title XII, § 1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100–26, § 110(a)(1), Apr. 21, 1987, 101 Stat. 288.

CODIFICATION

Pub. L. 110–417, § 811(d)(2)(B), (3)(B), (4)(B)(i), which directed amendment of this section by inserting ''or subprogram'' after ''the program'' in subsec. (b) and after ''the program'' each place it appeared in subsecs. (c) and (d), was executed by making the insertions after ''the program'' each place it appeared in those subsecs. except after ''designated major subprogram under the program'', to reflect the probable intent of Congress.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, § 811(d)(1), inserted ''and for each designated major subprogram under the program'' after ''major defense acquisition program'' in par. (1) and ''or designated major subprogram'' after ''major defense acquisition program'' in par. (2).

Subsec. (b). Pub. L. 110–417, § 811(d)(2), inserted ''or any designated major subprogram under the program'' after ''major defense acquisition program'' and ''or subprogram'' after ''after the program''. See Codification note above.

Subsec. (c). Pub. L. 110–417, § 811(d)(3), inserted ''or any designated major subprogram under the program'' after ''major defense acquisition program'' in introductory provisions and ''or subprogram'' after ''the program'' in pars. (1) to (3). See Codification note above.

Subsec. (d). Pub. L. 110–417, § 811(d)(4), inserted ''or any designated major subprogram under the program'' after ''major defense acquisition program'' wherever appearing, in par. (1), inserted ''or subprogram'' after ''to the program'', ''before the program'', and ''at program'', and, in par. (2), inserted ''or subprogram'' after ''for the program'' in two places. See Codification note above.

Subsec. (e)(2). Pub. L. 110–417, § 811(d)(5), inserted ''(or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms)'' after ''baseline description'' and ''or subprogram'' before period at end and substituted ''any such baseline description'' for ''the baseline''.

2006—Subsec. (d). Pub. L. 109–163 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 109–364 inserted ''prepared before the program enters system development and demonstration, or at program initiation, whichever occurs later'' after ''program under subsection (a)''.

Subsec. (e). Pub. L. 109–163 redesignated subsec. (d) as (e).

2001—Subsec. (b). Pub. L. 107–107, §§ 821(d)(1), 1048(b)(2), substituted ''system development and demonstration'' for ''engineering and manufacturing development'' and ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (c)(1). Pub. L. 107–107, § 821(d)(2)(A), substituted ''system development and demonstration'' for ''demonstration and validation''.

Subsec. (c)(2). Pub. L. 107–107, § 821(d)(2)(B), substituted ''production and deployment'' for ''engineering and manufacturing development''.

Subsec. (c)(3). Pub. L. 107–107, § 821(d)(2)(C), substituted ''full rate production'' for ''production and deployment''.

Subsec. (d)(2). Pub. L. 107–107, § 1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1994—Pub. L. 103–355 amended section generally. Prior to amendment, section related to enhanced program stability.

1993—Subsec. (b)(2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1990—Subsec. (b)(1). Pub. L. 101–510, § 1484(k)(11), struck out closing parenthesis after ''such Secretary'' in introductory provisions.

Subsec. (c). Pub. L. 101–510, §1207(b), struck out subsec. (c) which read as follows: ''STABILITY OF PROGRAM MANAGERS.—(1) The tour of duty of an officer of the armed forces as a program manager of a major defense acquisition program shall be (A) not less than four years, or (B) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense).

''(2) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in paragraph (1). The authority under the preceding sentence may not be delegated.''

1989—Subsec. (a)(2)(B)(iv). Pub. L. 101–189, §811(b)(1), substituted ''production'' for ''development''.

Subsec. (b)(1). Pub. L. 101–189, §811(b)(2)(A), substituted ''service acquisition executive designated by such Secretary'' for ''senior procurement executive of such military department (designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))''.

Subsec. (b)(2). Pub. L. 101–189, §811(b)(2)(B), substituted ''180 days'' for ''90 days'' in introductory provisions.

1988—Subsec. (b)(2). Pub. L. 100–456 clarified amendment by Pub. L. 100–180, §803(a). See 1987 Amendment note below.

Subsec. (c). Pub. L. 100–370 added subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–180, as amended by Pub. L. 100–456, substituted ''under paragraph (1), and for which the total cost of completion of the stage will exceed by 15 percent or more, in the case of a development stage, or by 5 percent or more, in the case of a production stage, the amount specified in the baseline description established under subsection (a) for such stage; or any milestone specified in such baseline description will be missed by more than 90 days'' for first reference to ''under paragraph (1)''.

Subsec. (c). Pub. L. 100–26, §7(b)(6), struck out subsec. (c) which defined ''major defense acquisition program''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 effective on Jan. 6, 2006, and applicable with respect to any major defense acquisition program for which an original Baseline Estimate is first established before, on, or after Jan. 6, 2006, see section 802(e) of Pub. L. 109–163, set out as a note under section 2433 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title XII, §1207(b), Nov. 5, 1990, 104 Stat. 1665, provided that the amendment made by that section is effective Oct. 1, 1991.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable as if included in the enactment of Pub. L. 100–180, see section 1233(*l*)(5) of Pub. L. 100–456 set out as a note under section 2366 of this title.

EFFECTIVE DATE

Pub. L. 99–500, §101(c) [title X, §904(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, and Pub. L. 99–591, §101(c) [title X, §904(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134, and Pub. L. 99–661, div. A, title IX, formerly title IV, §904(b), Nov. 14, 1986, 100 Stat. 3914, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2435 of title 10, United States Code (as added by subsection (a)(1)), shall apply to major defense acquisition programs that enter full-scale engineering development or full-rate production after the date of the enactment of this Act [Oct. 18, 1986].''

REVIEW OF ACQUISITION PROGRAM CYCLE

Pub. L. 103–355, title V, §5002(a), Oct. 13, 1994, 108 Stat. 3350, provided that: ''The Secretary of Defense shall review the regulations of the Department of Defense to ensure that acquisition program cycle procedures are focused on achieving the goals that are consistent with the program baseline description established pursuant to section 2435 of title 10, United States Code.''

§2436. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States

(a) ESTABLISHMENT OF INCENTIVE PROGRAM.—The Secretary of Defense shall plan and establish an incentive program in accordance with this section for contractors to purchase capital assets manufactured in the United States in part with funds available to the Department of Defense.

(b) DEFENSE INDUSTRIAL CAPABILITIES FUND MAY BE USED.—The Secretary of Defense may use the Defense Industrial Capabilities Fund, established under section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program established under this section.

(c) APPLICABILITY TO MAJOR DEFENSE ACQUISITION PROGRAM CONTRACTS.—The incentive program shall apply to contracts for the procurement of a major defense acquisition program.

(d) CONSIDERATION.—The Secretary of Defense shall provide consideration in source selection in any request for proposals for a major defense acquisition program for offerors with eligible capital assets.

(Added Pub. L. 108–136, div. A, title VIII, §822(a)(1), Nov. 24, 2003, 117 Stat. 1546.)

REFERENCES IN TEXT

Section 814 of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (b), is section 814 of Pub. L. 108–136, which is set out in a note under section 2501 of this title.

PRIOR PROVISIONS

A prior section 2436, added Pub. L. 99–500, §101(c) [title X, §905(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, and Pub. L. 99–591, §101(c) [title X, §905(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134; Pub. L. 99–661, div. A, title IX, formerly title IV, §905(a)(1), Nov. 14, 1986, 100 Stat. 3914; renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, §7(b)(7), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, §803(c), title XII, §1231(14), Dec. 4, 1987, 101 Stat. 1125, 1160; Pub. L. 101–510, div. A, title XIV, §1484(h)(4), Nov. 5, 1990, 104 Stat. 1718, related to establishment and conduct of the defense enterprise program, prior to repeal by Pub. L. 103–160, div. A, title VIII, §821(a)(5), Nov. 30, 1993, 107 Stat. 1704.

EFFECTIVE DATE

Pub. L. 108–136, div. A, title VIII, §822(c), Nov. 24, 2003, 117 Stat. 1547, provided that: ''Section 2436 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 18-month period beginning on the date of the enactment of this Act [Nov. 24, 2003].''

REGULATIONS

Pub. L. 108–136, div. A, title VIII, §822(b), Nov. 24, 2003, 117 Stat. 1547, provided that:

''(1) The Secretary of Defense shall prescribe regulations as necessary to carry out section 2436 of title 10, United States Code, as added by this section.

''(2) The Secretary may prescribe interim regulations as necessary to carry out such section. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this paragraph that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of section 2436 of title 10, United States Code [see Effective Date note above], as added by this section.''

§ 2437. Development of major defense acquisition programs: sustainment of system to be replaced

(a) REQUIREMENT FOR SUSTAINING EXISTING FORCES.—(1) The Secretary of Defense shall require that, whenever a new major defense acquisition program begins development, the defense acquisition authority responsible for that program shall develop a plan (to be known as a ''sustainment plan'') for the existing system that the system under development is intended to replace. Any such sustainment plan shall provide for an appropriate level of budgeting for sustaining the existing system until the replacement system to be developed under the major defense acquisition program is fielded and assumes the majority of responsibility for the mission of the existing system. This section does not apply to a major defense acquisition that reaches initial operational capability before October 1, 2008.

(2) In this section, the term ''defense acquisition authority'' means the Secretary of a military department or the commander of the United States Special Operations Command.

(b) SUSTAINMENT PLAN.—The Secretary of Defense shall require that each sustainment plan under this section include, at a minimum, the following:

(1) The milestone schedule for the development of the major defense acquisition program, including the scheduled dates for low-rate initial production, initial operational capability, full-rate production, and full operational capability and the date as of when the replacement system is scheduled to assume the majority of responsibility for the mission of the existing system.

(2) An analysis of the existing system to assess the following:

(A) Anticipated funding levels necessary to—

(i) ensure acceptable reliability and availability rates for the existing system; and

(ii) maintain mission capability of the existing system against the relevant threats.

(B) The extent to which it is necessary and appropriate to—

(i) transfer mature technologies from the new system or other systems to enhance the mission capability of the existing system against relevant threats; and

(ii) provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.

(c) EXCEPTIONS.—Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that—

(1) the existing system is no longer relevant to the mission;

(2) the mission has been eliminated;

(3) the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or

(4) the duration of time until the new system assumes the majority of responsibility for the existing system's mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.

(d) WAIVER.—The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary's determination and the reasons therefor in writing to the congressional defense committees.

(Added Pub. L. 108–375, div. A, title VIII, § 805(a)(1), Oct. 28, 2004, 118 Stat. 2008.)

PRIOR PROVISIONS

A prior section 2437, added Pub. L. 99–500, § 101(c) [title X, § 906(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–135, and Pub. L. 99–591, § 101(c) [title X, § 906(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–135; Pub. L. 99–661, div. A, title IX, formerly title IV, § 906(a)(1), Nov. 14, 1986, 100 Stat. 3915; renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(8), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(b), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–224, § 5(a)(3), Dec. 30, 1987, 101 Stat. 1538, related to designation of defense enterprise programs for milestone authorization, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(5), Nov. 30, 1993, 107 Stat. 1704.

EFFECTIVE DATE

Pub. L. 108–375, div. A, title VIII, § 805(b), Oct. 28, 2004, 118 Stat. 2009, provided that: ''Section 2437 of title 10, United States Code, as added by subsection (a), shall apply with respect to a major defense acquisition program for a system that is under development as of the date of the enactment of this Act [Oct. 28, 2004] and is not expected to reach initial operational capability before October 1, 2008. The Secretary of Defense shall require that a sustainment plan under that section be developed not later than one year after the date of the enactment of this Act for the existing system that the system under development is intended to replace.''

§ 2438. Performance assessments and root cause analyses

(a) DESIGNATION OF SENIOR OFFICIAL RESPONSIBILITY FOR PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES.—

(1) IN GENERAL.—The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense as the principal official of the Department of Defense responsible for conducting and overseeing performance assessments and root cause analyses for major defense acquisition programs.

(2) NO PROGRAM EXECUTION RESPONSIBILITY.—The Secretary shall ensure that the senior official designated under paragraph (1) is not responsible for program execution.

(3) STAFF AND RESOURCES.—The Secretary shall assign to the senior official designated under paragraph (1) appropriate staff and resources necessary to carry out the senior official's function under this section.

(b) RESPONSIBILITIES.—The senior official designated under subsection (a) shall be responsible for the following:

(1) Carrying out performance assessments of major defense acquisition programs in accord-

ance with the requirements of subsection (c) periodically or when requested by the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology and Logistics, the Secretary of a military department, or the head of a Defense Agency.

(2) Conducting root cause analyses for major defense acquisition programs in accordance with the requirements of subsection (d) when required by section 2433a(a)(1) of this title, or when requested by the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology and Logistics, the Secretary of a military department, or the head of a Defense Agency.

(3) Issuing policies, procedures, and guidance governing the conduct of performance assessments and root cause analyses by the military departments and the Defense Agencies.

(4) Evaluating the utility of performance metrics used to measure the cost, schedule, and performance of major defense acquisition programs, and making such recommendations to the Secretary of Defense as the official considers appropriate to improve such metrics.

(5) Advising acquisition officials on performance issues regarding a major defense acquisition program that may arise—

(A) before certification under section 2433a of this title;

(B) before entry into full-rate production; or

(C) in the course of consideration of any decision to request authorization of a multiyear procurement contract for the program.

(c) PERFORMANCE ASSESSMENTS.—For purposes of this section, a performance assessment with respect to a major defense acquisition program is an evaluation of the following:

(1) The cost, schedule, and performance of the program, relative to current metrics, including performance requirements and baseline descriptions.

(2) The extent to which the level of program cost, schedule, and performance predicted relative to such metrics is likely to result in the timely delivery of a level of capability to the warfighter that is consistent with the level of resources to be expended and provides superior value to alternative approaches that may be available to meet the same military requirement.

(d) ROOT CAUSE ANALYSES.—For purposes of this section and section 2433a of this title, a root cause analysis with respect to a major defense acquisition program is an assessment of the underlying cause or causes of shortcomings in cost, schedule, or performance of the program, including the role, if any, of—

(1) unrealistic performance expectations;

(2) unrealistic baseline estimates for cost or schedule;

(3) immature technologies or excessive manufacturing or integration risk;

(4) unanticipated design, engineering, manufacturing, or technology integration issues arising during program performance;

(5) changes in procurement quantities;

(6) inadequate program funding or funding instability;

(7) poor performance by government or contractor personnel responsible for program management; or

(8) any other matters.

(e) SUPPORT OF APPLICABLE CAPABILITIES AND EXPERTISE.—The Secretary of Defense shall ensure that the senior official designated under subsection (a) has the support of other Department of Defense officials with relevant capabilities and expertise needed to carry out the requirements of this section.

(Added and amended Pub. L. 111–383, div. A, title IX, §901(d), (k)(1)(F), Jan. 7, 2011, 124 Stat. 4321, 4325; Pub. L. 112–239, div. A, title X, §1076(f)(27), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 114–92, div. A, title X, §1077(b), Nov. 25, 2015, 129 Stat. 998.)

CODIFICATION

Section 103 of Pub. L. 111–23, formerly set out as a note under section 2430 of this title, which was transferred to this chapter, renumbered as this section, and amended by Pub. L. 111–383, §901(d), (k)(1)(F), was based on Pub. L. 111–23, title I, §103, May 22, 2009, 123 Stat. 1715.

PRIOR PROVISIONS

A prior section 2438, added Pub. L. 102–484, div. A, title VIII, §821(a)(1)(B), Oct. 23, 1992, 106 Stat. 2459; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, required competitive prototyping of major weapon systems and subsystems prior to development under major defense acquisition program, prior to repeal by Pub. L. 103–355, title III, §3006(a), Oct. 13, 1994, 108 Stat. 3331.

Another prior section 2438 was renumbered section 2439 of this title.

AMENDMENTS

2015—Subsec. (f). Pub. L. 114–92 struck out subsec. (f) which related to annual report.

2013—Subsec. (a)(3). Pub. L. 112–239 inserted ''the senior'' before ''official's''.

2011—Pub. L. 111–383, §901(k)(1)(F), substituted ''Performance assessments and root cause analyses'' for ''PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES FOR MAJOR DEFENSE ACQUISITION PROGRAMS'' in section catchline.

Pub. L. 111–383, §901(d), transferred section 103 of Pub. L. 111–23 to this chapter and renumbered it as this section. See Codification note above.

Subsec. (b)(2). Pub. L. 111–383, §901(d)(1), substituted ''section 2433a(a)(1) of this title'' for ''section 2433a(a)(1) of title 10, United States Code (as added by section 206(a) of this Act)''.

Subsec. (b)(5)(A). Pub. L. 111–383, §901(d)(2), substituted ''before'' for ''prior to'' and ''section 2433a of this title'' for ''section 2433a of title 10, United States Code (as so added)''.

Subsec. (b)(5)(B). Pub. L. 111–383, §901(d)(2)(B), substituted ''before'' for ''prior to''.

Subsec. (d). Pub. L. 111–383, §901(d)(3), substituted ''section 2433a of this title'' for ''section 2433a of title 10, United States Code (as so added)'' in introductory provisions.

Subsec. (f). Pub. L. 111–383, §901(d)(4), struck out ''beginning in 2010,'' after ''each year,''.

EFFECTIVE DATE

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as an Effective Date of 2011 Amendment note under section 131 of this title.

[§ 2439. Repealed. Pub. L. 103–355, title III, § 3007(a), Oct. 13, 1994, 108 Stat. 3331]

Section 2439, added Pub. L. 99–145, title IX, §912(a)(1), Nov. 8, 1985, 99 Stat. 685, §2305a; amended Pub. L. 99–433,

title I, § 110(g)(3), Oct. 1, 1986, 100 Stat. 1004; renumbered § 2438 and amended Pub. L. 100–26, § 7(b)(9)(A), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101–510, div. A, title VIII, § 805, Nov. 5, 1990, 104 Stat. 1591; renumbered § 2439, Pub. L. 102–484, div. A, title VIII, § 821(a)(1)(A), Oct. 23, 1992, 106 Stat. 2459, directed Secretary of Defense, before full-scale development under major program began, to prepare acquisition strategy which ensured that contracts for each major program, including each major subsystem under program, were awarded in accordance with acquisition strategy, and granted Secretary option of using competitive alternative sources for major programs and major subsystems throughout period.

§ 2440. Technology and industrial base plans

The Secretary of Defense shall prescribe regulations requiring consideration of the national technology and industrial base, in accordance with the strategy required by section 2501 of this title, in the development and implementation of acquisition plans for each major defense acquisition program.

(Added Pub. L. 102–484, div. D, title XLII, § 4216(b)(1), Oct. 23, 1992, 106 Stat. 2669; amended Pub. L. 109–364, div. A, title X, § 1071(a)(17), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–239, div. A, title XVI, § 1603(c), Jan. 2, 2013, 126 Stat. 2063.)

AMENDMENTS

2013—Pub. L. 112–239 inserted '', in accordance with the strategy required by section 2501 of this title,'' after ''base''.

2006—Pub. L. 109–364 substituted ''industrial base plans'' for ''Industrial Base Plans'' in section catchline.

CHAPTER 144A—MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS

Sec.
2445a. Definitions.
2445b. Cost, schedule, and performance information.
2445c. Reports: quarterly reports; reports on program changes.
2445d. Construction with other reporting requirements.

AMENDMENTS

2008—Pub. L. 110–417, [div. A], title VIII, § 812(a)(3), Oct. 14, 2008, 122 Stat. 4525, added item 2445a and struck out former item 2445a ''Major automated information system program defined''.

§ 2445a. Definitions

(a) MAJOR AUTOMATED INFORMATION SYSTEM PROGRAM.—In this chapter, the term ''major automated information system program'' means a Department of Defense program for the acquisition of an automated information system (either as a product or a service) if—

(1) the program is designated by the Secretary of Defense, or a designee of the Secretary, as a major automated information system program; or

(2) the dollar value of the program is estimated to exceed—

(A) $32,000,000 in fiscal year 2000 constant dollars for all program costs in a single fiscal year;

(B) $126,000,000 in fiscal year 2000 constant dollars for all program acquisition costs for the entire program; or

(C) $378,000,000 in fiscal year 2000 constant dollars for the total life-cycle costs of the program (including operation and maintenance costs).

(b) ADJUSTMENT.—The Secretary of Defense may adjust the amounts (and base fiscal year) set forth in subsection (a) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the congressional defense committees.

(c) INCREMENTS.—In the event any increment of a major automated information system program separately meets the requirements for treatment as a major automated information system program, the provisions of this chapter shall apply to such increment as well as to the overall major automated information system program of which such increment is a part.

(d) OTHER MAJOR INFORMATION TECHNOLOGY INVESTMENT PROGRAM.—In this chapter, the term ''other major information technology investment program'' means the following:

(1) An investment that is designated by the Secretary of Defense, or a designee of the Secretary, as a ''pre-Major Automated Information System'' or ''pre-MAIS'' program.

(2) Any other investment in automated information system products or services that is expected to exceed the thresholds established in subsection (a), as adjusted under subsection (b), but is not considered to be a major automated information system program because a formal acquisition decision has not yet been made with respect to such investment.

(e) FULL DEPLOYMENT DECISION.—In this chapter, the term ''full deployment decision'' means, with respect to a major automated information system program, the final decision made by the Milestone Decision Authority authorizing an increment of the program to deploy software for operational use.

(f) FULL DEPLOYMENT.—In this chapter, the term ''full deployment'' means, with respect to a major automated information system program, the fielding of an increment of the program in accordance with the terms of a full deployment decision.

(g) EXTENSION OF A PROGRAM.—In this chapter, the term ''extension of a program'' means, with respect to a major automated information system program or other major information technology investment program, the further deployment or planned deployment to additional users of the system which has already been found operationally effective and suitable by an independent test agency or the Director of Operational Test and Evaluation, beyond the scope planned in the original estimate or information originally submitted on the program.

(Added Pub. L. 109–364, div. A, title VIII, § 816(a)(1), Oct. 17, 2006, 120 Stat. 2323; amended Pub. L. 110–417, [div. A], title VIII, § 812(a)(1), (2), Oct. 14, 2008, 122 Stat. 4525; Pub. L. 111–84, div. A, title VIII, § 841(c), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 113–66, div. A, title X, § 1092(a), Dec. 26, 2013, 127 Stat. 877.)

AMENDMENTS

2013—Subsec. (g). Pub. L. 113–66 added subsec. (g).

2009—Subsecs. (e), (f). Pub. L. 111–84 added subsecs. (e) and (f).

2008—Pub. L. 110–417, §812(a)(2), substituted ''Definitions'' for ''Major automated information system program defined'' in section catchline.

Subsec. (a). Pub. L. 110–417, §812(a)(1)(A), substituted ''Major Automated Information System Program'' for ''In General'' in heading.

Subsec. (d). Pub. L. 110–417, §812(a)(1)(B), added subsec. (d).

EFFECTIVE DATE

Pub. L. 109–364, div. A, title VIII, §816(c), Oct. 17, 2006, 120 Stat. 2326, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [enacting this chapter] shall take effect on January 1, 2008, and shall apply with respect to any major automated information system program for which amounts are requested in the budget of the President (as submitted to Congress under section 1105 of title 31, United States Code) for a fiscal year after fiscal year 2008, regardless of whether the acquisition of the automated information system to be acquired under the program was initiated before, on, or after January 1, 2008.

''(2) REPORT REQUIREMENT.—Subsection (b) [120 Stat. 2326] shall take effect on the date of the enactment of this Act [Oct. 17, 2006].''

SCIENCE AND TECHNOLOGY ACTIVITIES TO SUPPORT BUSINESS SYSTEMS INFORMATION TECHNOLOGY ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title II, §217, Nov. 25, 2015, 129 Stat. 770, provided that:

''(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Deputy Chief Management Officer, and the Chief Information Officer, shall establish a set of science, technology, and innovation activities to improve the acquisition outcomes of major automated information systems through improved performance and reduced developmental and life cycle costs.

''(b) EXECUTION OF ACTIVITIES.—The activities established under subsection (a) shall be carried out by such military departments and Defense Agencies as the Under Secretary and the Deputy Chief Management Officer consider appropriate.

''(c) ACTIVITIES.—

''(1) IN GENERAL.—The set of activities established under subsection (a) may include the following:

''(A) Development of capabilities in Department of Defense laboratories, test centers, and federally funded research and development centers to provide technical support for acquisition program management and business process re-engineering activities.

''(B) Funding of intramural and extramural research and development activities as described in subsection (e).

''(2) CURRENT ACTIVITIES.—The Secretary shall identify the current activities described in subparagraphs (A) and (B) of paragraph (1) that are being carried out as of the date of the enactment of this Act [Nov. 25, 2015]. The Secretary shall consider such current activities in determining the set of activities to establish pursuant to subsection (a).

''(d) GAP ANALYSIS.—In establishing the set of activities under subsection (a), not later than 270 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary, in coordination with the Secretaries of the military departments and the heads of the Defense Agencies, shall conduct a gap analysis to identify activities that are not, as of such date, being pursued in the current science and technology program of the Department. The Secretary shall use such analysis in determining—

''(1) the set of activities to establish pursuant to subsection (a) that carry out the purposes specified in subsection (c)(1); and

''(2) the proposed funding requirements and timelines.

''(e) FUNDING OF INTRAMURAL AND EXTRAMURAL RESEARCH AND DEVELOPMENT.—

''(1) IN GENERAL.—In carrying out the set of activities required by subsection (a), the Secretary may award grants or contracts to eligible entities to carry out intramural or extramural research and development in areas of interest described in paragraph (3).

''(2) ELIGIBLE ENTITIES.—For purposes of this subsection, an eligible entity includes the following:

''(A) Entities in the defense industry.

''(B) Institutions of higher education.

''(C) Small businesses.

''(D) Nontraditional defense contractors (as defined in section 2302 of title 10, United States Code).

''(E) Federally funded research and development centers, primarily for the purpose of improving technical expertise to support acquisition efforts.

''(F) Nonprofit research institutions.

''(G) Government laboratories and test centers, primarily for the purpose of improving technical expertise to support acquisition efforts.

''(3) AREAS OF INTEREST.—The areas of interest described in this paragraph are the following:

''(A) Management innovation, including personnel and financial management policy innovation.

''(B) Business process re-engineering.

''(C) Systems engineering of information technology business systems.

''(D) Cloud computing to support business systems and business processes.

''(E) Software development, including systems and techniques to limit unique interfaces and simplify processes to customize commercial software to meet the needs of the Department of Defense.

''(F) Hardware development, including systems and techniques to limit unique interfaces and simplify processes to customize commercial hardware to meet the needs of the Department of Defense.

''(G) Development of methodologies and tools to support development and operational test of large and complex business systems.

''(H) Analysis tools to allow decision-makers to make tradeoffs between requirements, costs, technical risks, and schedule in major automated information system acquisition programs.

''(I) Information security in major automated information system systems.

''(J) Innovative acquisition policies and practices to streamline acquisition of information technology systems.

''(K) Such other areas as the Secretary considers appropriate.

''(f) PRIORITIES.—

''(1) IN GENERAL.—In carrying out the set of activities required by subsection (a), the Secretary shall give priority to—

''(A) projects that—

''(i) address the innovation and technology needs of the Department of Defense; and

''(ii) support activities of initiatives, programs, and offices identified by the Under Secretary and Deputy Chief Management Officer; and

''(B) the projects and programs identified in paragraph (2).

''(2) PROJECTS AND PROGRAMS IDENTIFIED.—The projects and programs identified in this paragraph are the following:

''(A) Major automated information system programs.

''(B) Projects and programs under the oversight of the Deputy Chief Management Officer.

''(C) Projects and programs relating to defense procurement acquisition policy.

''(D) Projects and programs of the agencies and field activities of the Office of the Secretary of Defense that support business missions such as finance, human resources, security, management, logistics, and contract management.

''(E) Military and civilian personnel policy development for information technology workforce.''

§ 2445b. Cost, schedule, and performance information

(a) SUBMITTAL OF COST, SCHEDULE, AND PERFORMANCE INFORMATION.—The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits to Congress the budget for a fiscal year under section 1105 of title 31, budget justification documents regarding cost, schedule, and performance for each major automated information system program and each other major information technology investment program for which funds are requested by the President in the budget.

(b) ELEMENTS REGARDING MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS.—The documents submitted under subsection (a) with respect to a major automated information system program shall include detailed and summarized information with respect to the automated information system to be acquired under the program, and shall specifically include each of the following:

(1) The development schedule, including major milestones.

(2) The implementation schedule, including estimates of milestone dates, full deployment decision, and full deployment.

(3) Estimates of total acquisition costs and full life-cycle costs.

(4) A summary of key performance parameters.

(5) For each major automated information system program for which such information has not been provided in a previous annual report—

(A) a description of the business case analysis (if any) that has been prepared for the program and key functional requirements for the program;

(B) a description of the analysis of alternatives conducted with regard to the program;

(C) an assessment of the extent to which the program, or portions of the program, have technical requirements of sufficient clarity that the program, or portions of the program, may be feasibly procured under firm, fixed-price contracts;

(D) the most recent independent cost estimate or cost analysis for the program provided by the Director of Cost Assessment and Program Evaluation in accordance with section 2334(a)(6) of this title;

(E) a certification by a Department of Defense acquisition official with responsibility for the program that all technical and business requirements have been reviewed and validated to ensure alignment with the business case; and

(F) an explanation of the basis for the certification described in subparagraph (E).

(6) For each major automated information system program for which the information required under paragraph (5) has been provided in a previous annual report, a summary of any significant changes to the information previously provided.

(c) BASELINE.—(1) For purposes of this chapter, the initial submittal to Congress of the documents required by subsection (a) with respect to a major automated information system program shall constitute the original estimate or information originally submitted on such program for purposes of the reports and determinations on program changes in section 2445c of this title.

(2) An adjustment or revision of the original estimate or information originally submitted on a program may be treated as the original estimate or information originally submitted on the program if the adjustment or revision is the result of a critical change in the program covered by section 2445c(d) of this title.

(3) In the event of an adjustment or revision to the original estimate or information originally submitted on a program under paragraph (2), the Secretary of Defense shall include in the next budget justification documents submitted under subsection (a) after such adjustment or revision a notification to the congressional defense committees of such adjustment or revision, together with the reasons for such adjustment or revision.

(d) TIME-CERTAIN DEVELOPMENT.—If an adjustment or revision under subsection (c) for a major automated information system that is not a national security system provides for a period in excess of five years from the time of program initiation to the time of a full deployment decision, the documents submitted under subsection (a) shall include a written determination by the senior Department of Defense official responsible for the program justifying the need for the longer period.

(e) ELEMENTS REGARDING OTHER MAJOR INFORMATION TECHNOLOGY INVESTMENT PROGRAMS.—With respect to each other major information technology investment program, the information required by subsection (a) may be provided in the format that is most appropriate to the current status of the program.

(Added Pub. L. 109–364, div. A, title VIII, § 816(a)(1), Oct. 17, 2006, 120 Stat. 2323; amended Pub. L. 110–417, [div. A], title VIII, § 812(b), Oct. 14, 2008, 122 Stat. 4525; Pub. L. 111–84, div. A, title VIII, § 841(a), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 111–383, div. A, title VIII, § 805(b), Jan. 7, 2011, 124 Stat. 4259; Pub. L. 113–66, div. A, title X, § 1092(d)(1), Dec. 26, 2013, 127 Stat. 877; Pub. L. 114–92, div. A, title VIII, § 891(a), Nov. 25, 2015, 129 Stat. 951.)

AMENDMENTS

2015—Subsecs. (d), (e). Pub. L. 114–92 added subsec. (d) and redesignated former subsec. (d) as (e).

2013—Subsec. (b)(3). Pub. L. 113–66 substituted ''total acquisition costs'' for ''development costs''.

2011—Subsec. (b)(5), (6). Pub. L. 111–383 added pars. (5) and (6).

2009—Subsec. (b)(2). Pub. L. 111–84 substituted ''full deployment decision, and full deployment'' for ''initial operational capability, and full operational capability''.

2008—Subsec. (a). Pub. L. 110–417, § 812(b)(1), inserted ''and each other major information technology investment program'' after ''each major automated information system program''.

Subsec. (b). Pub. L. 110–417, § 812(b)(2), inserted ''Regarding Major Automated Information System Programs'' after ''Elements'' in heading.

Subsec. (d). Pub. L. 110–417, § 812(b)(3), added subsec. (d).

§ 2445c. Reports: quarterly reports; reports on program changes

(a) QUARTERLY REPORTS BY PROGRAM MANAGERS.—The program manager of a major automated information system program or other major information technology investment program shall, on a quarterly basis, submit to the senior Department of Defense official responsible for the program a written report identifying any variance in the projected development schedule, implementation schedule, life-cycle costs, or key performance parameters for the major automated information system or information technology investment to be acquired under the program from such information as originally submitted to Congress under section 2445b of this title.

(b) SENIOR OFFICIALS RESPONSIBLE FOR PROGRAMS.—For purposes of this section, the senior Department of Defense official responsible for a major automated information system program or other major information technology investment program is—

(1) in the case of an automated information system or information technology investment to be acquired for a military department, the senior acquisition executive for the military department; or

(2) in the case of any other automated information system or information technology investment to be acquired for the Department of Defense or any component of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(c) REPORT ON SIGNIFICANT CHANGES IN PROGRAM.—

(1) IN GENERAL.—If, based on a quarterly report submitted by the program manager of a major automated information system program pursuant to subsection (a), the senior Department of Defense official responsible for the program makes a determination described in paragraph (2), the official shall, not later than 45 days after receiving such report, notify the congressional defense committees in writing of such determination.

(2) COVERED DETERMINATION.—A determination described in this paragraph with respect to a major automated information system program is a determination that—

(A) there has been a schedule change that will cause a delay of more than six months but less than a year in any program schedule milestone or significant event from the schedule originally submitted to Congress under paragraph (1) or (2) of section 2445b(b) of this title;

(B) the estimated total acquisition cost or full life-cycle cost for the program has increased by at least 15 percent, but less than 25 percent, over the original estimate submitted to Congress under paragraph (3) of section 2445b(b) of this title; or

(C) there has been a significant, adverse change in the expected performance of the major automated information system to be acquired under the program from the parameters originally submitted to Congress under paragraph (4) of section 2445b(b) of this title.

(d) REPORT ON CRITICAL CHANGES IN PROGRAM.—

(1) IN GENERAL.—If, based on a quarterly report submitted by the program manager of a major automated information system program or other major information technology investment program pursuant to subsection (a), the senior Department of Defense official responsible for the program makes a determination described in paragraph (3), the official shall, not later than 60 days after receiving such report—

(A) carry out an evaluation of the program under subsection (e); and

(B) submit, through the Secretary of Defense, to the congressional defense committees a report meeting the requirements of subsection (f).

(2) CERTIFICATION WHEN VARIANCE DUE TO EXTENSION OF PROGRAM.—If an official with milestone decision authority for a program who, following receipt of a quarterly report described in paragraph (1) and making a determination described in paragraph (3), also determines that the circumstances resulting in the determination described in paragraph (3) are primarily due to an extension of a program and involve minimal developmental risk, the official may, in lieu of carrying out an evaluation and submitting a report in accordance with paragraph (1), submit to the congressional defense committees, within 45 days after receiving the quarterly report, a certification that the official has made those determinations. If such a certification is submitted, the limitation in subsection (g)(1) does not apply with respect to that determination under paragraph (3).

(3) COVERED DETERMINATION.—A determination described in this paragraph with respect to a major automated information system program or other major information technology investment program is a determination that—

(A) there has been a schedule change that will cause a delay of one year or more in any program schedule milestone or significant event from the schedule originally submitted to Congress under paragraph (1) or (2) of section 2445b(b) of this title or section 2445b(d) of this title, as applicable;

(B) the estimated total acquisition cost or full life-cycle cost for the program has increased by 25 percent or more over the original estimate submitted to Congress under paragraph (3) of section 2445b(b) of this title or section 2445b(d) of this title, as applicable; or

(C) there has been a change in the expected performance of the major automated information system or major information technology investment to be acquired under the program that will undermine the ability of the system to perform the functions anticipated at the time information on the program was originally submitted to Congress under section 2445b(b) of this title or section 2445b(d) of this title, as applicable.

(e) PROGRAM EVALUATION.—The evaluation of a major automated information system program or other major information technology investment program conducted under this subsection for purposes of subsection (d)(1)(A) shall include an assessment of—

(1) the projected cost and schedule for completing the program if current requirements are not modified;

(2) the projected cost and schedule for completing the program based on reasonable modification of such requirements; and

(3) the rough order of magnitude of the cost and schedule for any reasonable alternative system or capability.

(f) REPORT ON CRITICAL PROGRAM CHANGES.—A report on a major automated information system program or other major information technology investment program conducted under this subsection for purposes of subsection (d)(1)(B) shall include a written certification (with supporting explanation) stating that—

(1) the automated information system or information technology investment to be acquired under the program is essential to the national security or to the efficient management of the Department of Defense;

(2) there is no alternative to the system or information technology investment which will provide equal or greater capability at less cost;

(3) the new estimates of the costs, schedule, and performance parameters with respect to the program and system or information technology investment, as applicable, have been determined, with the concurrence of the Director of Cost Assessment and Program Evaluation, to be reasonable; and

(4) the management structure for the program is adequate to manage and control program costs.

(g) PROHIBITION ON OBLIGATION OF FUNDS.—(1) If the determination of a critical change to a program is made by the senior Department official responsible for the program under subsection (d)(3) and a report is not submitted to Congress within the 60-day period provided by subsection (d)(1), appropriated funds may not be obligated for any major contract under the program.

(2) The prohibition on the obligation of funds for a program under paragraph (1) shall cease to apply on the date on which Congress has received a report under subsection (d)(1)(B).

(Added Pub. L. 109–364, div. A, title VIII, § 816(a)(1), Oct. 17, 2006, 120 Stat. 2324; amended Pub. L. 110–417, [div. A], title VIII, § 812(c), Oct. 14, 2008, 122 Stat. 4526; Pub. L. 111–23, title I, § 101(d)(6), May 22, 2009, 123 Stat. 1710; Pub. L. 111–84, div. A, title VIII, § 841(b), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 112–81, div. A, title VIII, § 811, Dec. 31, 2011, 125 Stat. 1491; Pub. L. 113–66, div. A, title X, § 1092(b), (c), (d)(2), (e), Dec. 26, 2013, 127 Stat. 877, 878; Pub. L. 113–291, div. A, title VIII, § 802, Dec. 19, 2014, 128 Stat. 3427; Pub. L. 114–92, div. A, title VIII, § 891(b), Nov. 25, 2015, 129 Stat. 952.)

AMENDMENTS

2015—Subsec. (c)(2)(B) to (D). Pub. L. 114–92 substituted ''; or'' for semicolon at end of subpar. (B) and period for ''; or'' at end of subpar. (C) and struck out subpar. (D) which read as follows: ''the automated information system or information technology investment failed to achieve a full deployment decision within five years after the Milestone A decision for the program or, if there was no Milestone A decision, the date when the preferred alternative is selected for the program (excluding any time during which program activity is delayed as a result of a bid protest).''

2014—Subsec. (c)(2)(D). Pub. L. 113–291, § 802(a), added subpar. (D).

Subsec. (d)(2). Pub. L. 113–291, § 802(c), substituted ''are primarily due to an extension of a program and involve'' for ''(A) is primarily due to an extension of a program, and (B) involves''.

Subsec. (d)(3). Pub. L. 113–291, § 802(b), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''the automated information system or information technology investment failed to achieve a full deployment decision within five years after the Milestone A decision for the program or, if there was no Milestone A decision, the date when the preferred alternative is selected for the program (excluding any time during which program activity is delayed as a result of a bid protest);''.

2013—Subsec. (c)(2)(B). Pub. L. 113–66, § 1092(d)(2)(A), substituted ''total acquisition cost'' for ''program development cost''.

Subsec. (d)(1). Pub. L. 113–66, § 1092(b)(1), substituted ''paragraph (3)'' for ''paragraph (2)'' in introductory provisions.

Subsec. (d)(2). Pub. L. 113–66, § 1092(b)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 113–66, § 1092(b)(2), (d)(2)(B), redesignated par. (2) as (3) and substituted ''total acquisition cost'' for ''program development cost'' in subpar. (C).

Subsec. (g)(1). Pub. L. 113–66, § 1092(c), substituted ''subsection (d)(3)'' for ''subsection (d)(2)''.

Subsec. (g)(2). Pub. L. 113–66, § 1092(e), substituted ''under subsection (d)(1)(B)'' for ''in compliance with the requirements of subsection (d)(2)''.

2011—Subsec. (d)(2)(A). Pub. L. 112–81 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the automated information system or information technology investment failed to achieve a full deployment decision within five years after funds were first obligated for the program;''.

2009—Subsec. (d)(2)(A). Pub. L. 111–84 substituted ''a full deployment decision'' for ''initial operational capability''.

Subsec. (f)(3). Pub. L. 111–23 substituted ''have been determined, with the concurrence of the Director of Cost Assessment and Program Evaluation, to be reasonable'' for ''are reasonable''.

2008—Subsec. (a). Pub. L. 110–417, § 812(c)(1), inserted ''or other major information technology investment program'' after ''major automated information system program'' and ''or information technology investment'' after ''the major automated information system''.

Subsec. (b). Pub. L. 110–417, § 812(c)(2), inserted ''or other major information technology investment program'' after ''major automated information system program'' in introductory provisions and ''or information technology investment'' after ''automated information system'' in pars. (1) and (2).

Subsec. (d)(1), (2). Pub. L. 110–417, § 812(c)(3)(A), inserted ''or other major information technology investment program'' after ''major automated information system program'' in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 110–417, § 812(c)(3)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the system failed to achieve initial operational capability within five years of milestone A approval;''.

Subsec. (d)(2)(B), (C). Pub. L. 110–417, § 812(c)(3)(B)(ii), (iii), inserted ''or section 2445b(d) of this title, as applicable'' before semicolon at end.

Subsec. (d)(2)(D). Pub. L. 110–417, § 812(c)(3)(B)(iv), inserted ''or major information technology investment'' after ''major automated information system'' and ''or section 2445b(d) of this title, as applicable'' before period at end.

Subsec. (e). Pub. L. 110–417, § 812(c)(4), inserted ''or other major information technology investment pro-

gram'' after ''major automated information system program'' in introductory provisions.

Subsec. (f). Pub. L. 110–417, §812(c)(5)(A), inserted ''or other major information technology investment program'' after ''major automated information system program'' in introductory provisions.

Subsec. (f)(1). Pub. L. 110–417, §812(c)(5)(B), inserted ''or information technology investment'' after ''automated information system''.

Subsec. (f)(2). Pub. L. 110–417, §812(c)(5)(C), inserted ''or information technology investment'' after ''the system''.

Subsec. (f)(3). Pub. L. 110–417, §812(c)(5)(D), inserted ''or information technology investment, as applicable,'' after ''the program and system''.

§ 2445d. Construction with other reporting requirements

In the case of a major automated information system program covered by this chapter that is also treatable as a major defense acquisition program for which reports would be required under chapter 144 of this title, the Secretary may designate the program to be treated only as a major automated information system program covered by this chapter or to be treated only as a major defense acquisition program covered by such chapter 144.

(Added Pub. L. 109–364, div. A, title VIII, §816(a)(1), Oct. 17, 2006, 120 Stat. 2326; amended Pub. L. 111–84, div. A, title VIII, §817(a), Oct. 28, 2009, 123 Stat. 2408.)

AMENDMENTS

2009—Pub. L. 111–84 substituted ''of this title, the Secretary may designate the program to be treated only as a major automated information system program covered by this chapter or to be treated only as a major defense acquisition program covered by such chapter 144.'' for ''of this title, no reports on the program are required under such chapter if the requirements of this chapter with respect to the program are met.''

GUIDANCE REQUIRED

Pub. L. 111–84, div. A, title VIII, §817(b), Oct. 28, 2009, 123 Stat. 2408, provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall issue guidance on the implementation of section 2445d of title 10, United States Code (as amended by subsection (a)). The guidance shall provide that, as a general rule—

''(1) a program covered by such section that requires the development of customized hardware shall be treated only as a major defense acquisition program under chapter 144 of title 10, United States Code; and

''(2) a program covered by such section that does not require the development of customized hardware shall be treated only as a major automated information system program under chapter 144A of title 10, United States Code.''

CHAPTER 145—CATALOGING AND STANDARDIZATION

Sec.
2451. Defense supply management.
2452. Duties of Secretary of Defense.
2453. Supply catalog: distribution and use.
2454. Supply catalog: new or obsolete items.
[2455. Repealed.]
2456. Coordination with General Services Administration.
2457. Standardization of equipment with North Atlantic Treaty Organization members.
2458. Inventory management policies.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title III, §323(a)(2), title XIII, §1331(6), Nov. 5, 1990, 104 Stat. 1530, 1673, struck out item 2455 ''Reports to Congress'' and added item 2458.

1982—Pub. L. 97–295, §1(30)(B), Oct. 12, 1982, 96 Stat. 1296, added item 2457.

§ 2451. Defense supply management

(a) The Secretary of Defense shall develop a single catalog system and related program of standardizing supplies for the Department of Defense.

(b) In cataloging, the Secretary shall name, describe, classify, and number each item recurrently used, bought, stocked, or distributed by the Department of Defense, so that only one distinctive combination of letters or numerals, or both, identifies the same item throughout the Department of Defense. Only one identification may be used for each item for all supply functions from purchase to final disposal in the field or other area. The catalog may consist of a number of volumes, sections, or supplements. It shall include all items of supply and, for each item, information needed for supply operations, such as descriptive and performance data, size, weight, cubage, packaging and packing data, a standard quantitative unit of measurement, and other related data that the Secretary determines to be desirable.

(c) In standardizing supplies the Secretary shall, to the highest degree practicable—

(1) standardize items used throughout the Department of Defense by developing and using single specifications, eliminating overlapping and duplicate specifications, and reducing the number of sizes and kinds of items that are generally similar;

(2) standardize the methods of packing, packaging, and preserving such items; and

(3) make efficient use of the services and facilities for inspecting, testing, and accepting such items.

(d) The Secretary shall coordinate with the Administrator of General Services to enable the use of commercial identifiers for commercial items within the Federal cataloging system.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138; Pub. L. 85–861, §33(a)(13), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 108–136, div. A, title III, §341, Nov. 24, 2003, 117 Stat. 1448.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2451(a)	5:173.	July 1, 1952, ch. 539, §§2, 4, 66 Stat. 318, 319; 1953 Reorg. Plan No. 6, §1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2451(b)	5:173b(a).	
2451(c)	5:173b(b).	

In subsection (a), the words ''for the Department of Defense'' are inserted for clarity. 5:173 (1st sentence) is omitted as impliedly repealed by section 2 of 1953 Reorganization Plan No. 6, effective June 30, 1953, 67 Stat. 638.

In subsection (b), the words ''or any of the departments thereof'', ''in such manner'', ''original'', and

''necessary or'' are omitted as surplusage. The words ''throughout the Department of Defense'' are substituted for the words ''either within a bureau or service, between bureaus or services, or between the departments''. The word ''recurrently'' is substituted for the word ''repetitively''. The words ''Only one identification may'' are substituted for the words ''The single item identification shall''.

In subsection (c), the words ''the most'' are omitted as surplusage. The words ''to the highest degree practicable'' are substituted for the words ''achieve the highest practicable degree possible'' and ''The greatest practicable degree of standardization * * * shall be achieved''.

1958 ACT

The change makes clear that clauses (2) and (3) apply to all items, whether or not standardized, used throughout the Department of Defense.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–136 added subsec. (d).

1958—Subsec. (c). Pub. L. 85–861 substituted ''such'' for ''standardized'' in cl. (2), and ''such'' for ''those'' in cl. (3).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

DEFENSE-WIDE ELECTRONIC MALL SYSTEM FOR SUPPLY PURCHASES

Pub. L. 105–261, div. A, title III, § 332, Oct. 17, 1998, 112 Stat. 1968, provided that:

''(a) ELECTRONIC MALL SYSTEM DEFINED.—In this section, the term 'electronic mall system' means an electronic system for displaying, ordering, and purchasing supplies and materiel available from sources within the Department of Defense and from the private sector.

''(b) DEVELOPMENT AND MANAGEMENT.—(1) Using systems and technology available in the Department of Defense as of the date of the enactment of this Act [Oct. 17, 1998], the Joint Electronic Commerce Program Office of the Department of Defense shall develop a single, defense-wide electronic mall system, which shall provide a single, defense-wide electronic point of entry and a single view, access, and ordering capability for all Department of Defense electronic catalogs. The Secretary of each military department and the head of each Defense Agency shall provide to the Joint Electronic Commerce Program Office the necessary and requested data to ensure compliance with this paragraph.

''(2) The Defense Logistics Agency, under the direction of the Joint Electronic Commerce Program Office, shall be responsible for maintaining the defense-wide electronic mall system developed under paragraph (1).

''(c) ROLE OF CHIEF INFORMATION OFFICER.—The Chief Information Officer of the Department of Defense shall be responsible for—

''(1) overseeing the elimination of duplication and overlap among Department of Defense electronic catalogs; and

''(2) ensuring that such catalogs utilize technologies and formats compliant with the requirements of subsection (b).

''(d) IMPLEMENTATION.—Within 180 days after the date of the enactment of this Act, the Chief Information Officer shall develop and provide to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives]—

''(1) an inventory of all existing and planned electronic mall systems in the Department of Defense; and

''(2) a schedule for ensuring that each such system is compliant with the requirements of subsection (b).''

STANDARDIZATION AND INTEROPERABILITY OF NATO WEAPONS

Pub. L. 94–361, title VIII, § 803, July 14, 1976, 90 Stat. 930, which expressed the sense of Congress that the weapons systems of the NATO Allies be standardized and interoperable, that this goal would be facilitated by inter-allied procurement of arms and closer intra-European collaboration in arms procurement, and directed the Secretary of Defense to negotiate with the Allies toward these ends and to report to Congress on actions and programs undertaken to achieve them, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

Pub. L. 94–106, title VIII, § 814(a), (b), Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 94–361, title VIII, § 802, July 14, 1976, 90 Stat. 930, which had provided that it was the policy of the United States that the equipment of our armed forces in Europe be standardized or at least interoperable with that of our NATO Allies, directed the Secretary of Defense to carry out procurement policies toward this end and to report to Congress on any agreements with the Allies involving exchange of equipment manufactured in the United States for equipment manufactured outside it, authorized the Secretary to find such agreements contrary to the public interest and required him to report on the procurement of any major weapons system not in accord with these policies, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

Pub. L. 93–365, title III, § 302(c), Aug. 5, 1974, 88 Stat. 402, as amended by Pub. L. 94–106, title VIII, § 814(c), Oct. 7, 1975, 89 Stat. 540; Pub. L. 97–252, title XI, § 1121, Sept. 8, 1982, 96 Stat. 754, which had directed the Secretary of Defense to assess the costs and possible loss of effectiveness from the failure of the NATO Allies to standardize equipment, to suggest standardization actions, and to report these matters to the Allies and Congress and to Congress annually on them and results obtained with the Allies, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

§ 2452. Duties of Secretary of Defense

The Secretary of Defense shall—

(1) develop and maintain the supply catalog, and the standardization program, described in section 2451 of this title;

(2) direct and coordinate progressive use of the supply catalog in all supply functions within the Department of Defense from the determination of requirements through final disposal;

(3) direct, review, and approve—

(A) the naming, description, and pattern of description of all items;

(B) the screening, consolidation, classification, and numbering of descriptions of all items; and

(C) the publication and distribution of the supply catalog;

(4) maintain liaison with industry advisory groups to coordinate the development of the supply catalog and the standardization program with the best practices of industry and to obtain the fullest practicable cooperation and participation of industry in developing the supply catalog and the standardization program;

(5) establish, publish, review, and revise, within the Department of Defense, military specifications, standards, and lists of qualified products, and resolve differences between the military departments, bureaus, and services with respect to them;

(6) assign responsibility for parts of the cataloging and the standardization programs to the military departments, bureaus, and services within the Department of Defense, when practical and consistent with their capacity and interest in those supplies;

(7) establish time schedules for assignments made under clause (6); and

(8) make final decisions in all matters concerned with the cataloging and standardization programs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2452	5:173c.	July 1, 1952, ch. 539, §5, 66 Stat. 319; 1953 Reorg. Plan No. 6, §1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

In clause (1), the word ''establish'' is omitted as surplusage.

In clause (2), the words ''provided for herein'' and ''its departments, bureaus, and services'' are omitted as surplusage.

In clauses (2) and (3), the words ''provide for'' are omitted as surplusage.

In clause (4), the words ''establish and'' and ''established by sections 173–173i of this title'' are omitted as surplusage.

In clause (5), the words ''amend'' and ''promulgate'' are omitted as surplusage.

In clause (6), the words ''established by sections 173–173i of this title'' are omitted as surplusage.

Clause (7) is substituted for 5:173c(f) (last 11 words).

In clause (8), the word ''programs'' is substituted for the words ''authority established in sections 173–173i of this title''. The words ''subject to review and modification by the Secretary of Defense'' are omitted as surplusage.

REGULATIONS RELATING TO INCREASES IN PRICES FOR SPARE PARTS AND REPLACEMENT EQUIPMENT

Pub. L. 98–94, title XII, §1215, Sept. 24, 1983, 97 Stat. 688, as amended by Pub. L. 98–525, title XII, §1244, Oct. 19, 1984, 98 Stat. 2609; Pub. L. 103–35, title II, §204(b), May 31, 1993, 107 Stat. 102, provided that:

''(a) Not later than 120 days after the date of the enactment of this Act [Sept. 24, 1983], the Secretary of Defense shall issue regulations which—

''(1) except as provided in clause (2), prohibit the purchase of any spare part or replacement equipment when the price of such part or equipment, since a time in the past specified by the Secretary (in terms of days or months) or since the most recent purchase of such part or equipment by the Department of Defense, has increased in price by a percentage in excess of a percentage threshold specified by the Secretary in such regulations, and

''(2) permit the purchase of such spare part or equipment (notwithstanding the prohibition contained in clause (1)) if the contracting officer for such part or equipment certifies in writing to the head of the procuring activity before the purchase is made that—

''(A) such officer has evaluated the price of such part or equipment and concluded that the increase in the price of such part or equipment is fair and reasonable, or

''(B) the national security interests of the United States require that such part or equipment be purchased despite the increase in price of such part or equipment.

''(b)(1) The Secretary shall publish the regulations issued under this section in the Federal Register.

''(2) The Secretary may provide in such regulations for the waiver of the prohibition in subsection (a)(1) and compliance with the requirements of subsection (a)(2) in the case of a purchase of any spare part or replacement equipment made or to be made through competitive procedures.

''(c) Not less than 30 days before the Secretary publishes such regulations in accordance with subsection (b), the Secretary shall submit the text of the proposed regulations to the Committees on Armed Services of the Senate and House of Representatives.''

REPORT ON MANAGEMENT OF ACQUISITION OF SPARE PARTS

Pub. L. 98–94, title XII, §1216, Sept. 24, 1983, 97 Stat. 688, directed Secretary of Defense to submit to Congress, by June 1, 1984, a comprehensive report on management by Department of Defense of acquisition of initial and replenishment spare parts and on status of efforts within Department (including particularly the Defense Logistics Agency and the military departments) to correct problems associated with increased costs of such parts, directed Secretary, not later than Dec. 1, 1983, to submit to Congress an interim report stating briefly the actions being taken by the Department to improve acquisition and management of spare parts, and directed Secretary to put into effect at the earliest practicable date policies and procedures to achieve a long-term solution to problems relating to excessive costs of, and long lead times in the acquisition of, initial and replenishment spare parts.

§ 2453. Supply catalog: distribution and use

The Secretary of Defense shall distribute the parts of the supply catalog described in section 2451 of this title as they are completed. Existing catalogs shall be replaced according to schedules established by the Secretary. After replacement no other supply catalog may be used within the Department of Defense with respect to the kinds of items covered by that part. All property reports and records shall use the nomenclature, item numbers, and descriptive data of the supply catalog.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2453	5:173d.	July 1, 1952, ch. 539, §6, 66 Stat. 320; 1953 Reorg. Plan No. 6, §1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

The words ''and ready for use'' and ''all departments, bureaus, and services'' are omitted as surplusage. The words ''After replacement'' are substituted for the word ''Thereafter''. The words ''with respect to the kinds of items covered by that part'' are inserted for clarity.

§ 2454. Supply catalog: new or obsolete items

(a) After any part of the supply catalog described in section 2451 of this title is distributed, and with respect to the kinds of items covered by that part, only the items listed in it may be procured for recurrent use in the Department of Defense. However, a military department may acquire any new item that is necessary to carry out its mission. As soon as such an item is acquired, it shall be submitted to the Secretary for inclusion in the catalog and the standardization program.

(b) Obsolete items may be deleted from the catalog at any time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2454(a)	5:173e (less last 5 words of 1st proviso).	July 1, 1952, ch. 539, § 7, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2454(b)	5:173e (last 5 words of 1st proviso).	

In subsection (a), the words ''After any part * * * is distributed'' are substituted for the words ''Following the publication and promulgation * * * or portions thereof''. The words ''and with respect to the kinds of items covered by that part'' are inserted for clarity. The word ''recurrent'' is substituted for the word ''repetitive''. The words ''the departments, bureaus, and services of'' are omitted as surplusage. The second sentence of the revised subsection is substituted for 5:173e (1st proviso, less last 5 words; and 2d proviso).

In subsection (b), the words ''at any time'' are inserted for clarity.

[§ 2455. Repealed. Pub. L. 101–510, div. A, title XIII, § 1322(a)(9), Nov. 5, 1990, 104 Stat. 1671]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 140; Jan. 2, 1975, Pub. L. 93–608, § 2(2), 88 Stat. 1971; Dec. 21, 1982, Pub. L. 97–375, title II, § 203(c), 96 Stat. 1823, related to reports on cataloging supplies for Department of Defense.

§ 2456. Coordination with General Services Administration

To avoid unnecessary duplication, the Administrator of General Services and the Secretary of Defense shall coordinate the cataloging and standardization activities of the General Services Administration and the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2456	5:173i.	July 1, 1952, ch. 539, § 11, 66 Stat. 320.

§ 2457. Standardization of equipment with North Atlantic Treaty Organization members

(a) It is the policy of the United States to standardize equipment, including weapons systems, ammunition, and fuel, procured for the use of the armed forces of the United States stationed in Europe under the North Atlantic Treaty or at least to make that equipment interoperable with equipment of other members of the North Atlantic Treaty Organization. To carry out this policy, the Secretary of Defense shall—

(1) assess the costs and possible loss of nonnuclear combat effectiveness of the military forces of the members of the Organization caused by the failure of the members to standardize equipment;

(2) maintain a list of actions to be taken, including an evaluation of the priority and effect of the action, to standardize equipment that may improve the overall nonnuclear defense capability of the Organization or save resources for the Organization; and

(3) initiate and carry out, to the maximum extent feasible, procurement procedures to acquire standardized or interoperable equipment, considering the cost, function, quality, and availability of the equipment.

(b) Progress in realizing the objectives of standardization and interoperability would be enhanced by expanded inter-Allied procurement of arms and equipment within the North Atlantic Treaty Organization. Expanded inter-Allied procurement would be made easier by greater reliance on licensing and coproduction cooperative agreements among the signatories of the North Atlantic Treaty. If constructed to preserve the efficiencies associated with economies of scale, the agreements could minimize potential economic hardship to parties to the agreements and increase the survivability, in time of war, of the North Atlantic Alliance's armaments production base by dispersing manufacturing facilities. In conjunction with other members of the Organization and to the maximum extent feasible, the Secretary shall—

(1) identify areas in which those cooperative agreements may be made with members of the Alliance; and

(2) negotiate those agreements.

(c)(1) It is the sense of Congress that weapons systems being developed wholly or primarily for employment in the North Atlantic Treaty Organization theater should conform to a common Organization requirement in order to proceed toward joint doctrine and planning and to facilitate maximum feasible standardization and interoperability of equipment, and that a common Organization requirement should be understood to include a common definition of the military threat to the members of the Organization.

(2) It is further the sense of Congress that standardization of weapons and equipment within the Organization on the basis of a ''two-way street'' concept of cooperation in defense procurement between Europe and North America can only work in a realistic sense if the European nations operate on a united and collective basis. Therefore, the governments of Europe are encouraged to accelerate their present efforts to achieve European armaments collaboration among all European members of the Organization.

[(d) Repealed. Pub. L. 108–136, div. A, title X, § 1031(a)(22), Nov. 24, 2003, 117 Stat. 1598.]

(e) If the Secretary decides that procurement of equipment manufactured outside the United States is necessary to carry out the policy of subsection (a), the Secretary may determine under section 8302 of title 41 that acquiring that equipment manufactured in the United States is inconsistent with the public interest.

(f) The Secretary shall submit the results of each assessment and evaluation made under subsection (a)(1) and (2) to the appropriate North Atlantic Treaty Organization body to become an integral part of the overall Organization review of force goals and development of force plans.

(Added Pub. L. 97–295, § 1(30)(A), Oct. 12, 1982, 96 Stat. 1294; amended Pub. L. 101–510, div. A, title XIII, § 1311(5), Nov. 5, 1990, 104 Stat. 1670; Pub. L. 104–106, div. A, title XV, § 1503(a)(24), Feb. 10, 1996, 110 Stat. 512; Pub. L. 108–136, div. A, title X, § 1031(a)(22), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 111–350, § 5(b)(33), Jan. 4, 2011, 124 Stat. 3845.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2457(a)	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (1st–3d sentences), 88 Stat. 402. Oct. 7, 1975, Pub. L. 94–106, § 814(a)(1), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(b)	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(b) (1st–4th sentences), 90 Stat. 931.
2457(c)	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(a) (1st, 2d sentences), (c), 90 Stat. 930, 931.
2457(d) (words before (1)), (1) (related to (a)(1) and (2)).	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (5th sentence), 88 Stat. 402; Oct. 7, 1975, Pub. L. 94–106, § 814(c), 89 Stat. 540.
2457(d)(1) (related to (a)(3)).	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(b) (last sentence), 90 Stat. 931.
2457(d)(2)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(b), 89 Stat. 540.
2457(d)(3)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(a)(3), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(d) (4)–(6).	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(a) (3d–last sentences), 90 Stat. 930.
2457(d)(7), (8).	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, 88 Stat. 399, § 302(c) (6th, last sentences); added Sept. 8, 1982, Pub. L. 97–252, § 1121, 96 Stat. 754.
2457(e)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(a)(2), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(f)	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (4th sentence), 88 Stat. 402.

In the introductory matter of subsection (a), before clause (1), the word ''equipment'' is substituted for ''impedimenta'' in section 302(c) of the Department of Defense Appropriation Authorization Act, 1975 (Pub. L. 93–365, Aug. 5, 1974, 88 Stat. 402), for clarity and for consistency with section 814(a)(1) of the Department of Defense Appropriation Authorization Act, 1976 (Pub. L. 94–106, Oct. 7, 1975, 89 Stat. 540), which is restated as part of this subsection.

In subsection (a)(1), the word ''undertake'' is omitted as surplus. The word ''members'' is substituted for ''countries'' for consistency. The words ''including the United States'' are omitted as unnecessary.

In subsection (a)(2), the words ''The Secretary of Defense shall also'' are omitted as unnecessary. The word ''maintain'' is substituted for ''develop'' because it is more appropriate.

In subsection (a)(3), the words ''of other members of the North Atlantic Treaty Organization whenever such equipment is to be used by personnel of the Armed Forces of the United States stationed in Europe under the terms of the North Atlantic Treaty'' are omitted as unnecessary because of the restatement. The words ''Such procedures shall also take into . . . to be procured'' are omitted as unnecessary. The text of section 814(a)(1) (4th, last sentences) is omitted as executed.

In subsection (b), the words ''It is the sense of the Congress'', ''It is further the sense of Congress'', ''It is the Congress' considered judgment'', ''properly'', ''Accordingly'', and ''pursuant to these ends'' are omitted as unnecessary.

In subsection (c)(1), the word ''should'' is substituted for ''shall'' for clarity.

In subsection (d)(1), the word ''members'' is substituted for ''allies'' for consistency. The words ''The Secretary of Defense shall include in the report to the Congress required by section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(2), the words ''The report required under section 302(c) of Public Law 93–365 shall include'' are omitted as unnecessary because of the restatement.

In subsection (d)(3), the words ''he shall report that fact to the Congress in the annual report required under section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(4), the words ''The Secretary of Defense shall, in the reports required by section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(5), the words ''if none exist'' are substituted for ''In the absence of such common requirements'' to eliminate unnecessary words. The words ''the Secretary shall include a discussion of the'' are omitted as unnecessary because of the restatement.

In subsection (d)(6), the words ''The Secretary of Defense shall also report on'' are omitted as unnecessary because of the restatement.

In subsection (d)(7), the words ''those programs'' are substituted for ''all such existing and planned programs'' and ''all such programs'' to eliminate unnecessary words.

In subsection (f), the words ''The Secretary shall submit the results of these . . . to Congress'' are omitted as unnecessary because of the source provisions restated in subsection (d)(1). The word ''submit'' is substituted for ''cause to be brought'' to eliminate unnecessary words. The words ''in order that the suggested actions and recommendations can'' are omitted as unnecessary because of the restatement.

AMENDMENTS

2011—Subsec. (e). Pub. L. 111–350 substituted ''section 8302 of title 41'' for ''section 2 of the Buy American Act (41 U.S.C. 10a)''.

2003—Subsec. (d). Pub. L. 108–136 struck out subsec. (d) which related to Secretary's biennial submission of report to Congress.

1996—Subsec. (e). Pub. L. 104–106 substituted ''the Buy American Act (41 U.S.C. 10a)'' for ''title III of the Act of March 3, 1933 (41 U.S.C. 10a),''.

1990—Subsec. (d). Pub. L. 101–510 substituted ''Before February 1, 1989, and biennially thereafter'' for ''Before February 1 of each year''.

§ 2458. Inventory management policies

(a) POLICY REQUIRED.—The Secretary of Defense shall issue a single, uniform policy on the management of inventory items of the Department of Defense. Such policy shall—

(1) establish maximum levels for inventory items sufficient to achieve and maintain only those levels for inventory items necessary for the national defense;

(2) provide guidance to item managers and other appropriate officials on how effectively to eliminate wasteful practices in the acquisition and management of inventory items; and

(3) set forth a uniform system for the valuation of inventory items by the military departments and Defense Agencies.

(b) PERSONNEL EVALUATIONS.—The Secretary of Defense shall establish procedures to ensure that, with regard to item managers and other personnel responsible for the acquisition and management of inventory items of the Department of Defense, personnel appraisal systems for such personnel give appropriate consideration to efforts made by such personnel to eliminate wasteful practices and achieve cost savings in the acquisition and management of inventory items.

(Added Pub. L. 101–510, div. A, title III, § 323(a)(1), Nov. 5, 1990, 104 Stat. 1530; amended Pub. L. 102–190, div. A, title III, § 347(a), Dec. 5, 1991, 105 Stat. 1347.)

AMENDMENTS

1991—Subsec. (a)(3). Pub. L. 102–190 added par. (3).

IMPLEMENTATION OF 1991 AMENDMENT

Secretary of Defense to establish uniform system of valuation described in subsec. (a)(3) of this section not later than 180 days after Dec. 5, 1991, see section 347(c) of Pub. L. 102–190, set out as a note under section 2721 of this title.

MANAGEMENT OF CONVENTIONAL AMMUNITION INVENTORY

Pub. L. 113–291, div. A, title III, § 352(a), (b), Dec. 19, 2014, 128 Stat. 3347, provided that:

''(a) CONSOLIDATION OF DATA.—Not later than 240 days after the date of the enactment of this Act [Dec. 19, 2014], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue Department-wide guidance designating an authoritative source of data for conventional ammunition. Not later than 10 days after issuing the guidance required by this subsection, the Under Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on what source of data has been designated under this subsection.

''(b) ANNUAL REPORT.—The Secretary of the Army shall include in the appropriate annual ammunition inventory reports, as determined by the Secretary, information on all available ammunition for use during the redistribution process, including any ammunition that was unclaimed and categorized for disposal by another military service during a year before the year during which the report is submitted.''

IMPROVEMENT OF INVENTORY MANAGEMENT PRACTICES

Pub. L. 111–84, div. A, title III, § 328, Oct. 28, 2009, 123 Stat. 2255, provided that:

''(a) INVENTORY MANAGEMENT PRACTICES IMPROVEMENT PLAN REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Oct. 28, 2009], 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 comprehensive plan for improving the inventory management systems of the military departments and the Defense Logistics Agency with the objective of reducing the acquisition and storage of secondary inventory that is excess to requirements.

''(b) ELEMENTS.—The plan under subsection (a) shall include the following:

''(1) A plan for a comprehensive review of demand-forecasting procedures to identify and correct any systematic weaknesses in such procedures, including the development of metrics to identify bias toward over-forecasting and adjust forecasting methods accordingly.

''(2) A plan to accelerate the efforts of the Department of Defense to achieve total asset visibility, including efforts to link wholesale and retail inventory levels through multi-echelon modeling.

''(3) A plan to reduce the average level of on-order secondary inventory that is excess to requirements, including a requirement for the systemic review of such inventory for possible contract termination.

''(4) A plan for the review and validation of methods used by the military departments and the Defense Logistics Agency to establish economic retention requirements.

''(5) A plan for an independent review of methods used by the military departments and the Defense Logistics Agency to establish contingency retention requirements.

''(6) A plan to identify items stored in secondary inventory that require substantial amounts of storage space and shift such items, where practicable, to direct vendor delivery.

''(7) A plan for a comprehensive assessment of inventory items on hand that have no recurring demands, including the development of—

''(A) metrics to track years of no demand for items in stock; and

''(B) procedures for ensuring the systemic review of such items for potential reutilization or disposal.

''(8) A plan to more aggressively pursue disposal reviews and actions on stocks identified for potential reutilization or disposal.

''(c) GAO REPORTS.—

''(1) ASSESSMENT OF PLAN.—Not later than 60 days after the date on which the plan required by subsection (a) is submitted as specified in that subsection, the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth an assessment of the extent to which the plan meets the requirements of this section.

''(2) ASSESSMENT OF IMPLEMENTATION.—Not later than 18 months after the date on which the plan required by subsection (a) is submitted, the Comptroller General shall submit to the congressional defense committees a report setting forth an assessment of the extent to which the plan has been effectively implemented by each military department and by the Defense Logistics Agency.

''(d) INVENTORY THAT IS EXCESS TO REQUIREMENTS DEFINED.—In this section, the term 'inventory that is excess to requirements' means inventory that—

''(1) is excess to the approved acquisition objective concerned; and

''(2) is not needed for the purposes of economic retention or contingency retention.''

REPORT ON INVENTORY AND CONTROL OF MILITARY EQUIPMENT

Pub. L. 106–65, div. A, title III, § 363, Oct. 5, 1999, 113 Stat. 576, provided that not later than Aug. 31, 2000, the Secretary of Defense was to submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the inventory and control of the military equipment of the Department of Defense as of the end of fiscal year 1999, and that not later than Nov. 30, 2000, the Inspector General of the Department of Defense was to review the report and submit comments to the committees.

BEST COMMERCIAL INVENTORY PRACTICES FOR MANAGEMENT OF SECONDARY SUPPLY ITEMS

Pub. L. 105–261, div. A, title III, § 347, Oct. 17, 1998, 112 Stat. 1980, provided that:

''(a) DEVELOPMENT AND SUBMISSION OF SCHEDULE.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of each military department shall submit to Congress a schedule for implementing within the military department, for secondary supply items managed by that military department, inventory practices identified by the Secretary as being the best commercial inventory practices for the acquisition and distribution of such supply items consistent with military requirements. The schedule shall provide for the implementation of such practices to be completed not later than five years after the date of the enactment of this Act.

''(b) DEFINITION.—For purposes of this section, the term 'best commercial inventory practice' includes cellular repair processes, use of third-party logistics providers, and any other practice that the Secretary of the military department determines will enable the military department to reduce inventory levels while improving the responsiveness of the supply system to user needs.

''(c) GAO REPORTS ON MILITARY DEPARTMENT AND DEFENSE LOGISTICS AGENCY SCHEDULES.—(1) Not later

than 240 days after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report evaluating the extent to which the Secretary of each military department has complied with the requirements of this section.

''(2) Not later than 18 months after the date on which the Director of the Defense Logistics Agency submits to Congress a schedule for implementing best commercial inventory practices under section 395 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1718; 10 U.S.C. 2458 note), the Comptroller General shall submit to Congress an evaluation of the extent to which best commercial inventory practices are being implemented in the Defense Logistics Agency in accordance with that schedule.''

INVENTORY MANAGEMENT OF IN-TRANSIT ITEMS

Pub. L. 105–261, div. A, title III, §349, Oct. 17, 1998, 112 Stat. 1981, as amended by Pub. L. 106–398, §1 [[div. A], title III, §386], Oct. 30, 2000, 114 Stat. 1654, 1654A–88, provided that:

''(a) REQUIREMENT FOR PLAN.—The Secretary of Defense shall prescribe and carry out a comprehensive plan to ensure visibility over all in-transit end items and secondary items.

''(b) END ITEMS.—The plan required by subsection (a) shall address the specific mechanisms to be used to enable the Department of Defense to identify at any time the quantity and location of all end items.

''(c) SECONDARY ITEMS.—The plan required by subsection (a) shall address the following problems with Department of Defense management of inventories of in-transit secondary items:

''(1) The vulnerability of in-transit secondary items to loss through fraud, waste, and abuse.

''(2) Loss of oversight of in-transit secondary items, including any loss of oversight when items are being transported by commercial carriers.

''(3) Loss of accountability for in-transit secondary items due to either a delay of delivery of the items or a lack of notification of a delivery of the items.

''(d) CONTENT OF PLAN.—The plan shall include for subsection (b) and for each of the problems described in subsection (c) the following information:

''(1) The actions to be taken by the Department, including specific actions to address underlying weaknesses in the controls over items being shipped.

''(2) Statements of objectives.

''(3) Performance measures and schedules.

''(4) An identification of any resources necessary for implementing the required actions, together with an estimate of the annual costs.

''(5) The key management elements for monitoring, and for measuring the progress achieved in, the implementation of the plan, including—

''(A) the assignment of oversight responsibility for each action identified pursuant to paragraph (1);

''(B) a description of the resources required for oversight; and

''(C) an estimate of the annual cost of oversight.

''(e) GAO REVIEWS.—(1) Not later than 60 days after the date on which the Secretary of Defense submits the initial plan to Congress, the Comptroller General shall review the plan and submit to Congress any comments that the Comptroller General considers appropriate regarding the plan.

''(2) The Comptroller General shall monitor any implementation of the plan and, not later than 1 year after the date referred to in paragraph (1), submit to Congress an assessment of the extent to which the plan has been implemented.

''(f) SUBMISSIONS TO CONGRESS.—The Secretary shall submit to Congress any revisions made to the plan that are required by any law enacted after October 17, 1998. The revisions so made shall be submitted not later than 180 days after the date of the enactment of the law requiring the revisions.''

INVENTORY MANAGEMENT

Pub. L. 105–85, div. A, title III, §395, Nov. 18, 1997, 111 Stat. 1718, provided that:

''(a) DEVELOPMENT AND SUBMISSION OF SCHEDULE.—Not later than 180 days after the date of the enactment of this Act [Nov. 18, 1997], the Director of the Defense Logistics Agency shall develop and submit to Congress a schedule for implementing within the agency, for the supplies and equipment described in subsection (b), inventory practices identified by the Director as being the best commercial inventory practices for the acquisition and distribution of such supplies and equipment consistent with military requirements. The schedule shall provide for the implementation of such practices to be completed not later than three years after the date of the enactment of this Act.

''(b) COVERED SUPPLIES AND EQUIPMENT.—Subsection (a) shall apply to the following types of supplies and equipment for the Department of Defense:

''(1) Medical and pharmaceutical.

''(2) Subsistence.

''(3) Clothing and textiles.

''(4) Commercially available electronics.

''(5) Construction.

''(6) Industrial.

''(7) Automotive.

''(8) Fuel.

''(9) Facilities maintenance.

''(c) DEFINITION.—For purposes of this section, the term 'best commercial inventory practice' includes a so-called prime vendor arrangement and any other practice that the Director determines will enable the Defense Logistics Agency to reduce inventory levels and holding costs while improving the responsiveness of the supply system to user needs.

''(d) REPORT ON EXPANSION OF COVERED SUPPLIES AND EQUIPMENT.—Not later than March 1, 1998, the Comptroller General shall submit to Congress a report evaluating the feasibility of expanding the list of covered supplies and equipment under subsection (b) to include repairable items.''

DIRECT VENDOR DELIVERY SYSTEM FOR CONSUMABLE INVENTORY ITEMS OF DEPARTMENT OF DEFENSE

Pub. L. 104–106, div. A, title III, §352, Feb. 10, 1996, 110 Stat. 266, provided that:

''(a) IMPLEMENTATION OF DIRECT VENDOR DELIVERY SYSTEM.—Not later than September 30, 1997, the Secretary of Defense shall, to the maximum extent practicable, implement a system under which consumable inventory items referred to in subsection (b) are delivered to military installations throughout the United States directly by the vendors of those items. The purpose for implementing the system is to reduce the expense and necessity of maintaining extensive warehouses for those items within the Department of Defense.

''(b) COVERED ITEMS.—The items referred to in subsection (a) are the following:

''(1) Food and clothing.

''(2) Medical and pharmaceutical supplies.

''(3) Automotive, electrical, fuel, and construction supplies.

''(4) Other consumable inventory items the Secretary considers appropriate.''

DATE OF ISSUANCE OF POLICY

Pub. L. 101–510, div. A, title III, §323(b), Nov. 5, 1990, 104 Stat. 1530, provided that: ''The policy required by section 2458(a) of title 10, United States Code (as added by subsection (a)), shall be issued not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990].''

CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS

Sec.
2460. Definition of depot-level maintenance and repair.
2461. Public-private competition required before conversion to contractor performance.

Sec.
2461a. Development and implementation of system for monitoring cost saving resulting from public-private competitions.
[2462. Repealed.]
2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions.
2464. Core logistics capabilities.
2465. Prohibition on contracts for performance of firefighting or security-guard functions.
2466. Limitations on the performance of depot-level maintenance of materiel.
[2467, 2468. Repealed.]
2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition.
[2469a. Repealed.]
2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies.
[2471. Repealed.]
2472. Prohibition on management of depot employees by end strength.
[2473. Repealed.]
2474. Centers of Industrial and Technical Excellence: designation; public-private partnerships.
2475. Consolidation, restructuring, or reengineering of organizations, functions, or activities: notification requirements.
2476. Minimum capital investment for certain depots.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title X, §1060(a)(2)(B), Dec. 19, 2014, 128 Stat. 3502, struck out item 2462 ''Reports on public-private competition''.

2013—Pub. L. 112–239, div. A, title III, §322(b)(2)(B), Jan. 2, 2013, 126 Stat. 1695, substituted ''Core logistics capabilities'' for ''Core depot-level maintenance and repair capabilities'' in item 2464.

2011—Pub. L. 112–81, div. A, title III, §327(b), Dec. 31, 2011, 125 Stat. 1368, substituted ''Core depot-level maintenance and repair capabilities'' for ''Core logistics capabilities'' in item 2464.

Pub. L. 111–383, div. A, title VIII, §822(b), Jan. 7, 2011, 124 Stat. 4268, struck out item 2473 ''Procurements from the small arms production industrial base''.

2008—Pub. L. 110–181, div. A, title III, §§322(d), 324(a)(2), Jan. 28, 2008, 122 Stat. 60, 61, added item 2463 and struck out item 2467 ''Cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison''.

2006—Pub. L. 109–364, div. A, title III, §332(b), Oct. 17, 2006, 120 Stat. 2150, added item 2476.

Pub. L. 109–163, div. A, title III, §341(g)(4), Jan. 6, 2006, 119 Stat. 3200, substituted ''Public-private competition required'' for ''Commercial or industrial type functions: required studies and reports'' in item 2461, ''Development and implementation of system for monitoring cost saving resulting from public-private competitions'' for ''Development of system for monitoring cost savings resulting from workforce reductions'' in item 2461a, and ''Reports on public-private competition'' for ''Contracting for certain supplies and services required when cost is lower'' in item 2462 and struck out item 2463 ''Collection and retention of cost information data on converted services and functions''.

2004—Pub. L. 108–375, div. A, title III, §322(b)(2), Oct. 28, 2004, 118 Stat. 1846, substituted ''Prohibition on management of depot employees by end strength'' for ''Management of depot employees'' in item 2472.

2002—Pub. L. 107–314, div. A, title III, §333(b), Dec. 2, 2002, 116 Stat. 2514, struck out item 2469a ''Use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at certain military installations''.

2001—Pub. L. 107–107, div. A, title X, §1048(e)(10)(B), Dec. 28, 2001, 115 Stat. 1228, struck out item 2468 ''Military installations: authority of base commanders over contracting for commercial activities''.

2000—Pub. L. 106–398, §1 [[div. A], title III, §§341(g)(2), 353(b), 354(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64, 1654A–73, 1654A–75, added items 2461a and 2475 and struck out item 2471 ''Persons outside the Department of Defense: lease of excess depot-level equipment and facilities by''.

1999—Pub. L. 106–65, div. A, title III, §342(b)(2), Oct. 5, 1999, 113 Stat. 569, added item 2467 and struck former item 2467 ''Cost comparisons: requirements with respect to retirement costs and consultation with employees''.

1997—Pub. L. 105–85, div. A, title III, §§355(c)(1), 356(b), 359(a)(2), 361(a)(2), 385(b), Nov. 18, 1997, 111 Stat. 1694, 1695, 1699, 1701, 1712, added item 2460, substituted ''Collection and retention of cost information data on converted services and functions'' for ''Reports on savings or costs from increased use of DOD civilian personnel'' in item 2463 and ''capabilities'' for ''functions'' in item 2464, and added items 2469a and 2474.

1996—Pub. L. 104–201, div. A, title VIII, §832(b), Sept. 23, 1996, 110 Stat. 2616, added item 2473.

Pub. L. 104–106, div. A, title III, §312(d), Feb. 10, 1996, 110 Stat. 251, added item 2472.

Pub. L. 104–106, div. A, title III, §311(f)(2), Feb. 10, 1996, 110 Stat. 248, which directed striking out items 2466 and 2469, was repealed by Pub. L. 105–85, div. A, title III, §363, Nov. 18, 1997, 111 Stat. 1702.

1994—Pub. L. 103–337, div. A, title III, §§335(b), 336(b), Oct. 5, 1994, 108 Stat. 2717, added items 2470 and 2471.

1992—Pub. L. 102–484, div. A, title III, §353(b), Oct. 23, 1992, 106 Stat. 2379, added item 2469.

1991—Pub. L. 102–190, div. A, title III, §314(a)(2), Dec. 5, 1991, 105 Stat. 1337, substituted ''Limitations on the performance of depot-level maintenance of materiel'' for ''Prohibition on certain depot maintenance workload competitions'' in item 2466.

1989—Pub. L. 101–189, div. A, title XI, §1131(a)(2), Nov. 29, 1989, 103 Stat. 1561, added item 2468.

1988—Pub. L. 100–456, div. A, title III, §§326(b), 331(b), Sept. 29, 1988, 102 Stat. 1956, 1958, added items 2466 and 2467.

§ 2460. Definition of depot-level maintenance and repair

(a) IN GENERAL.—In this chapter, the term ''depot-level maintenance and repair'' means (except as provided in subsection (b)) material maintenance or repair requiring the overhaul, upgrading, or rebuilding of parts, assemblies, or subassemblies, and the testing and reclamation of equipment as necessary, regardless of the source of funds for the maintenance or repair or the location at which the maintenance or repair is performed. The term includes (1) all aspects of software maintenance classified by the Department of Defense as of July 1, 1995, as depot-level maintenance and repair, and (2) interim contractor support or contractor logistics support (or any similar contractor support), to the extent that such support is for the performance of services described in the preceding sentence.

(b) EXCEPTIONS.—(1) The term does not include the procurement of major modifications or upgrades of weapon systems that are designed to improve program performance or the nuclear refueling or defueling of an aircraft carrier and any concurrent complex overhaul. A major upgrade program covered by this exception could continue to be performed by private or public sector activities.

(2) The term also does not include the procurement of parts for safety modifications. However,

the term does include the installation of parts for that purpose.

(Added and amended Pub. L. 112–239, div. A, title III, §322(b)(1), (c), Jan. 2, 2013, 126 Stat. 1694, 1695.)

CODIFICATION

Section 322(b)(1) of Pub. L. 112–239, cited as a credit to this section, revived section 2460 of this title as in effect the day before the date of the enactment of Pub. L. 112–81, Dec. 31, 2011. See Prior Provisions note below.

PRIOR PROVISIONS

A prior section 2460, added Pub. L. 105–85, div. A, title III, §355(a), Nov. 18, 1997, 111 Stat. 1693; amended Pub. L. 105–261, div. A, title III, §341, Oct. 17, 1998, 112 Stat. 1973; Pub. L. 112–81, div. A, title III, §321, Dec. 31, 2011, 125 Stat. 1361, defined ''depot-level maintenance and repair'' for this chapter prior to repeal by Pub. L. 112–239, div. A, title III, §322(a)(1), Jan. 2, 2013, 126 Stat. 1694.

AMENDMENTS

2013—Subsec. (b)(1). Pub. L. 112–239, §322(c), substituted ''or the nuclear refueling or defueling of an aircraft carrier and any concurrent complex overhaul'' for ''or the nuclear refueling of an aircraft carrier''.

EFFECTIVE DATE

Section and amendment by Pub. L. 112–239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112–81, see section 322(f) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2366a of this title.

§ 2461. Public-private competition required before conversion to contractor performance

(a) PUBLIC-PRIVATE COMPETITION.—(1) No function of the Department of Defense performed by Department of Defense civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

(A) formally compares the cost of performance of the function by Department of Defense civilian employees with the cost of performance by a contractor;

(B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A–76, as implemented on May 29, 2003, or any successor circular;

(C) includes the issuance of a solicitation;

(D) determines whether the submitted offers meet the needs of the Department of Defense with respect to factors other than cost, including quality, reliability, and timeliness;

(E) examines the cost of performance of the function by Department of Defense civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Government over the life of the contract, including—

(i) the estimated cost to the Government (based on offers received) for performance of the function by a contractor;

(ii) the estimated cost to the Government for performance of the function by Department of Defense civilian employees; and

(iii) an estimate of all other costs and expenditures that the Government would incur because of the award of such a contract;

(F) requires continued performance of the function by Department of Defense civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by Department of Defense civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

(ii) $10,000,000;

(G) requires that the contractor shall not receive an advantage for a proposal that would reduce costs for the Department of Defense by—

(i) not making an employer-sponsored health insurance plan (or payment that could be used in lieu of such a plan), health savings account, or medical savings account available to the workers who are to be employed to perform the function under the contract;

(ii) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees of the Department under chapter 89 of title 5; or

(iii) offering to such workers a retirement benefit that, in any year, costs less than the annual retirement cost factor applicable to civilian employees of the Department of Defense under chapter 84 of title 5; and

(H) examines the effect of performance of the function by a contractor on the military mission associated with the performance of the function.

(2) A function that is performed by the Department of Defense and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.

(3) In no case may a function being performed by Department of Defense personnel be—

(A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or

(B) converted to performance by a contractor to circumvent a civilian personnel ceiling.

(4) A military department or Defense Agency may not be required to conduct a public-private competition under Office of Management and Budget Circular A–76 or any other provision of law at the end of the performance period specified in a letter of obligation or other agreement entered into with Department of Defense civilian employees pursuant to a public-private competition for any function of the Department of Defense performed by Department of Defense civilian employees.

(5)(A) Except as provided in subparagraph (B), the duration of a public-private competition conducted pursuant to Office of Management

and Budget Circular A–76 or any other provision of law for any function of the Department of Defense performed by Department of Defense civilian employees may not exceed a period of 24 months, commencing on the date on which the preliminary planning for the public-private competition begins and ending on the date on which a performance decision is rendered with respect to the function.

(B)(i) The Secretary of Defense may specify an alternative period of time for a public-private competition, which may not exceed 33 months, if the Secretary—

(I) determines that the competition is of such complexity that it cannot be completed within 24 months; and

(II) submits to Congress, as part of the formal congressional notification of a public-private competition pursuant to subsection (c), written notification that explains the basis of such determination.

(ii) The notification under clause (i)(II) shall also address each of the following:

(I) Any efforts of the Secretary to break up the study geographically or functionally.

(II) The Secretary's justification for undertaking a public-private competition instead of using internal reengineering alternatives.

(III) The cost savings that the Secretary expects to achieve as a result of the public-private competition.

(iii) If the Secretary specifies an alternative time period under this subparagraph, the alternative time period shall be binding on the Department in the same manner and to the same extent as the limitation provided in subparagraph (A).

(C) The time period specified in subparagraph (A) for a public-private competition does not include any day during which the public-private competition is delayed by reason of the filing of a protest before the Government Accountability Office or a complaint in the United States Court of Federal Claims up until the day the decision or recommendation of either authority becomes final. In the case of a protest before the Government Accountability Office, the recommendation becomes final after the period of time for filing a request for reconsideration, or if a request for reconsideration is filed, on the day the Government Accountability Office issues a decision on the reconsideration.

(D) If a protest with respect to a public-private competition before the Government Accountability Office or the United States Court of Federal Claims is sustained, and the recommendation is final as described in subparagraph (C), and if such protest and recommendation result in an unforeseen delay in implementing a final performance decision, the Secretary of Defense may terminate the public-private competition or extend the period of time specified for the public-private competition under subparagraph (A) or subparagraph (B). If the Secretary decides not to terminate a competition, the Secretary shall submit to Congress written notice of such decision. Any such notification shall include a justification for the Secretary's decision and a new time limitation for the competition, which shall not exceed 12 months from the final decision and shall be binding on the Department.

(E) For the purposes of this paragraph, preliminary planning with respect to a public-private competition shall be conducted in accordance with guidance and procedures that shall be issued and maintained by the Under Secretary of Defense for Personnel and Readiness and shall begin on the date on which a component of the Department of Defense first obligates funds specifically for the acquisition of contract support for the preliminary planning effort, or formally assigns Department of Defense personnel, to carry out any of the following activities:

(i) Determining the scope of the public-private competition.

(ii) Conducting research to determine the appropriate grouping of functions for the competition.

(iii) Assessing the availability of workload data, quantifiable outputs of functions, and agency or industry performance standards applicable to the competition.

(iv) Determining the baseline cost of any function for which the competition is conducted.

(F) To effectively establish the date that is the first day of preliminary planning for a public-private competition, the head of a military department or Defense Agency shall submit to Congress written notice of the actions intended to be taken during the preliminary planning process and shall provide public notice of such actions by announcing such date on an appropriate Internet website and through other means as determined necessary. The date of such announcement shall be used for the purpose of computing the duration of the public private competition for purposes of this section.

(G) The Secretary of Defense shall submit to the congressional defense committees an annual report on the use, during the year covered by the report, of alternative time periods for public-private competitions under this section, and the explanations of the Secretary for such alternative time periods.

(b) REQUIREMENT TO CONSULT DOD EMPLOYEES.—(1) Each officer or employee of the Department of Defense responsible for determining under Office of Management and Budget Circular A–76 whether to convert to contractor performance any function of the Department of Defense—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(B) may consult with such employees on other matters relating to that determination.

(2)(A) In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(C) The Secretary of Defense shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in subparagraph (B) for purposes of the consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION.—(1) Before commencing a public-private competition under subsection (a), the Secretary of Defense shall submit to Congress a report containing the following:

(A) The function for which such public-private competition is to be conducted.

(B) The location at which the function is performed by Department of Defense civilian employees.

(C) The number of Department of Defense civilian employee positions potentially affected.

(D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.

(E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of a military department or Defense Agency to impose predetermined constraints or limitations on such employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

(2) The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—

(A) Department of Defense civilian employees who would be affected by such a conversion in performance; and

(B) the local community and the Government, if more than 50 Department of Defense civilian employees perform the function.

(3)(A) A representative individual or entity at a facility where a public-private competition is conducted may submit to the Secretary of Defense an objection to the public-private competition on the grounds that the report required by paragraph (1) has not been submitted or that the certification required by paragraph (1)(E) is not included in the report submitted as a condition for the public-private competition. The objection shall be in writing and shall be submitted within 90 days after the following date:

(i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.

(ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.

(B) If the Secretary determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.

(d) EXEMPTION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED PERSONS.—This section shall not apply to a commercial or industrial type function of the Department of Defense that—

(1) is included on the procurement list established pursuant to section 8503 of title 41; or

(2) is planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped persons in accordance with such section.

(e) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

(Added Pub. L. 100–370, §2(a)(1), July 19, 1988, 102 Stat. 851; amended Pub. L. 101–189, div. A, title XI, §1132, Nov. 29, 1989, 103 Stat. 1561; Pub. L. 104–106, div. D, title XLIII, §4321(b)(19), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title III, §384, Nov. 18, 1997, 111 Stat. 1711; Pub. L. 105–261, div. A, title III, §342(a)–(c), Oct. 17, 1998, 112 Stat. 1974–1976; Pub. L. 106–65, div. A, title III, §341, Oct. 5, 1999, 113 Stat. 568; Pub. L. 106–398, §1 [[div. A], title III, §§351, 352], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, 1654A–72; Pub. L. 107–107, div. A, title III, §344, Dec. 28, 2001, 115 Stat. 1061; Pub. L. 107–314, div. A, title III, §331, Dec. 2, 2002, 116 Stat. 2512; Pub. L. 109–163, div. A, title III, §341(a), (b), (c)(2), (3), (g)(1)–(2)(B), Jan. 6, 2006, 119 Stat. 3195, 3196, 3199, 3200; Pub. L. 110–181, div. A, title III, §§322(a), (b)(2), (c), 323, Jan. 28, 2008, 122 Stat. 58–60; Pub. L. 111–84, div. A, title III, §§321(a), 322(a), title X, §1073(a)(25), Oct. 28, 2009, 123 Stat. 2250, 2251, 2474; Pub. L. 111–350, §5(b)(34), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112–81, div. A, title IX, §937, Dec. 31, 2011, 125 Stat. 1546; Pub. L. 112–239, div. A, title X, §1076(f)(28), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 113–66, div. A, title X, §1091(a)(11), Dec. 26, 2013, 127 Stat. 876.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 96–342, title V, §502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97–252, title XI, §1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99–145, title XII, §1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99–661, div. A, title XII, §1221, Nov. 14, 1986, 100 Stat. 3976.

AMENDMENTS

2013—Subsec. (a)(5)(E)(i). Pub. L. 113–66 struck out ''a'' before ''public-private competition''.

Subsec. (d)(2). Pub. L. 112–239 substituted ''such section'' for ''that Act''.

2011—Subsec. (a)(5)(E). Pub. L. 112–81, §937(1)(A)–(E), in introductory provisions, substituted ''competition shall be conducted in accordance with guidance and procedures that shall be issued and maintained by the Under Secretary of Defense for Personnel and Readiness and shall begin on the date on which a component of the Department of Defense first obligates funds spe-

cifically for the acquisition of contract support for the preliminary planning effort'' for ''competition, begins on the date on which the Department of Defense obligates funds for the acquisition of contract support''.

Subsec. (a)(5)(E)(i). Pub. L. 112–81, §937(1)(F), inserted ''a public-private'' before ''competition''.

Subsec. (a)(5)(F). Pub. L. 112–82, §937(2), substituted ''military department or Defense Agency shall submit to Congress written notice of the actions intended to be taken during the preliminary planning process and shall provide public notice of such actions by announcing such date on an appropriate Internet website and through other means as determined necessary. The date of such announcement shall be used for the purpose'' for ''military department shall submit to Congress written notice of such date and shall provide public notice by announcing such date on an appropriate Internet website. Such date is the first day of preliminary planning for a public-private competition for the purpose''.

Subsec. (d)(1). Pub. L. 111–350, which directed substitution of ''section 8503 of title 41'' for ''section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47)'' in subsec. (c)(1), was executed by making the substitution in subsec. (d)(1) to reflect the probable intent of Congress and the amendment by Pub. L. 110–181, §322(b)(2). See 2008 Amendment note below.

2009—Subsec. (a)(1). Pub. L. 111–84, §321(a), in introductory provisions, substituted ''No function'' for ''A function'' and ''may be converted'' for ''may not be converted'' and struck out ''10 or more'' before ''Department of Defense civilian employees''.

Subsec. (a)(5). Pub. L. 111–84, §322(a), added par. (5).

Subsec. (c)(3)(A). Pub. L. 111–84, §1073(a)(25), substituted ''the public-private competition'' for ''the public private competition'' in two places in introductory provisions.

2008—Subsec. (a)(1)(B). Pub. L. 110–181, §322(c)(1)(A), inserted '', or any successor circular'' after ''2003''.

Subsec. (a)(1)(D). Pub. L. 110–181, §322(c)(1)(B), substituted '', reliability, and timeliness'' for ''and reliability''.

Subsec. (a)(1)(G), (H). Pub. L. 110–181, §322(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(4). Pub. L. 110–181, §323, added par. (4).

Subsecs. (b), (c). Pub. L. 110–181, §322(b)(2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2). Pub. L. 110–181, §322(c)(2), inserted ''of'' after ''examination'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 110–181, §322(b)(2), redesignated subsecs. (c) and (d) as (d) and (e), respectively.

2006—Pub. L. 109–163, §341(g)(2)(A), substituted ''Public-private competition required'' for ''Commercial or industrial type functions: required studies and reports'' in section catchline.

Subsec. (a). Pub. L. 109–163, §341(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''A commercial or industrial type function of the Department of Defense that, as of October 1, 1980, was being performed by Department of Defense civilian employees may not be changed to performance by the private sector until the Secretary of Defense fully complies with the reporting and analysis requirements specified in subsections (b) and (c).''

Subsec. (b). Pub. L. 109–163, §341(g)(2)(B), substituted ''Congressional Notification'' for ''Notification and Elements of Analysis'' in heading.

Subsec. (b)(1). Pub. L. 109–163, §341(b)(1)(A), in introductory provisions, substituted ''a public-private competition under subsection (a)'' for ''to analyze a commercial or industrial type function described in subsection (a) for possible change to performance by the private sector''.

Subsec. (b)(1)(A). Pub. L. 109–163, §341(b)(1)(B), substituted ''for which such public-private competition is to be conducted'' for ''to be analyzed for possible change''.

Subsec. (b)(1)(C). Pub. L. 109–163, §341(b)(1)(C), inserted ''Department of Defense'' before ''civilian employee''.

Subsec. (b)(1)(D). Pub. L. 109–163, §341(b)(1)(D), substituted ''the public-private competition'' for ''the analysis'' in two places.

Subsec. (b)(1)(E). Pub. L. 109–163, §341(b)(1)(E), struck out ''commercial or industrial type'' before ''function'' and substituted ''a contractor'' for ''persons who are not civilian employees of the Department of Defense''.

Subsec. (b)(2). Pub. L. 109–163, §341(b)(2), added par. (2) and struck out former par. (2) which read as follows: ''The duty to prepare a report under paragraph (1) may be delegated. A report prepared below the major command or claimant level of a military department, or below the equivalent level in a Defense Agency, pursuant to any such delegation shall be reviewed at the major command, claimant level, or equivalent level, as the case may be, before submission to Congress.''

Subsec. (b)(3). Pub. L. 109–163, §341(b)(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which related to analysis of a commercial or industrial type function for possible change to performance by the private sector.

Subsec. (b)(3)(A). Pub. L. 109–163, §341(b)(4)(A), in introductory provisions, substituted ''where a public-private competition is conducted'' for ''where a commercial or industrial type function is analyzed for possible change in performance'' and ''the public private competition'' for ''the analysis'' in two places.

Subsec. (b)(3)(B). Pub. L. 109–163, §341(b)(4)(B), substituted ''the function for which the public-private competition was conducted for which the objection was submitted'' for ''the commercial or industrial type function covered by the analysis to which objected''.

Subsec. (b)(4). Pub. L. 109–163, §341(b)(3), redesignated par. (4) as (3).

Subsec. (c). Pub. L. 109–163, §341(g)(1), substituted ''This section'' for ''Subsections (a) through (c) and subsection (g)''.

Pub. L. 109–163, §341(c)(3), substituted ''Exemption'' for ''Waiver'' in heading.

Pub. L. 109–163, §341(c)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to submission of analysis results by the Secretary of Defense.

Subsecs. (d) to (h). Pub. L. 109–163, §341(c)(2), redesignated subsecs. (e) and (h) as (c) and (d), respectively, and struck out former subsecs. (d), (f), and (g) which related, respectively, to waiver for small functions, additional limitations, and annual reports.

2002—Subsec. (c). Pub. L. 107–314 amended heading and text of subsec. (c) generally. Prior to amendment, text related to the report to Congress by the Secretary of Defense upon a decision to change the commercial or industrial type function that was the subject of the analysis to performance by the private sector, with requirements for contents of the report and submission of the report prior to the change of the function to contractor performance.

2001—Subsec. (g). Pub. L. 107–107 substituted ''June 30'' for ''February 1''.

2000—Subsec. (b)(1)(D). Pub. L. 106–398, §1 [[div. A], title III, §351(a)], inserted before period '', and a specific identification of the budgetary line item from which funds will be used to cover the cost of the analysis''.

Subsec. (c)(1). Pub. L. 106–398, §1 [[div. A], title III, §351(b)], added subpars. (A), (D), (E), and (G) and redesignated former subpars. (A), (B), (C), (D), and (E) as (B), (C), (F), (H), and (I), respectively.

Subsec. (c)(2), (3). Pub. L. 106–398, §1 [[div. A], title III, §352], added par. (2) and redesignated former par. (2) as (3).

1999—Subsec. (b)(3)(B)(ii). Pub. L. 106–65 substituted ''50 employees'' for ''75 employees''.

1998—Subsec. (a). Pub. L. 105–261, §342(a)(2), added subsec. (a) and struck out former subsec. (a) which provided that commercial or industrial type functions of the Department of Defense that on Oct. 1, 1980, were being performed by Department of Defense civilian employees could not be converted to performance by private contractors unless the Secretary of Defense pro-

vided certain notices, information, certifications, and reports to Congress.

Subsec. (b). Pub. L. 105–261, §342(a)(2), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''If, after completion of the studies required for completion of the certification and report required by paragraphs (3) and (4) of subsection (a), a decision is made to convert the function to contractor performance, the Secretary of Defense shall notify Congress of such decision. The notification shall include the timetable for completing conversion of the function to contractor performance.''

Subsec. (c). Pub. L. 105–261, §342(a)(2), added subsec. (c). Former subsec. (c) redesignated (g).

Subsec. (d). Pub. L. 105–261, §342(b), (c)(1), substituted ''50'' for ''20'' and inserted ''and subsection (g)'' after ''Subsections (a) through (c)''.

Subsec. (e). Pub. L. 105–261, §342(c)(1), (2), inserted ''and subsection (g)'' after ''Subsections (a) through (c)'' in introductory provisions and substituted ''changed'' for ''converted'' in par. (2).

Subsec. (f). Pub. L. 105–261, §342(c)(2), (3), substituted ''changed'' for ''converted'' in par. (1) and ''change'' for ''conversion'' in par. (2).

Subsecs. (g), (h). Pub. L. 105–261, §342(a)(1), redesignated subsecs. (c) and (g) as (g) and (h), respectively.

1997—Subsec. (a)(1). Pub. L. 105–85, §384(a), inserted ''and the anticipated length and cost of the study'' before semicolon at end.

Subsec. (b). Pub. L. 105–85, §384(b), inserted at end ''The notification shall include the timetable for completing conversion of the function to contractor performance.''

Subsec. (d). Pub. L. 105–85, §384(c), substituted ''20 or fewer'' for ''45 or fewer''.

1996—Subsec. (e)(1). Pub. L. 104–106 substituted ''the Javits-Wagner-O'Day Act (41 U.S.C. 47)'' for ''the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Wagner-O'Day Act''.

1989—Subsecs. (e) to (g). Pub. L. 101–189 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title III, §321(b), Oct. 28, 2009, 123 Stat. 2250, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to a function for which a public-private competition is commenced on or after the date of the enactment of this Act [Oct. 28, 2009].''

Pub. L. 111–84, div. A, title III, §322(b), Oct. 28, 2009, 123 Stat. 2252, provided that: ''Paragraph (5) of section 2461(a) of title 10, United States Code, as added by subsection (a), shall apply with respect to a public-private competition covered by such section that is initiated on or after the date of the enactment of this Act [Oct. 28, 2009].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, §342(d), Oct. 17, 1998, 112 Stat. 1976, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1998], but the amendments shall not apply with respect to a conversion of a function of the Department of Defense to performance by a private contractor concerning which the Secretary of Defense provided to Congress, before the date of the enactment of this Act, a notification under paragraph (1) of section 2461(a) of title 10, United States Code, as in effect on the day before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

RESTRICTION ON OFFICE OF MANAGEMENT AND BUDGET INFLUENCE OVER DEPARTMENT OF DEFENSE PUBLIC-PRIVATE COMPETITIONS

Pub. L. 110–181, div. A, title III, §325, Jan. 28, 2008, 122 Stat. 61, provided that:

''(a) RESTRICTION ON OFFICE OF MANAGEMENT AND BUDGET.—The Office of Management and Budget may not direct or require the Secretary of Defense or the Secretary of a military department to prepare for, undertake, continue, or complete a public-private competition or direct conversion of a Department of Defense function to performance by a contractor under Office of Management and Budget Circular A–76, or any other successor regulation, directive, or policy.

''(b) RESTRICTION ON SECRETARY OF DEFENSE.—The Secretary of Defense or the Secretary of a military department may not prepare for, undertake, continue, or complete a public-private competition or direct conversion of a Department of Defense function to performance by a contractor under Office of Management and Budget Circular A–76, or any other successor regulation, directive, or policy by reason of any direction or requirement provided by the Office of Management and Budget.

''(c) INSPECTOR GENERAL REVIEW.—

''(1) COMPREHENSIVE REVIEW REQUIRED.—The Inspector General of the Department of Defense shall conduct a comprehensive review of the compliance of the Secretary of Defense and the Secretaries of the military departments with the requirements of this section during calendar year 2008. The Inspector General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the following reports on the comprehensive review:

''(A) An interim report, to be submitted by not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008].

''(B) A final report, to be submitted by not later than December 31, 2008.

''(2) INSPECTOR GENERAL ACCESS.—For the purpose of determining compliance with the requirements of this section, the Secretary of Defense shall ensure that the Inspector General has access to all Department records of relevant communications between Department officials and officials of other departments and agencies of the Federal Government, whether such communications occurred inside or outside of the Department.''

PILOT PROGRAM ON COMMERCIAL FEE-FOR-SERVICE AIR REFUELING SUPPORT FOR THE AIR FORCE

Pub. L. 111–84, div. A, title X, §1082, Oct. 28, 2009, 123 Stat. 2481, provided that:

''(a) MULTIYEAR CONTRACTS AUTHORIZED.—The Secretary of the Air Force may enter into one or more multiyear contracts, beginning with the fiscal year 2011 program year, for purposes of conducting the pilot program on utilizing commercial fee-for-service air refueling tanker aircraft for Air Force operations required by section 1081 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 335) [set out below].

''(b) COMPLIANCE WITH LAW APPLICABLE TO MULTIYEAR CONTRACTS.—Any contract entered into under subsection (a) shall be entered into in accordance with the provisions of section 2306c of title 10, United States Code, except that—

''(1) the term of the contract may not be more than 8 years; and

''(2) notwithstanding section 2306c(b) of such title, the authority under section 2306c(a) of such title shall apply to the fee-for-service air refueling pilot program.

''(c) COMPLIANCE WITH LAW APPLICABLE TO SERVICE CONTRACTS.—A contract entered into under subsection (a) shall be entered into in accordance with the provisions of section 2401 of title 10, United States Code, except that—

''(1) the Secretary shall not be required to certify to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the contract is the most cost-effective means of obtaining commercial fee-for-service air refueling tanker aircraft for Air Force operations; and

''(2) the Secretary shall not be required to certify to the congressional defense committees that there is no alternative for meeting urgent operational requirements other than making the contract.

''(d) LIMITATION ON AMOUNT.—The amount of a contract under subsection (a) may not exceed $999,999,999.

''(e) PROVISION OF GOVERNMENT INSURANCE.—A commercial air operator contracting with the Department of Defense under the pilot program referred to in subsection (a) shall be eligible to receive Government-provided insurance pursuant to chapter 443 of title 49, United States Code, if commercial insurance is unavailable on reasonable terms and conditions.''

Pub. L. 110–181, div. A, title X, § 1081, Jan. 28, 2008, 122 Stat. 335, as amended by Pub. L. 111–84, div. A, title X, § 1081, Oct. 28, 2009, 123 Stat. 2481; Pub. L. 113–291, div. A, title X, § 1061, Dec. 19, 2014, 128 Stat. 3503, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of the Air Force shall conduct, as soon as practicable after the date of the enactment of this Act [Jan. 28, 2008], a pilot program to assess the feasibility and advisability of utilizing commercial fee-for-service air refueling tanker aircraft for Air Force operations, unless the Secretary of Defense submits notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that pursuing such a program is not in the national interest. The duration of the pilot program shall be at least five years after commencement of the program.

''(b) PURPOSE.—

''(1) IN GENERAL.—The pilot program required by subsection (a) shall evaluate the feasibility of fee-for-service air refueling to support, augment, or enhance the air refueling mission of the Air Force by utilizing commercial air refueling providers on a fee-for-service basis.

''(2) ELEMENTS.—In order to achieve the purpose of the pilot program, the Secretary of the Air Force shall—

''(A) demonstrate and validate a comprehensive strategy for air refueling on a fee-for-service basis by evaluating all mission areas, including testing support, training support to receiving aircraft, homeland defense support, deployment support, air bridge support, aeromedical evacuation, and emergency air refueling; and

''(B) integrate fee-for-service air refueling described in paragraph (1) into Air Mobility Command operations during the evaluation and execution phases of the pilot program.

''(c) ANNUAL REPORT.—The Secretary of the Air Force shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an annual report on the fee-for-service air refueling program, which includes—

''(1) information with respect to—

''(A) missions flown;

''(B) mission areas supported;

''(C) aircraft number, type, model series supported;

''(D) fuel dispensed;

''(E) departure reliability rates; and

''(F) the annual and cumulative cost to the Government for the program, including a comparison of costs of the same service provided by the Air Force;

''(2) an assessment of the impact of outsourcing air refueling on the Air Force's flying hour program and aircrew training; and

''(3) any other data that the Secretary determines is appropriate for evaluating the performance of the commercial air refueling providers participating in the pilot program.''

INAPPLICABILITY OF SUBSECTION (a)(1)(E) TO BEST-VALUE SOURCE SELECTION PILOT PROGRAM

Pub. L. 109–163, div. A, title III, § 341(e), Jan. 6, 2006, 119 Stat. 3199, as amended by Pub. L. 109–364, div. A, title X, § 1071(e)(1), Oct. 17, 2006, 120 Stat. 2401, provided that: ''Subsection (a)(1)(F) of section 2461 of title 10, United States Code, as amended by subsection (a), shall not apply with respect to the pilot program for best-value source selection for performance of information technology services authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1444; 10 U.S.C. 2461 note).''

PERFORMANCE OF CERTAIN WORK BY FEDERAL GOVERNMENT EMPLOYEES

Pub. L. 109–163, div. A, title III, § 343, Jan. 6, 2006, 119 Stat. 3200, which provided that the Secretary of Defense was to prescribe guidelines and procedures for ensuring that consideration be given to using Federal Government employees for work that was currently performed or would otherwise be performed under Department of Defense contracts, and that the Secretary was to include the use of the flexible hiring authority available through the National Security Personnel System in order to facilitate performance by Federal Government employees of new requirements and work that was performed under Department of Defense contracts, was repealed and restated in section 2463 of this title by Pub. L. 110–181, div. A, title III, § 324(a)(1), (c), Jan. 28, 2008, 122 Stat. 60, 61.

PILOT PROGRAM FOR PURCHASE OF CERTAIN MUNICIPAL SERVICES FOR MILITARY INSTALLATIONS

Pub. L. 108–375, div. A, title III, § 325, Oct. 28, 2004, 118 Stat. 1847, as amended by Pub. L. 110–181, div. B, title XXVIII, § 2826, Jan. 28, 2008, 122 Stat. 546; Pub. L. 110–417, [div. A], title X, § 1061(b)(16), Oct. 14, 2008, 122 Stat. 4613, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Secretary of a military department may carry out a pilot program to procure one or more of the municipal services specified in subsection (b) for a military installation under the jurisdiction of the Secretary from a county or municipality in which the installation is located for the purpose of evaluating the efficacy of procuring such services rather than providing them directly.

''(b) SERVICES AUTHORIZED FOR PROCUREMENT.—Only the following services may be procured for a military installation participating in the pilot program:

''(1) Refuse collection.

''(2) Refuse disposal.

''(3) Library services.

''(4) Recreation services.

''(5) Facility maintenance and repair.

''(6) Utilities.

''(c) PARTICIPATING INSTALLATIONS.—Not more than three military installations from each military service may be selected to participate in the pilot program, and only installations located in the United States are eligible for selection.

''(d) CONGRESSIONAL NOTIFICATION.—The Secretary of a military department may not enter into a contract under the pilot program for the procurement of municipal services until the Secretary notifies the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] of the proposed contract and a period of 14 days elapses from the date the notification is received by the committees.

''(e) TERMINATION OF PILOT PROGRAM.—The pilot program shall terminate on September 30, 2012. Any contract entered into under the pilot program shall terminate not later than that date.''

LIMITATIONS ON CONVERSION OF WORK PERFORMED BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES TO CONTRACTOR PERFORMANCE

Pub. L. 108–375, div. A, title III, § 327, Oct. 28, 2004, 118 Stat. 1849, which generally required the Secretary of Defense to maintain the continued performance of certain activities and functions by civilian employees unless the competitive sourcing official determined that the cost of performance of the activity or function by a contractor would be less costly by an amount that

equaled or exceeded the lesser of $10,000,000 or 10 percent of the most efficient organization's personnel-related costs for performance of the activity or function by civilian employees, was repealed by Pub. L. 109–163, div. A, title III, § 341(g)(3), Jan. 6, 2006, 119 Stat. 3200.

DELAYED IMPLEMENTATION OF REVISED OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A–76 BY DEPARTMENT OF DEFENSE

Pub. L. 108–136, div. A, title III, § 335, Nov. 24, 2003, 117 Stat. 1443, provided that:

''(a) LIMITATION PENDING REPORT.—No studies or competitions may be conducted under the policies and procedures contained in the revised Office of Management and Budget Circular A–76 dated May 29, 2003 (68 Fed. Reg. 32134), relating to the possible contracting out of commercial activities being performed, as of such date, by employees of the Department of Defense, until the end of the 45-day period beginning on the date on which the Secretary of Defense submits to Congress a report on the effects of the revisions.

''(b) CONTENT OF REPORT.—The report required by subsection (a) shall contain, at a minimum, specific information regarding the following:

''(1) The extent to which the revised circular will ensure that employees of the Department of Defense have the opportunity to compete to retain their jobs.

''(2) The extent to which the revised circular will provide appeal and protest rights to employees of the Department of Defense.

''(3) Identify safeguards in the revised circular to ensure that all public-private competitions are fair, appropriate, and comply with requirements of full and open competition.

''(4) The plans of the Department to ensure an appropriate phase-in period for the revised circular, as recommended by the Commercial Activities Panel of the Government [General] Accounting Office [now Government Accountability Office] in its April 2002 report to Congress, including recommendations for any legislative changes that may be required to ensure a smooth and efficient phase-in period.

''(5) The plans of the Department to provide training to employees of the Department of Defense regarding the revised circular, including how the training will be funded, how employees will be selected to receive the training, and the number of employees likely to receive the training.

''(6) The plans of the Department to collect and analyze data on the costs and quality of work contracted out or retained in-house as a result of a sourcing process conducted under the revised circular.''

PILOT PROGRAM FOR BEST-VALUE SOURCE SELECTION FOR PERFORMANCE OF INFORMATION TECHNOLOGY SERVICES

Pub. L. 108–136, div. A, title III, § 336, Nov. 24, 2003, 117 Stat. 1444, provided that:

''(a) AUTHORITY TO USE BEST-VALUE CRITERION.—The Secretary of Defense may carry out a pilot program for the procurement of information technology services for the Department of Defense that uses a best-value criterion in the selection of the source for the performance of the information technology services.

''(b) REQUIRED EXAMINATION UNDER PILOT PROJECT.—Under the pilot program, the Secretary of Defense shall modify the examination otherwise required by section 2461(b)(3)(A) [now 2461(c)(3)(A)] of title 10, United States Code, to be an examination of the performance of an information technology services function by Department of Defense civilian employees and by one or more private contractors to demonstrate whether—

''(1) a change to performance by the private sector will result in the best value to the Government over the life of the contract, as determined in accordance with the competition requirements of Office of Management and Budget Circular A–76; and

''(2) certain benefits exist, in addition to price, that warrant performance of the function by a private sector source at a cost higher than that of performance by Department of Defense civilian employees.

''(c) EXEMPTION FOR PILOT PROGRAM.—[Former] Section 2462(a) of title 10, United States Code, does not apply to the procurement of information technology services under the pilot program.

''(d) DURATION OF PILOT PROGRAM.—(1) The authority to carry out the pilot program begins on the date on which the Secretary of Defense submits to Congress the report on the effect of the recent revisions to Office of Management and Budget Circular A–76, as required by section 335 of this Act [set out above], and expires on September 30, 2008.

''(2) The expiration of the pilot program shall not affect the selection of the source for the performance of an information technology services function for the Department of Defense for which the analysis required by section 2461(b)(3) [now 2461(c)(3)] of title 10, United States Code, has been commenced before the expiration date or for which a solicitation has been issued before the expiration date.

''(e) GAO REVIEW.—Not later than February 1, 2008, the Comptroller General shall submit to Congress a report containing—

''(1) a review of the pilot program to assess the extent to which the pilot program is effective and is equitable for the potential public sources and the potential private sources of information technology services for the Department of Defense; and

''(2) any other conclusions of the Comptroller General resulting from the review.

''(f) INFORMATION TECHNOLOGY SERVICE DEFINED.—In this section, the term 'information technology service' means any service performed in the operation or maintenance of information technology (as defined in section 11101 of title 40, United States Code) that is necessary for or beneficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or Government personnel).''

PILOT MANPOWER REPORTING SYSTEM IN DEPARTMENT OF THE ARMY

Pub. L. 107–107, div. A, title III, § 345(a)–(c), Dec. 28, 2001, 115 Stat. 1061, 1062, provided that, not later than Mar. 1 of each of the fiscal years 2002 through 2004, the Secretary of the Army was to submit to Congress a report describing the use during the previous fiscal year of non-Federal entities to provide services to the Department of the Army.

PILOT PROGRAM FOR COMMERCIAL SERVICES

Pub. L. 106–65, div. A, title VIII, § 814, Oct. 5, 1999, 113 Stat. 711, authorized the Secretary of Defense to carry out a pilot program to treat procurements of commercial services as procurements of commercial items, required the Secretary to issue guidance to procurement officials not later than 90 days after Oct. 5, 1999, and provided that the pilot program was to begin on the date that the Secretary issued the guidance and that it could continue for a period, not in excess of five years.

PUBLIC AVAILABILITY OF OPERATING AGREEMENTS BETWEEN MILITARY INSTALLATIONS AND FINANCIAL INSTITUTIONS

Pub. L. 105–261, div. A, title III, § 379, Oct. 17, 1998, 112 Stat. 1995, provided that: ''With respect to an agreement between the commander of a military installation in the United States (or the designee of such an installation commander) and a financial institution that permits, allows, or otherwise authorizes the provision of financial services by the financial institution on the military installation, nothing in the terms or nature of such an agreement shall be construed to exempt the

agreement from the provisions of sections 552 and 552a of title 5, United States Code.''

DEVELOPMENT OF STANDARD FORMS REGARDING PERFORMANCE WORK STATEMENT AND REQUEST FOR PROPOSAL FOR CONVERSION OF CERTAIN OPERATIONAL FUNCTIONS OF MILITARY INSTALLATIONS

Pub. L. 105–85, div. A, title III, § 389, Nov. 18, 1997, 111 Stat. 1714, as amended by Pub. L. 105–261, div. A, title X, § 1069(b)(1), Oct. 17, 1998, 112 Stat. 2136, provided that:

''(a) STANDARDIZATION OF REQUIREMENTS.—The Secretary of Defense is authorized and encouraged to develop standard forms (to be known as a 'standard performance work statement' and a 'standard request for proposal') for use in the consideration for conversion to contractor performance of commercial services and functions at military installations. A separate standard form shall be developed for each service and function.

''(b) RELATIONSHIP TO OMB REQUIREMENTS.—A standard performance work statement or a standard request for proposal developed under subsection (a) must fulfill the basic requirements of the performance work statement or request for proposal otherwise required under the procedures and requirements of Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) in effect at the time the standard form will be used.

''(c) PRIORITY DEVELOPMENT OF CERTAIN FORMS.—In developing standard performance work statements and standard requests for proposal, the Secretary shall give first priority to those commercial services and functions that the Secretary determines have been successfully converted to contractor performance on a repeated basis.

''(d) INCENTIVE FOR USE.—Beginning not later than October 1, 1998, if a standard performance work statement or a standard request for proposal is developed under subsection (a) for a particular service and function, the standard form may be used in lieu of the performance work statement or request for proposal otherwise required under the procedures and requirements of Office of Management and Budget Circular A–76 in connection with the consideration for conversion to contractor performance of that service or function at a military installation.

''(e) EXCLUSION OF MULTIFUNCTION CONVERSION.—If a commercial service or function for which a standard form is developed under subsection (a) is combined with another service or function (for which such a form has not yet been developed) for purposes of considering the services and functions at the military installation for conversion to contractor performance, a standard performance work statement or a standard request for a proposal developed under subsection (a) may not be used in the conversion process in lieu of the procedures and requirements of Office of Management and Budget Circular A–76.

''(f) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed to supersede any other requirements or limitations, specifically contained in chapter 146 of title 10, United States Code, on the conversion to contractor performance of activities performed by civilian employees of the Department of Defense.

''(g) GAO REPORT.—Not later than June 1, 1999, the Comptroller General shall submit to Congress a report reviewing the implementation of this section.

''(h) MILITARY INSTALLATION DEFINED.—For purposes of this section, the term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility.''

[Pub. L. 105–261, div. A, title X, § 1069(b), Oct. 17, 1998, 112 Stat. 2136, provided that the amendment made by that section to section 389 of Pub. L. 105–85, set out above, is effective as of Nov. 18, 1997, and as if included in the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, as enacted.]

PRIVATE-SECTOR OPERATION OF CERTAIN PAYROLL, FINANCE, AND ACCOUNTING FUNCTIONS OF DEPARTMENT OF DEFENSE; PLAN; REPORT

Pub. L. 104–106, div. A, title III, § 353(a), Feb. 10, 1996, 110 Stat. 267, provided that:

''(1) Not later than October 1, 1996, the Secretary of Defense shall submit to Congress a plan for the performance by private-sector sources of payroll functions for civilian employees of the Department of Defense other than employees paid from nonappropriated funds.

''(2)(A) The Secretary shall implement the plan referred to in paragraph (1) if the Secretary determines that the cost of performance by private-sector sources of the functions referred to in that paragraph does not exceed the cost of performance of those functions by employees of the Federal Government.

''(B) In computing the total cost of performance of such functions by employees of the Federal Government, the Secretary shall include the following:

''(i) Managerial and administrative costs.

''(ii) Personnel costs, including the cost of providing retirement benefits for such personnel.

''(iii) Costs associated with the provision of facilities and other support by Federal agencies.

''(C) The Defense Contract Audit Agency shall verify the costs computed for the Secretary under this paragraph by others.

''(3) At the same time the Secretary submits the plan required by paragraph (1), the Secretary shall submit to Congress a report on other accounting and finance functions of the Department that are appropriate for performance by private-sector sources.''

PILOT PROGRAM FOR PRIVATE-SECTOR OPERATION OF NAFI FUNCTIONS

Pub. L. 104–106, div. A, title III, § 353(b), Feb. 10, 1996, 110 Stat. 267, provided that:

''(1) The Secretary shall carry out a pilot program to test the performance by private-sector sources of payroll and other accounting and finance functions of nonappropriated fund instrumentalities and to evaluate the extent to which cost savings and efficiencies would result from the performance of such functions by those sources.

''(2) The payroll and other accounting and finance functions designated by the Secretary for performance by private-sector sources under the pilot program shall include at least one major payroll, accounting, or finance function.

''(3) To carry out the pilot program, the Secretary shall enter into discussions with private-sector sources for the purpose of developing a request for proposals to be issued for performance by those sources of functions designated by the Secretary under paragraph (2). The discussions shall be conducted on a schedule that accommodates issuance of a request for proposals within 60 days after the date of the enactment of this Act [Feb. 10, 1996].

''(4) A goal of the pilot program is to reduce by at least 25 percent the total costs incurred by the Department annually for the performance of a function referred to in paragraph (2) through the performance of that function by a private-sector source.

''(5) Before conducting the pilot program, the Secretary shall develop a plan for the program that addresses the following:

''(A) The purposes of the program.

''(B) The methodology, duration, and anticipated costs of the program, including the cost of an arrangement pursuant to which a private-sector source would receive an agreed-upon payment plus an additional negotiated amount not to exceed 50 percent of the dollar savings achieved in excess of the goal specified in paragraph (4).

''(C) A specific citation to any provisions of law, rule, or regulation that, if not waived, would prohibit

the conduct of the program or any part of the program.

''(D) A mechanism to evaluate the program.

''(E) A provision for all payroll, accounting, and finance functions of nonappropriated fund instrumentalities of the Department of Defense to be performed by private-sector sources, if determined advisable on the basis of a final assessment of the results of the program.

''(6) The Secretary shall act through the Under Secretary of Defense (Comptroller) in the performance of the Secretary's responsibilities under this subsection.''

DEMONSTRATION PROGRAM TO IDENTIFY OVERPAYMENTS MADE TO VENDORS

Pub. L. 105–85, div. A, title III, §388(c), Nov. 18, 1997, 111 Stat. 1714, provided that, not later than Dec. 31, 1998, the Comptroller General was to submit to Congress a report containing the results of a review by the Comptroller General of the demonstration program conducted under section 354 of Pub. L. 104–106, set out below.

Pub. L. 104–106, div. A, title III, §354, Feb. 10, 1996, 110 Stat. 268, as amended by Pub. L. 105–85, div. A, title III, §388(a), (b), Nov. 18, 1997, 111 Stat. 1713, 1714, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall conduct a demonstration program to evaluate the feasibility of using private contractors to audit accounting and procurement records of the Department of Defense in order to identify overpayments made to vendors by the Department.

''(b) PROGRAM REQUIREMENTS.—(1) Under the demonstration program, the Secretary shall, by contract, provide for one or more persons to audit the accounting and procurement records relating to fiscal years after fiscal year 1993 of the working-capital funds and industrial, commercial, and support type activities managed through the Defense Business Operations Fund, except the Defense Logistics Agency to the extent such records have already been audited. The Secretary may enter into more than one contract under the program.

''(2) A contract under the demonstration program shall require the contractor to use data processing techniques that are generally used in audits of private-sector records similar to the records audited under the contract.

''(c) AUDIT REQUIREMENTS.—In conducting an audit under the demonstration program, a contractor shall compare Department of Defense purchase agreements (and related documents) with invoices submitted by vendors under the purchase agreements. A purpose of the comparison is to identify, in the case of each audited purchase agreement, the following:

''(1) Any payments to the vendor for costs that are not allowable under the terms of the purchase agreement or by law.

''(2) Any amounts not deducted from the total amount paid to the vendor under the purchase agreement that should have been deducted from that amount on account of goods and services provided to the vendor by the Department.

''(3) Duplicate payments.

''(4) Unauthorized charges.

''(5) Other discrepancies between the amount paid to the vendor and the amount actually due the vendor under the purchase agreement.

''(d) COLLECTION METHOD.—(1) In the case of an overpayment to a vendor identified under the demonstration program, the Secretary shall consider the use of the procedures specified in section 32.611 of the Federal Acquisition Regulation, regarding a setoff against existing invoices for payment to the vendor, as the first method by which the Department seeks to recover the amount of the overpayment (and any applicable interest and penalties) from the vendor.

''(2) The Secretary of Defense shall be solely responsible for notifying a vendor of an overpayment made to the vendor and identified under the demonstration program and for recovering the amount of the overpayment (and any applicable interest and penalties) from the vendor.

''(e) FEES FOR CONTRACTOR.—The Secretary shall pay to the contractor under the contract entered into under the demonstration program an amount not to exceed 25 percent of the total amount recovered by the Department (through the collection of overpayments and the use of setoffs) solely on the basis of information obtained as a result of the audits performed by the contractor under the program. When an overpayment is recovered through the use of a setoff, amounts for the required payment to the contractor shall be derived from funds available to the working-capital fund or industrial, commercial, or support type activity for which the overpayment is recovered.''

PROGRAM FOR IMPROVED TRAVEL PROCESS FOR DEPARTMENT OF DEFENSE

Pub. L. 104–106, div. A, title III, §356, Feb. 10, 1996, 110 Stat. 270, as amended by Pub. L. 105–85, div. A, title X, §1073(d)(1)(B), Nov. 18, 1997, 111 Stat. 1905, provided that:

''(a) IN GENERAL.—(1) The Secretary of Defense shall conduct a program to evaluate options to improve the Department of Defense travel process. To carry out the program, the Secretary shall compare the results of the tests conducted under subsection (b) to determine which travel process tested under such subsection is the better option to effectively manage travel of Department personnel.

''(2) The program shall be conducted at not less than three and not more than six military installations, except that an installation may be the subject of only one test conducted under the program.

''(3) The Secretary shall act through the Under Secretary of Defense (Comptroller) in the performance of the Secretary's responsibilities under this section.

''(b) CONDUCT OF TESTS.—(1) The Secretary shall conduct a test at an installation referred to in subsection (a)(2) under which the Secretary—

''(A) implements the changes proposed to be made with respect to the Department of Defense travel process by the task force on travel management that was established by the Secretary in July 1994;

''(B) manages and uniformly applies that travel process (including the implemented changes) throughout the Department; and

''(C) provides opportunities for private-sector sources to provide travel reservation services and credit card services to facilitate that travel process.

''(2) The Secretary shall conduct a test at an installation referred to in subsection (a)(2) under which the Secretary—

''(A) enters into one or more contracts with a private-sector source pursuant to which the private-sector source manages the Department of Defense travel process (except for functions referred to in subparagraph (B)), provides for responsive, reasonably priced services as part of the travel process, and uniformly applies the travel process throughout the Department; and

''(B) provides for the performance by employees of the Department of only those travel functions, such as travel authorization, that the Secretary considers to be necessary to be performed by such employees.

''(3) Each test required by this subsection shall begin not later than 60 days after the date of the enactment of this Act [Feb. 10, 1996] and end two years after the date on which it began. Each such test shall also be conducted in accordance with the guidelines for travel management issued for the Department by the Under Secretary of Defense (Comptroller).

''(c) EVALUATION CRITERIA.—The Secretary shall establish criteria to evaluate the travel processes tested under subsection (b). The criteria shall, at a minimum, include the extent to which a travel process provides for the following:

''(1) The coordination, at the time of a travel reservation, of travel policy and cost estimates with the mission which necessitates the travel.

''(2) The use of fully integrated travel solutions envisioned by the travel reengineering report of the Department of Defense dated January 1995.

''(3) The coordination of credit card data and travel reservation data with cost estimate data.

''(4) The elimination of the need for multiple travel approvals through the coordination of such data with proposed travel plans.

''(5) A responsive and flexible management information system that enables the Under Secretary of Defense (Comptroller) to monitor travel expenses throughout the year, accurately plan travel budgets for future years, and assess, in the case of travel of an employee on temporary duty, the relationship between the cost of the travel and the value of the travel to the accomplishment of the mission which necessitates the travel.

''(d) PLAN FOR PROGRAM.—Before conducting the program, the Secretary shall develop a plan for the program that addresses the following:

''(1) The purposes of the program, including the achievement of an objective of reducing by at least 50 percent the total cost incurred by the Department annually to manage the Department of Defense travel process.

''(2) The methodology and anticipated cost of the program, including the cost of an arrangement pursuant to which a private-sector source would receive an agreed-upon payment plus an additional negotiated amount that does not exceed 50 percent of the total amount saved in excess of the objective specified in paragraph (1).

''(3) A specific citation to any provision of law, rule, or regulation that, if not waived, would prohibit the conduct of the program or any part of the program.

''(4) The evaluation criteria established pursuant to subsection (c).

''(5) A provision for implementing throughout the Department the travel process determined to be the better option to effectively manage travel of Department personnel on the basis of a final assessment of the results of the program.

''(e) REPORT.—After the first full year of the conduct of the tests required by subsection (b), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the implementation of the program. The report shall include an analysis of the evaluation criteria established pursuant to subsection (c).''

INCREASED RELIANCE ON PRIVATE-SECTOR SOURCES FOR COMMERCIAL PRODUCTS AND SERVICES

Pub. L. 104–106, div. A, title III, § 357, Feb. 10, 1996, 110 Stat. 271, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall endeavor to carry out through a private-sector source any activity to provide a commercial product or service for the Department of Defense if—

''(1) the product or service can be provided adequately through such a source; and

''(2) an adequate competitive environment exists to provide for economical performance of the activity by such a source.

''(b) APPLICABILITY.—(1) Subsection (a) shall not apply to any commercial product or service with respect to which the Secretary determines that production, manufacture, or provision of that product or service by the Government is necessary for reasons of national security.

''(2) A determination under paragraph (1) shall be made in accordance with regulations prescribed under subsection (c).

''(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. Such regulations shall be prescribed in consultation with the Director of the Office of Management and Budget.

''(d) REPORT.—(1) The Secretary shall identify activities of the Department (other than activities specified by the Secretary pursuant to subsection (b)) that are carried out by employees of the Department to provide commercial-type products or services for the Department.

''(2) Not later than April 15, 1996, the Secretary shall transmit to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and Committees on National Security and Appropriations of the House of Representatives] a report on opportunities for increased use of private-sector sources to provide commercial products and services for the Department.

''(3) The report required by paragraph (2) shall include the following:

''(A) A list of activities identified under paragraph (1) indicating, for each activity, whether the Secretary proposes to convert the performance of that activity to performance by private-sector sources and, if not, the reasons why.

''(B) An assessment of the advantages and disadvantages of using private-sector sources, rather than employees of the Department, to provide commercial products and services for the Department that are not essential to the warfighting mission of the Armed Forces.

''(C) A specification of all legislative and regulatory impediments to converting the performance of activities identified under paragraph (1) to performance by private-sector sources.

''(D) The views of the Secretary on the desirability of terminating the applicability of OMB Circular A–76 to the Department.

''(4) The Secretary shall carry out paragraph (1) in consultation with the Director of the Office of Management and Budget and the Comptroller General of the United States. In carrying out that paragraph, the Secretary shall consult with, and seek the views of, representatives of the private sector, including organizations representing small businesses.''

§ 2461a. Development and implementation of system for monitoring cost saving resulting from public-private competitions

(a) SYSTEM FOR MONITORING PERFORMANCE.—(1) The Secretary of Defense shall monitor the performance, including the cost of performance, of each function of the Department of Defense that, after October 30, 2000, is the subject of a public-private competition conducted under section 2461 of this title.

(2) In carrying out paragraph (1), the Secretary shall—

(A) compare the cost of performing the function before the public-private competition to the cost of performing the function after the implementation of the results of the public-private competition; and

(B) identify any actual savings of the Department of Defense after the implementation of the results of the public-private competition and compare such savings to the estimated savings identified pursuant to section 2461(a)(1)(E) of this title for that public-private competition;

(3) The monitoring of a function shall continue under this section for at least five years after the conversion, reorganization, or reengineering of the function pursuant to such a public-private competition.

(b) CONSIDERATION IN PREPARATION OF FUTURE-YEARS DEFENSE PROGRAM.—In preparing the future-years defense program under section 221 of this title, the Secretary of Defense shall, for the fiscal years covered by the program, estimate and take into account the costs to be incurred and the savings to be derived from the performance of functions by workforces selected in public-private competitions conducted under sec-

tion 2461 of this title. The Secretary shall consider the results of the monitoring under this section in making the estimates.

(Added Pub. L. 106–398, §1 [[div. A], title III, §354(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–73; amended Pub. L. 107–107, div. A, title X, §1048(a)(21), (c)(11), Dec. 28, 2001, 115 Stat. 1224, 1226; Pub. L. 109–163, div. A, title III, §341(d), (g)(2)(C), Jan. 6, 2006, 119 Stat. 3199, 3200.)

AMENDMENTS

2006—Pub. L. 109–163, §341(g)(2)(C), substituted ''Development and implementation of system for monitoring cost saving resulting from public-private competitions'' for ''Development of system for monitoring cost savings resulting from workforce reductions'' in section catchline.

Subsec. (a). Pub. L. 109–163, §341(d)(1), (2), redesignated subsec. (b) as (a) and struck out former subsec. (a) which defined ''workforce review''.

Subsec. (a)(1). Pub. L. 109–163, §341(d)(3)(A), substituted ''monitor'' for ''establish a system for monitoring'' and ''a public-private competition conducted under section 2461 of this title'' for ''a workforce review''.

Subsec. (a)(2). Pub. L. 109–163, §341(d)(3)(B), added par. (2) and struck out former par. (2) which established requirements for the monitoring system.

Subsec. (a)(3). Pub. L. 109–163, §341(d)(3)(C), inserted ''pursuant to such a public-private competition'' after ''reengineering of the function''.

Subsec. (b). Pub. L. 109–163, §341(d)(4), substituted ''public-private competitions conducted under section 2461 of this title'' for ''workforce reviews''.

Pub. L. 109–163, §341(d)(2), redesignated subsec. (e) as (b). Former subsec. (b) redesignated (a).

Subsecs. (c) to (e). Pub. L. 109–163, §341(d)(1), (2), redesignated subsec. (e) as (b) and struck out former subsecs. (c) and (d) which related to waiver for certain workforce reviews and annual report, respectively.

2001—Subsec. (a)(2). Pub. L. 107–107, §1048(a)(21), substituted ''efficiency'' for ''effeciency''.

Subsec. (b)(1). Pub. L. 107–107, §1048(c)(11), substituted ''October 30, 2000,'' for ''the date of the enactment of this section,''.

[§ 2462. Repealed. Pub. L. 113–291, div. A, title X, § 1060(a)(2)(A), Dec. 19, 2014, 128 Stat. 3502]

Section, added Pub. L. 100–370, §2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 109–163, div. A, title III, §341(c)(1), Jan. 6, 2006, 119 Stat. 3197, related to reports on public-private competition.

§ 2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions

(a) GUIDELINES REQUIRED.—(1) The Under Secretary of Defense for Personnel and Readiness shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees. The Secretary of a military department may prescribe supplemental regulations, if the Secretary determines such regulations are necessary for implementing such guidelines within that military department.

(2) The guidelines and procedures required under paragraph (1) may not include any specific limitation or restriction on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.

(b) SPECIAL CONSIDERATION FOR CERTAIN FUNCTIONS.—The guidelines and procedures required under subsection (a) shall provide for special consideration to be given to using Department of Defense civilian employees to perform any function that—

(1) is performed by a contractor and—

(A) is a critical function that—

(i) is necessary to maintain sufficient Government expertise and technical capabilities; or

(ii) entails operational risk associated with contractor performance;

(B) is an acquisition workforce function;

(C) is a function closely associated with the performance of an inherently governmental function;

(D) has been performed by Department of Defense civilian employees at any time during the previous 10-year period;

(E) has been performed pursuant to a contract awarded on a non-competitive basis; or

(F) has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality; or

(2) is a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by Department of Defense civilian employees or is a function closely associated with the performance of an inherently governmental function.

(c) EXCLUSION OF CERTAIN FUNCTIONS FROM COMPETITIONS.—The Secretary of Defense may not conduct a public-private competition under this chapter, Office of Management and Budget Circular A–76, or any other provision of law or regulation before—

(1) in the case of a new Department of Defense function, assigning the performance of the function to Department of Defense civilian employees;

(2) in the case of any Department of Defense function described in subsection (b), converting the function to performance by Department of Defense civilian employees; or

(3) in the case of a Department of Defense function performed by Department of Defense civilian employees, expanding the scope of the function.

(d) USE OF FLEXIBLE HIRING AUTHORITY.—(1) The Secretary of Defense may use the flexible hiring authority available to the Secretary pursuant to section 9902 of title 5, to facilitate the performance by Department of Defense civilian employees of functions described in subsection (b).

(2) The Secretary shall make use of the inventory required by section 2330a(c) of this title for the purpose of identifying functions that should be considered for performance by Department of Defense civilian employees pursuant to subsection (b).

(e) DETERMINATIONS RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—(1) Except as provided in paragraph (2), in determining whether a function should be converted to performance by

Department of Defense civilian employees, the Secretary of Defense shall—

(A) develop methodology for determining costs based on the guidance outlined in the Directive-Type Memorandum 09–007 entitled ''Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support'' or any successor guidance for the determination of costs when costs are the sole basis for the determination;

(B) take into consideration any supplemental guidance issued by the Secretary of a military department for determinations affecting functions of that military department; and

(C) ensure that the difference in the cost of performing the function by a contractor compared to the cost of performing the function by Department of Defense civilian employees would be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function; or

(ii) $10,000,000.

(2) Paragraph (1) shall not apply to any function that is inherently governmental or any function described in subparagraph (A), (B), or (C) of subsection (b)(1).

(f) NOTIFICATION RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—The Secretary of Defense shall establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert to performance by Department of Defense civilian employees pursuant to subsection (a). The Secretary shall provide a copy of any such notification to the congressional defense committees.

(g) DEFINITIONS.—In this section:

(1) The term ''functions closely associated with inherently governmental functions'' has the meaning given that term in section 2383(b)(3) of this title.

(2) The term ''acquisition function'' has the meaning given that term under section 1721(a) of this title.

(3) The term ''inherently governmental function'' has the meaning given that term in the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note).

(Added Pub. L. 110–181, div. A, title III, §324(a)(1), Jan. 28, 2008, 122 Stat. 60; amended Pub. L. 111–383, div. A, title III, §353, Jan. 7, 2011, 124 Stat. 4194; Pub. L. 112–81, div. A, title IX, §938, Dec. 31, 2011, 125 Stat. 1547.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 109–163, div. A, title III, §343, Jan. 6, 2006, 119 Stat. 3200, which was set out as a note under section 2461 of this title, prior to repeal by Pub. L. 110–181, div. A, title III, §324(c), Jan. 28, 2008, 122 Stat. 61.

A prior section 2463, added Pub. L. 100–370, §2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101–189, div. A, title XVI, §1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title XIII, §1301(14), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 105–85, div. A, title III, §385(a), Nov. 18, 1997, 111 Stat. 1712, related to collection and retention of cost information data on the conversion of services and functions of the Department of Defense to or from contractor performance, prior to repeal by Pub. L. 109–163, div. A, title III, §341(f), Jan. 6, 2006, 119 Stat. 3199.

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 112–81, §938(1), added subpars. (A), (B), and (D), redesignated former subpars. (B), (C), and (D) as (C), (E), and (F), and struck out former subpar. (A) which read as follows: ''has been performed by Department of Defense civilian employees at any time during the previous 10 years;''.

Subsec. (d)(1). Pub. L. 111–383 struck out ''under the National Security Personnel System, as established'' before ''pursuant to section 9902 of title 5''.

Subsecs. (e), (f). Pub. L. 112–81, §938(3), added subsecs. (e) and (f). Former subsec. (e) redesignated (g).

Subsec. (g). Pub. L. 112–81, §938(4), substituted ''this section:'' for ''this section the term 'functions closely associated with inherently governmental functions' has the meaning given that term in section 2383(b)(3) of this title.'' and added pars. (1) to (3).

Pub. L. 112–81, §938(2), redesignated subsec. (e) as (g).

PROHIBITION ON ESTABLISHING GOALS OR QUOTAS FOR CONVERSION OF FUNCTIONS TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES

Pub. L. 111–383, div. A, title III, §323, Jan. 7, 2011, 124 Stat. 4184, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not establish, apply, or enforce any numerical goal, target, or quota for the conversion of Department of Defense functions to performance by Department of Defense civilian employees, unless such goal, target, or quota is based on considered research and analysis, as required by section 235, 2330a, or 2463 of title 10, United States Code.

''(b) DECISIONS TO INSOURCE.—In deciding which functions should be converted to performance by Department of Defense civilian employees pursuant to section 2463 of title 10, United States Code, the Secretary of Defense shall use the costing methodology outlined in the Directive-Type Memorandum 09–007 (Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support) or any successor guidance for the determination of costs when costs are the sole basis for the decision. The Secretary of a military department may issue supplemental guidance to assist in such decisions affecting functions of that military department.

''(c) REPORTS.—

''(1) REPORT TO CONGRESS.—Not later than March 31, 2011, 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 the decisions with respect to the conversion of functions to performance by Department of Defense civilian employees made during fiscal year 2010. Such report shall identify, for each such decision—

''(A) the agency or service of the Department involved in the decision;

''(B) the basis and rationale for the decision; and

''(C) the number of contractor employees whose functions were converted to performance by Department of Defense civilian employees.

''(2) COMPTROLLER GENERAL REVIEW.—Not later than 120 days after the submittal of the report under paragraph (1), the Comptroller General of the United States shall submit to the congressional defense committees an assessment of the report.

''(d) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to preclude the Secretary of Defense from establishing, applying, and enforcing goals for the conversion of acquisition functions and other critical functions to performance by Department of Defense civilian employees, where such goals are based on considered research and analysis; or

''(2) to require the Secretary of Defense to conduct a cost comparison before making a decision to convert any acquisition function or other critical function to performance by Department of Defense civilian employees, where factors other than cost serve as a basis for the Secretary's decision.''

DEADLINE FOR ISSUANCE OF GUIDELINES AND PROCEDURES

Pub. L. 110–181, div. A, title III, §324(a)(3), Jan. 28, 2008, 122 Stat. 61, provided that: ''The Secretary of Defense shall implement the guidelines and procedures required under section 2463 of title 10, United States Code, as added by paragraph (1), by not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008].''

§ 2464. Core logistics capabilities

(a) NECESSITY FOR CORE LOGISTICS CAPABILITIES.—(1) It is essential for the national defense that the Department of Defense maintain a core logistics capability that is Government-owned and Government-operated (including Government personnel and Government-owned and Government-operated equipment and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify the core logistics capabilities described in paragraph (1) and the workload required to maintain those capabilities.

(3) The core logistics capabilities identified under paragraphs (1) and (2) shall include those capabilities that are necessary to maintain and repair the weapon systems and other military equipment (including mission-essential weapon systems or materiel not later than four years after achieving initial operational capability, but excluding systems and equipment under special access programs, nuclear aircraft carriers, and commercial items described in paragraph (5)) that are identified by the Secretary, in consultation with the Chairman of the Joint Chiefs of Staff, as necessary to enable the armed forces to fulfill the strategic and contingency plans prepared by the Chairman of the Joint Chiefs of Staff under section 153(a) of this title.

(4) The Secretary of Defense shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified under paragraphs (1), (2), and (3) at Government-owned, Government-operated facilities of the Department of Defense (including Government-owned, Government-operated facilities of a military department) and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence in peacetime while preserving the surge capacity and reconstitution capabilities necessary to support fully the strategic and contingency plans referred to in paragraph (3).

(5) The commercial items covered by paragraph (3) are commercial items that have been sold or leased in substantial quantities to the general public and are purchased without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.

(b) LIMITATION ON CONTRACTING.—(1) Except as provided in paragraph (2), performance of workload needed to maintain a logistics capability identified by the Secretary under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A–76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A–76).

(2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics capability and provide that performance of the workload needed to maintain that capability shall be considered for conversion to contractor performance in accordance with OMB Circular A–76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the workload is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such workload is no longer required for national defense reasons.

(3)(A) A waiver under paragraph (2) may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report on the waiver 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.

(B) For the purposes of subparagraph (A)—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) NOTIFICATION OF DETERMINATIONS REGARDING CERTAIN COMMERCIAL ITEMS.—The first time that a weapon system or other item of military equipment described in subsection (a)(3) is determined to be a commercial item for the purposes of the exception contained in that subsection, the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:

(1) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the Government's version of the item.

(2) The value of any unique support and test equipment and tools that are necessary to support the military requirements if the item were maintained by the Government.

(3) A comparison of the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the Government.

(d) BIENNIAL CORE REPORT.—Not later than April 1 of each even-numbered year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (except for the Coast Guard), for the fiscal year after the fiscal year during which the report is submitted, each of the following:

(1) The core depot-level maintenance and repair capability requirements and sustaining workloads, organized by work breakdown structure, expressed in direct labor hours.

(2) The corresponding workloads necessary to sustain core depot-level maintenance and repair capability requirements, expressed in direct labor hours and cost.

(3) In any case where core depot-level maintenance and repair capability requirements exceed or are expected to exceed sustaining workloads, a detailed rationale for any and all shortfalls and a plan either to correct or mitigate the effects of the shortfalls.

(e) COMPTROLLER GENERAL REVIEW.—The Comptroller General of the United States shall review each report submitted under subsection (d) for completeness and compliance and shall submit to the congressional defense committees findings and recommendations with respect to the report by not later than 60 days after the date on which the report is submitted to Congress.

(Added and amended Pub. L. 112–239, div. A, title III, § 322(b)(2)(A), (d), Jan. 2, 2013, 126 Stat. 1695.)

CODIFICATION

Section 322(b)(2)(A) of Pub. L. 112–239, cited as a credit to this section, revived section 2464 of this title as in effect the day before the date of the enactment of Pub. L. 112–81, Dec. 31, 2011. See Prior Provisions note below.

PRIOR PROVISIONS

A prior section 2464, added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 104–106, div. A, title III, § 314, Feb. 10, 1996, 110 Stat. 251; Pub. L. 105–85, div. A, title III, § 356(a), Nov. 18, 1997, 111 Stat. 1694; Pub. L. 105–261, div. A, title III, § 343(a), Oct. 17, 1998, 112 Stat. 1976; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–81, div. A, title III, § 327(a), Dec. 31, 2011, 125 Stat. 1366, related to core depot-level maintenance and repair capabilities prior to repeal by Pub. L. 112–239, div. A, title III, § 322(a)(2), Jan. 2, 2013, 126 Stat. 1694.

AMENDMENTS

2013—Subsecs. (d), (e). Pub. L. 112–239, § 322(d), added subsecs. (d) and (e).

EFFECTIVE DATE

Section and amendment by Pub. L. 112–239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112–81. See section 322(f) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2366a of this title.

§ 2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply to the following contracts:

(1) A contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness.

(2) A contract to be carried out on a Government-owned but privately operated installation.

(3) A contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(4) A contract for the performance of firefighting functions if the contract is—

(A) for a period of one year or less; and

(B) covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(Added Pub. L. 99–661, div. A, title XII, § 1222(a)(1), Nov. 14, 1986, 100 Stat. 3976, § 2693; amended Pub. L. 100–180, div. A, title XI, § 1112(a)–(b)(2), Dec. 4, 1987, 101 Stat. 1147; renumbered § 2465, Pub. L. 100–370, § 2(b)(1), July 19, 1988, 102 Stat. 854; Pub. L. 104–106, div. A, title XV, § 1503(a)(25), Feb. 10, 1996, 110 Stat. 512; Pub. L. 108–136, div. A, title III, § 331, Nov. 24, 2003, 117 Stat. 1442.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136 substituted ''apply to the following contracts:'' for ''apply—'' in introductory provisions, ''A'' for ''to a'' at beginning of pars. (1) to (3), period for semicolon at end of par. (1), and period for ''; or'' at end of par. (2), and added par. (4).

1996—Subsec. (b)(3). Pub. L. 104–106 substituted ''under contract on September 24, 1983'' for ''under contract or September 24, 1983''.

1988—Pub. L. 100–370 renumbered section 2693 of this title as this section.

1987—Pub. L. 100–180 inserted ''or security-guard'' before ''functions'' in section catchline and subsec. (a), and substituted ''a function'' for ''the function'' in subsec. (b)(1).

TEMPORARY AUTHORITY TO CONTRACT WITH LOCAL AND STATE GOVERNMENTS FOR PERFORMANCE OF SECURITY FUNCTIONS AT UNITED STATES MILITARY INSTALLATIONS

Pub. L. 107–56, title X, § 1010, Oct. 26, 2001, 115 Stat. 395, provided that:

''(a) IN GENERAL.—Notwithstanding section 2465 of title 10, United States Code, during the period of time that United States armed forces are engaged in Operation Enduring Freedom, and for the period of 180 days thereafter, funds appropriated to the Department of Defense may be obligated and expended for the purpose of entering into contracts or other agreements for the performance of security functions at any military installation or facility in the United States with a proximately located local or State government, or combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation.

''(b) TRAINING.—Any contract or agreement entered into under this section shall prescribe standards for the training and other qualifications of local government law enforcement personnel who perform security functions under this section in accordance with criteria established by the Secretary of the service concerned.

''(c) REPORT.—One year after the date of enactment of this section [Oct. 26, 2001], the Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives describing the use of the authority granted under this section and the use by the Department of Defense of other means to improve the performance of security functions on military installations and facilities located within the United States.''

PERFORMANCE OF EMERGENCY RESPONSE FUNCTIONS AT CHEMICAL WEAPONS STORAGE INSTALLATIONS

Pub. L. 106–398, §1 [[div. A], title III, §355], Oct. 30, 2000, 114 Stat. 1654, 1654A–75, provided that:

''(a) RESTRICTION ON CONVERSION.—The Secretary of the Army may not convert to contractor performance the emergency response functions of any chemical weapons storage installation that, as of the date of the enactment of this Act [Oct. 30, 2000], are performed for that installation by employees of the United States until the certification required by subsection (c) has been submitted in accordance with that subsection.

''(b) COVERED INSTALLATIONS.—For the purposes of this section, a chemical weapons storage installation is any installation of the Department of Defense on which lethal chemical agents or munitions are stored.

''(c) CERTIFICATION REQUIREMENT.—The Secretary of the Army shall certify in writing to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that, to ensure that there will be no lapse of capability to perform the chemical weapon emergency response mission at a chemical weapons storage installation during any transition to contractor performance of those functions at the installation, the plan for conversion of the performance of those functions—

''(1) is consistent with the recommendation contained in General Accounting Office [now Government Accountability Office] Report NSIAD–00–88, entitled 'DoD Competitive Sourcing', dated March 2000;

''(2) provides for a transition to contractor performance of emergency response functions which ensures an adequate transfer of the relevant knowledge and expertise regarding chemical weapon emergency response to the contractor personnel; and

''(3) complies with section 2465 of title 10, United States Code.''

§ 2466. Limitations on the performance of depot-level maintenance of materiel

(a) PERCENTAGE LIMITATION.—Not more than 50 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload may be used to contract for the performance by non-Federal Government personnel of such workload for the military department or the Defense Agency. Any such funds that are not used for such a contract shall be used for the performance of depot-level maintenance and repair workload by employees of the Department of Defense.

(b) WAIVER OF LIMITATION.—The Secretary of Defense may waive the limitation in subsection (a) for a fiscal year if—

(1) the Secretary determines that the waiver is necessary for reasons of national security; and

(2) the Secretary submits to Congress a notification of the waiver together with the reasons for the waiver.

(c) PROHIBITION ON DELEGATION OF WAIVER AUTHORITY.—The authority to grant a waiver under subsection (b) may not be delegated.

(d) ANNUAL REPORT.—(1) Not later than 90 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that was expended during the preceding fiscal year, and are projected to be expended during the current fiscal year and the ensuing fiscal year, for performance of depot-level maintenance and repair workloads by the public and private sectors.

(2) Each report required under paragraph (1) shall include as a separate item any expenditure covered by section 2474(f) of this title that was made during the fiscal year covered by the report and shall specify the amount and nature of each such expenditure.

(Added Pub. L. 100–456, div. A, title III, §326(a), Sept. 29, 1988, 102 Stat. 1955; amended Pub. L. 101–189, div. A, title III, §313, Nov. 29, 1989, 103 Stat. 1412; Pub. L. 102–190, div. A, title III, §314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub. L. 102–484, div. A, title III, §352(a)–(c), Oct. 23, 1992, 106 Stat. 2378; Pub. L. 103–337, div. A, title III, §332, Oct. 5, 1994, 108 Stat. 2715; Pub. L. 104–106, div. A, title III, §§311(f)(1), 312(b), Feb. 10, 1996, 110 Stat. 248, 250; Pub. L. 105–85, div. A, title III, §§357, 358, 363, Nov. 18, 1997, 111 Stat. 1695, 1702; Pub. L. 106–65, div. A, title III, §333, Oct. 5, 1999, 113 Stat. 567; Pub. L. 107–107, div. A, title III, §341, Dec. 28, 2001, 115 Stat. 1060; Pub. L. 108–136, div. A, title III, §332, Nov. 24, 2003, 117 Stat. 1442; Pub. L. 108–375, div. A, title III, §321, Oct. 28, 2004, 118 Stat. 1845; Pub. L. 109–364, div. A, title III, §331(b), Oct. 17, 2006, 120 Stat. 2149; Pub. L. 111–84, div. A, title III, §329, Oct. 28, 2009, 123 Stat. 2256.)

AMENDMENTS

2009—Subsec. (d)(1). Pub. L. 111–84 substituted ''90 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31'' for ''April 1 of each year''.

2006—Subsec. (d). Pub. L. 109–364, §331(b)(2), struck out ''and Review'' after ''Annual Report'' in heading.

Subsec. (d)(2). Pub. L. 109–364, §331(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Not later than 90 days after the date on which the Secretary submits a report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General's views on whether—

''(A) the Department of Defense complied with the requirements of subsection (a) during the preceding fiscal year covered by the report; and

''(B) the expenditure projections for the current fiscal year and the ensuing fiscal year are reasonable.''

2004—Subsec. (d). Pub. L. 108–375 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

''(1) Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that were expended during the preceding two fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

''(2) Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that are projected to be expended during each of the next five fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

''(3) Not later than 60 days after the date on which the Secretary submits a report under this subsection, the Comptroller General shall submit to Congress the Comptroller General's views on whether—

''(A) in the case of a report under paragraph (1), the Department of Defense has complied with the re-

quirements of subsection (a) for the fiscal years covered by the report; and

''(B) in the case of a report under paragraph (2), the expenditure projections for future fiscal years are reasonable.''

2003—Subsecs. (d), (e). Pub. L. 108–136 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California.''

2001—Subsecs. (b), (c). Pub. L. 107–107 added subsecs. (b) and (c) and struck out heading and text of former subsec. (c). Text read as follows: ''The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense may waive the applicability of subsection (a) for a fiscal year, to a particular workload, or to a particular depot-level activity if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.''

1999—Subsec. (e). Pub. L. 106–65 amended heading and text of subsec. (e) generally. Text read as follows:

''(1) Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense Agency, the percentage of the funds referred to in subsection (a) that were expended during the preceding fiscal year for performance of depot-level maintenance and repair workloads by the public and private sectors as required by section 2466 of this title.

''(2) Not later than 90 days after the date on which the Secretary submits the annual report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General's views on whether the Department of Defense has complied with the requirements of subsection (a) for the fiscal year covered by the report.''

1997—Pub. L. 105–85, § 363, repealed Pub. L. 104–106, § 311(f)(1). See 1996 Amendment note below.

Subsec. (a). Pub. L. 105–85, § 357, substituted ''50 percent'' for ''40 percent''.

Subsec. (e). Pub. L. 105–85, § 358, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than January 15, 1995, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense Agency, the percentage of funds referred to in subsection (a) that was used during fiscal year 1994 to contract for the performance by non-Federal Government personnel of depot-level maintenance and repair workload.''

1996—Pub. L. 104–106, § 311(f)(1), which directed repeal of this section, was repealed by Pub. L. 105–85, § 363.

Subsec. (b). Pub. L. 104–106, § 312(b), redesignated subsec. (b) as section 2472(a) of this title.

1994—Subsec. (a). Pub. L. 103–337, § 332(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows:

''(1) Except as provided in paragraph (2), the Secretary of a military department and, with respect to a Defense Agency, the Secretary of Defense, may not contract for the performance by non-Federal Government personnel of more than 40 percent of the depot-level maintenance workload for the military department or the Defense Agency.

''(2) The Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than the following percentages of Army aviation depot-level maintenance workload:

''(A) For fiscal year 1993, 50 percent.

''(B) For fiscal year 1994, 55 percent.

''(C) For fiscal year 1995, 60 percent.''

Subsec. (b). Pub. L. 103–337, § 332(b), inserted ''and repair'' after ''maintenance'' in two places.

Subsec. (e). Pub. L. 103–337, § 332(c), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) Not later than January 15, 1992, and January 15, 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to subsection (a).

''(2) Not later than January 15, 1994, the Secretary of each military department and the Secretary of Defense, with respect to the Defense Agencies, shall jointly submit to Congress a report described in paragraph (1).''

1992—Subsec. (a). Pub. L. 102–484, § 352(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''PERCENTAGE LIMITATION.—Not less than 60 percent of the funds available for each fiscal year for depot-level maintenance of materiel managed for the Department of the Army and the Department of the Air Force shall be used for the performance of such depot-level maintenance by employees of the Department of Defense.''

Subsec. (c). Pub. L. 102–484, § 352(b), substituted ''The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense'' for ''The Secretary of the Army, with respect to the Department of the Army, and the Secretary of the Air Force, with respect to the Department of the Air Force,''.

Subsec. (e). Pub. L. 102–484, § 352(c), designated existing provisions as par. (1) and added par. (2).

1991—Pub. L. 102–190 substituted section catchline for one which read ''Prohibition on certain depot maintenance workload competitions'' and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prohibit the Secretary of the Army and the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, from carrying out a competition for such selection—

''(1) between or among maintenance activities of the Department of the Army and the Department of the Air Force; or

''(2) between a maintenance activity of either such department and a private contractor.''

1989—Pub. L. 101–189, in introductory provisions, substituted ''shall prohibit'' for ''may not require'', ''Army and'' for ''Army or'', and ''from carrying out'' for ''to carry out''.

CONGRESSIONAL FINDINGS

Pub. L. 103–337, div. A, title III, § 331, Oct. 5, 1994, 108 Stat. 2715, provided that: ''Congress makes the following findings:

''(1) By providing the Armed Forces with a critical capacity to respond to the needs of the Armed Forces for depot-level maintenance and repair of weapon systems and equipment, the depot-level maintenance and repair activities of the Department of Defense play an essential role in maintaining the readiness of the Armed Forces.

''(2) It is appropriate for the capability of the depot-level maintenance and repair activities of the Department of Defense to perform maintenance and repair of weapon systems and equipment to be based on policies that take into consideration the readiness, mobilization, and deployment requirements of the military departments.

''(3) It is appropriate for the management of employees of the depot-level maintenance and repair activities of the Department of Defense to be based on the amount of workload necessary to be performed by such activities to maintain the readiness of the weapon systems and equipment of the military departments and on the funds made available for the performance of such workload.''

REUTILIZATION INITIATIVE FOR DEPOT-LEVEL ACTIVITIES

Pub. L. 103–337, div. A, title III, § 337, Oct. 5, 1994, 108 Stat. 2717, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense shall conduct activities to encourage commercial firms to enter into partnerships with depot-level activities of the military departments for the purposes of—

''(1) demonstrating commercial uses of the depot-level activities that are related to the principal mission of the depot-level activities;

''(2) preserving employment and skills of employees currently employed by the depot-level activities or providing for the reemployment and retraining of employees who, as the result of the closure, realignment, or reduced in-house workload of such activities, may become unemployed; and

''(3) supporting the goals of other defense conversion, reinvestment, and transition assistance programs while also allowing the depot-level activities to remain in operation to continue to perform their defense readiness mission.

''(b) CONDITIONS.—The Secretary shall ensure that activities conducted under this section—

''(1) do not interfere with the closure or realignment of a depot-level activity of the military departments under a base closure law; and

''(2) do not adversely affect the readiness or primary mission of a participating depot-level activity.''

CONTINUATION OF PERCENTAGE LIMITATIONS ON PERFORMANCE OF DEPOT-LEVEL MAINTENANCE

Pub. L. 103–160, div. A, title III, §343, Nov. 30, 1993, 107 Stat. 1624, provided that: ''The Secretary of Defense shall ensure that the percentage limitations applicable to the depot-level maintenance workload performed by non-Federal Government personnel set forth in section 2466 of title 10, United States Code, are adhered to.''

EFFECT OF 1992 AMENDMENTS ON EXISTING CONTRACTS

Pub. L. 102–484, div. A, title III, §352(d), Oct. 23, 1992, 106 Stat. 2378, provided that: ''The Secretary of a military department and the Secretary of Defense, with respect to the Defense Agencies, may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Oct. 23, 1992] in order to comply with the requirements of section 2466(a) of title 10, United States Code, as amended by subsection (a).''

PROHIBITION ON CANCELLATION OF CONTRACTS IN EFFECT ON DECEMBER 5, 1991

Pub. L. 102–190, div. A, title III, §314(a)(3), Dec. 5, 1991, 105 Stat. 1337, provided that: ''The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Dec. 5, 1991] in order to comply with the requirements of section 2466(a) of such title, as amended by subsection (a).''

COMPETITION PILOT PROGRAM; REVIEW AND REPORT

Pub. L. 102–190, div. A, title III, §314(b)–(d), Dec. 5, 1991, 105 Stat. 1337, as amended by Pub. L. 102–484, div. A, title III, §354, Oct. 23, 1992, 106 Stat. 2379, required the Comptroller General to submit to Congress, not later than Feb. 1, 1994, an evaluation of all depot maintenance workloads of the Department of Defense that were performed by an entity selected pursuant to competitive procedures, and required the Secretary of Defense to submit to Congress, not later than Dec. 1, 1993, a report containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads and describing the cost savings anticipated.

PILOT PROGRAM FOR DEPOT MAINTENANCE WORKLOAD COMPETITION

Pub. L. 101–510, div. A, title IX, §922, Nov. 5, 1990, 104 Stat. 1627, authorized a depot maintenance workload competition pilot program during fiscal year 1991, outlined elements of the program, and provided for a report not later than Mar. 31, 1992, to congressional defense committees, prior to repeal by Pub. L. 102–190, div. A, title III, §314(b)(2), Dec. 5, 1991, 105 Stat. 1337.

[§ 2467. Repealed. Pub. L. 110–181, div. A, title III, § 322(b)(1), Jan. 28, 2008, 122 Stat. 59]

Section, added Pub. L. 100–456, div. A, title III, §331(a), Sept. 29, 1988, 102 Stat. 1957; amended Pub. L. 106–65, div. A, title III, §342(a), (b)(1), Oct. 5, 1999, 113 Stat. 569; Pub. L. 107–107, div. A, title X, §1048(a)(22), Dec. 28, 2001, 115 Stat. 1224, related to cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison.

[§ 2468. Repealed. Pub. L. 107–107, div. A, title X, § 1048(e)(10)(A), Dec. 28, 2001, 115 Stat. 1228]

Section, added Pub. L. 101–189, div. A, title XI, §1131(a)(1), Nov. 29, 1989, 103 Stat. 1560; amended Pub. L. 101–510, div. A, title IX, §921, Nov. 5, 1990, 104 Stat. 1627; Pub. L. 102–190, div. A, title III, §315(a), Dec. 5, 1991, 105 Stat. 1337; Pub. L. 103–160, div. A, title III, §370(c), Nov. 30, 1993, 107 Stat. 1634; Pub. L. 103–337, div. A, title III, §386(c), Oct. 5, 1994, 108 Stat. 2742, related to authority of military base commanders over contracting for commercial activities.

§ 2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition

(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense shall ensure that the performance of a depot-level maintenance and repair workload described in subsection (b) is not changed to performance by a contractor or by another depot-level activity of the Department of Defense unless the change is made using—

(1) merit-based selection procedures for competitions among all depot-level activities of the Department of Defense; or

(2) competitive procedures for competitions among private and public sector entities.

(b) SCOPE.—Except as provided in subsection (c), subsection (a) applies to any depot-level maintenance and repair workload that has a value of not less than $3,000,000 (including the cost of labor and materials) and is being performed by a depot-level activity of the Department of Defense.

(c) EXCEPTION FOR PUBLIC-PRIVATE PARTNERSHIPS.—The requirements of subsection (a) may be waived in the case of a depot-level maintenance and repair workload that is performed at a Center of Industrial and Technical Excellence designated under subsection (a) of section 2474 of this title by a public-private partnership entered into under subsection (b) of such section consisting of a depot-level activity and a private entity.

(d) INAPPLICABILITY OF OMB CIRCULAR A–76.—Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) does not apply to a performance change to which subsection (a) applies.

(Added Pub. L. 102–484, div. A, title III, §353(a), Oct. 23, 1992, 106 Stat. 2378; amended Pub. L. 103–160, div. A, title III, §346, title XI, §1182(a)(7), Nov. 30, 1993, 107 Stat. 1625, 1771; Pub. L. 103–337, div. A, title III, §338, Oct. 5, 1994, 108 Stat. 2718; Pub. L. 104–106, div. A, title III, §311(f)(1), Feb. 10, 1996, 110 Stat. 248; Pub. L. 105–85, div. A, title III, §§355(b), 363, Nov. 18, 1997, 111 Stat. 1694, 1702; Pub. L. 106–65, div. A, title III, §334, Oct. 5, 1999, 113 Stat. 568; Pub. L. 108–136, div. A, title III, §333, Nov. 24, 2003, 117 Stat. 1442.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136, §333(1), substituted ''Except as provided in subsection (c), subsection'' for ''Subsection''.

Subsecs. (c), (d). Pub. L. 108–136, §333(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

1999—Subsec. (b). Pub. L. 106–65 inserted ''(including the cost of labor and materials)'' after ''$3,000,000''.

1997—Pub. L. 105–85, §363, repealed Pub. L. 104–106, §311(f)(1). See 1996 Amendment note below.

Subsecs. (a), (b). Pub. L. 105–85, §355(b), substituted ''maintenance and repair'' for ''maintenance or repair''.

1996—Pub. L. 104–106, §311(f)(1), which directed repeal of this section, was repealed by Pub. L. 105–85, §363.

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section read as follows:

''(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a value of not less than $3,000,000 and is being performed by a depot-level activity of the Department of Defense to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload.

''(b) INAPPLICABILITY OF OMB CIRCULAR A–76.—The use of Office of Management and Budget Circular A–76 shall not apply to a performance change under subsection (a).''

1993—Pub. L. 103–160, §346, amended section, as amended by Pub. L. 103–160, §1182(a)(7), (h), by designating existing provisions as subsec. (a), inserting heading, striking out ''threshold'' before ''value'', substituting ''to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload'' for ''unless the Secretary uses competitive procedures to make the change'', and adding subsec. (b).

Pub. L. 103–160, §1182(a)(7), struck out '', prior to any such change,'' after ''Department of Defense unless''.

[§ 2469a. Repealed. Pub. L. 107–314, div. A, title III, § 333(a), Dec. 2, 2002, 116 Stat. 2514]

Section, added Pub. L. 105–85, div. A, title III, §359(a)(1), Nov. 18, 1997, 111 Stat. 1696; amended Pub. L. 106–65, div. A, title III, §335, title X, §1066(a)(20), Oct. 5, 1999, 113 Stat. 568, 771, related to use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at closed or realigned military installations.

§ 2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies

A depot-level activity of the Department of Defense shall be eligible to compete for the performance of any depot-level maintenance and repair workload of a Federal agency for which competitive procedures are used to select the entity to perform the workload.

(Added Pub. L. 103–337, div. A, title III, §335(a), Oct. 5, 1994, 108 Stat. 2716.)

[§ 2471. Repealed. Pub. L. 106–398, § 1 [[div. A], title III, § 341(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64]

Section, added Pub. L. 103–337, div. A, title III, §336(a), Oct. 5, 1994, 108 Stat. 2717; amended Pub. L. 104–106, div. A, title XV, §1503(a)(26), Feb. 10, 1996, 110 Stat. 512; Pub. L. 105–85, div. A, title III, §361(b)(1), Nov. 18, 1997, 111 Stat. 1701, related to lease of excess depot-level equipment and facilities by persons outside the Department of Defense.

§ 2472. Prohibition on management of depot employees by end strength

The civilian employees of the Department of Defense, including the civilian employees of the military departments and the Defense Agencies, who perform, or are involved in the performance of, depot-level maintenance and repair workloads may not be 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. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance and repair.

(Added and amended Pub. L. 104–106, div. A, title III, §312(a), (b), Feb. 10, 1996, 110 Stat. 250; Pub. L. 105–85, div. A, title III, §360, Nov. 18, 1997, 111 Stat. 1700; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–375, div. A, title III, §322(a), (b)(1), Oct. 28, 2004, 118 Stat. 1846.)

CODIFICATION

The text of section 2466(b) of this title, which was transferred to this section and redesignated subsec. (a) by Pub. L. 104–106, §312(b), was based on Pub. L. 102–190, div. A, title III, §314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub. L. 103–337, div. A, title III, §332(b), Oct. 5, 1994, 108 Stat. 2715.

AMENDMENTS

2004—Pub. L. 108–375 substituted ''Prohibition on management of depot employees by end strength'' for ''Management of depot employees'' in section catchline, struck out subsec. (a) designation and heading before ''The civilian'', and struck out heading and text of subsec. (b). Text read as follows: ''Not later than December 1 of each fiscal year, the Secretary of Defense 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 number of employees employed and expected to be employed by the Department of Defense during that fiscal year to perform depot-level maintenance and repair of materiel. The report shall indicate whether that number is sufficient to perform the depot-level maintenance and repair functions for which funds are expected to be provided for that fiscal year for performance by Department of Defense employees.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a). Pub. L. 105–85 inserted first sentence and struck out former first sentence which read as follows: ''The civilian employees of the Department of Defense involved in the depot-level maintenance and repair of materiel may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year.''

1996—Subsec. (a). Pub. L. 104–106, §312(b), renumbered section 2466(b) of this title as subsec. (a) of this section.

SUBMISSION OF INITIAL REPORT

Pub. L. 104–106, div. A, title III, §312(c), Feb. 10, 1996, 110 Stat. 250, required the report under subsec. (b) of this section for fiscal year 1996 to be submitted not later than Mar. 15, 1996.

[§ 2473. Repealed. Pub. L. 111–383, div. A, title VIII, § 822(a), Jan. 7, 2011, 124 Stat. 4268]

Section, added Pub. L. 104–201, div. A, title VIII, §832(a), Sept. 23, 1996, 110 Stat. 2616; amended Pub. L. 105–261, div. A, title VIII, §809(a)–(d), Oct. 17, 1998, 112 Stat. 2085, 2086; Pub. L. 106–65, div. A, title VIII, §815(b), Oct. 5, 1999, 113 Stat. 712; Pub. L. 111–84, div. A, title VIII, §818(a), Oct. 28, 2009, 123 Stat. 2408, required the Secretary of Defense to place conditions on the procurement of property or services in order to preserve the small arms production industrial base.

§ 2474. Centers of Industrial and Technical Excellence: designation; public-private partnerships

(a) DESIGNATION.—(1) The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, shall designate each depot-level activity or military arsenal facility of the military departments and the Defense Agencies (other than facilities approved for closure or major realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note)) as a Center of Industrial and Technical Excellence in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department and the head of each Defense Agency to reengineer industrial processes and adopt best-business practices at their Centers of Industrial and Technical Excellence in connection with their core competency requirements, so as to serve as recognized leaders in their core competencies throughout the Department of Defense and in the national technology and industrial base (as defined in section 2500(1) of this title).

(3) The Secretary of a military department may conduct a pilot program, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Secretary determines could improve the efficiency and effectiveness of operations at Centers of Industrial and Technical Excellence, improve the support provided by the Centers for the armed forces user of the services of the Centers, and enhance readiness by reducing the time that it takes to repair equipment.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—(1) To achieve one or more objectives set forth in paragraph (2), the Secretary designating a Center of Industrial and Technical Excellence under subsection (a) may authorize and encourage the head of the Center to enter into public-private cooperative arrangements (in this section referred to as a ''public-private partnership'') to provide for any of the following:

(A) For employees of the Center, private industry, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the core competencies of the Center, including any depot-level maintenance and repair work that involves one or more core competencies of the Center.

(B) For private industry or other entities outside the Department of Defense to use, for any period of time determined to be consistent with the needs of the Department of Defense, any facilities or equipment of the Center that are not fully utilized for a military department's own production or maintenance requirements.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the utilization of the capacity of a Center of Industrial and Technical Excellence.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense in such areas of responsibility as operations and maintenance and environmental remediation.

(C) To reduce the cost of products of the Department of Defense produced or maintained at a Center.

(D) To leverage private sector investment in—

(i) such efforts as plant and equipment recapitalization for a Center; and

(ii) the promotion of the undertaking of commercial business ventures at a Center.

(E) To foster cooperation between the armed forces and private industry.

(3) If the Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, authorizes the use of public-private partnerships under this subsection, the Secretary shall submit to Congress a report evaluating the need for loan guarantee authority, similar to the ARMS Initiative loan guarantee program under section 4555 of this title, to facilitate the establishment of public-private partnerships and the achievement of the objectives set forth in paragraph (2).

(c) PRIVATE SECTOR USE OF EXCESS CAPACITY.—Any facilities or equipment of a Center of Industrial and Technical Excellence made available to private industry may be used to perform maintenance or to produce goods in order to make more efficient and economical use of Government-owned industrial plants and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary manufacturing and maintenance skills to meet the needs of the armed forces.

(d) CREDITING OF AMOUNTS FOR PERFORMANCE.—Amounts received by a Center for work performed under a public-private partnership shall be credited to the appropriation or fund, including a working-capital fund, that incurs the cost of performing the work. Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(e) of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.

(e) AVAILABILITY OF EXCESS EQUIPMENT TO PRIVATE-SECTOR PARTNERS.—Equipment or facilities of a Center of Industrial and Technical Excellence may be made available for use by a private-sector entity under this section only if—

(1) the use of the equipment or facilities will not have a significant adverse effect on the readiness of the armed forces, as determined by the Secretary concerned or, in the case of a Center in a Defense Agency, by the Secretary of Defense; and

(2) the private-sector entity agrees—

(A) to reimburse the Department of Defense for the direct and indirect costs (including any rental costs) that are attributable to the entity's use of the equipment or facilities, as determined by that Secretary; and

(B) to hold harmless and indemnify the United States from—

(i) any claim for damages or injury to any person or property arising out of the use of the equipment or facilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary concerned or the Secretary of Defense to suspend or terminate that use of equipment or facilities during a war or national emergency.

(f) EXCLUSION OF CERTAIN EXPENDITURES FROM PERCENTAGE LIMITATION.—Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by private industry or other entities outside the Department of Defense pursuant to a public-private partnership.

(g) CONSTRUCTION OF PROVISION.—Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center of Industrial and Technical Excellence by Department of Defense personnel to performance by a contractor.

(Added Pub. L. 105–85, div. A, title III, § 361(a)(1), Nov. 18, 1997, 111 Stat. 1700; amended Pub. L. 106–398, § 1 [[div. A], title III, § 341(a)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–61 to 1654A–63; Pub. L. 107–107, div. A, title III, §§ 342, 343(b), Dec. 28, 2001, 115 Stat. 1060, 1061; Pub. L. 107–314, div. A, title III, § 334, Dec. 2, 2002, 116 Stat. 2514; Pub. L. 108–375, div. A, title III, § 323, title X, § 1084(d)(20), Oct. 28, 2004, 118 Stat. 1846, 2062; Pub. L. 109–364, div. A, title III, § 331(a), Oct. 17, 2006, 120 Stat. 2149; Pub. L. 112–81, div. A, title III, § 322, Dec. 31, 2011, 125 Stat. 1362; Pub. L. 112–239, div. A, title X, § 1076(d)(4), Jan. 2, 2013, 126 Stat. 1951.)

AMENDMENTS

2013—Subsec. (d). Pub. L. 112–239 substituted ''section 2667(e)'' for ''section 2667(d)''.

2011—Subsec. (a)(1). Pub. L. 112–81 inserted ''or military arsenal facility'' after ''depot-level activity''.

2006—Subsec. (f). Pub. L. 109–364 struck out ''(1)'' before ''Amounts'', ''entered into during fiscal years 2003 through 2009'' before ''shall not be counted'', and par. (2) which read as follows: ''All funds covered by paragraph (1) shall be included as a separate item in the reports required under paragraphs (1), (2), and (3) of section 2466(d) of this title.''

2004—Subsec. (f)(1). Pub. L. 108–375, § 323, substituted ''through 2009'' for ''through 2006''.

Subsec. (f)(2). Pub. L. 108–375, § 1084(d)(20), substituted ''section 2466(d)'' for ''section 2466(e)''.

2002—Subsec. (f)(1). Pub. L. 107–314, § 334(1), substituted ''Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract entered into during fiscal years 2003 through 2006'' for ''Amounts expended out of funds described in paragraph (2) for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence''.

Subsec. (f)(2), (3). Pub. L. 107–314, § 334(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The funds referred to in paragraph (1) are funds available to the military departments and Defense Agencies for depot-level maintenance and repair workloads for fiscal years 2002 through 2005.''

2001—Subsec. (e)(2)(B)(i). Pub. L. 107–107, § 343(b), substituted ''under the circumstances described in section 2563(c)(3) of this title'' for ''in a case of willful conduct or gross negligence''.

Subsecs. (f), (g). Pub. L. 107–107, § 342, added subsec. (f) and redesignated former subsec. (f) as (g).

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title III, § 341(a)(1)], substituted ''The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency,'' for ''The Secretary of Defense'' and ''of the designee'' for ''of the activity''.

Subsec. (a)(2). Pub. L. 106–398, § 1 [[div. A], title III, § 341(a)(2)], inserted ''of Defense'' after ''The Secretary'' and substituted ''Centers of Industrial and Technical Excellence'' for ''depot-level activities''.

Subsec. (a)(3). Pub. L. 106–398, § 1 [[div. A], title III, § 341(a)(3)], substituted ''operations at Centers of Industrial and Technical Excellence'' for ''depot-level operations'', ''by the Centers'' for ''by depot-level activities'', and ''of the Centers'' for ''of such activities''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title III, § 341(b)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall enable Centers of Industrial and Technical Excellence to enter into public-private cooperative arrangements for the performance of depot-level maintenance and repair at such Centers and shall encourage the use of such arrangements to maximize the utilization of the capacity at such Centers. A public-private cooperative arrangement under this subsection shall be known as a 'public-private partnership'.''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title III, § 341(c)(3)], added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title III, § 341(d)], inserted at end ''Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(d) of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.''

Pub. L. 106–398, § 1 [[div. A], title III, § 341(c)(1), (2)], redesignated subsec. (c) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''The policy required under subsection (a) shall include measures to enable a private sector entity that enters into a partnership arrangement under subsection (b) or leases excess equipment and facilities at a Center of Industrial and Technical Excellence pursuant to section 2471 of this title to perform additional work at the Center, subject to the limitations outlined in subsection (b) of such section, outside of the types of work normally assigned to the Center.''

Subsecs. (e), (f). Pub. L. 106–398, § 1 [[div. A], title III, § 341(e)], added subsecs. (e) and (f).

REPORTING REQUIREMENT

Pub. L. 105–85, div. A, title III, § 361(c), Nov. 18, 1997, 111 Stat. 1701, provided that, not later than Mar. 1, 1999, the Secretary of Defense was to submit to Congress a report on the policies established by the Secretary pursuant to this section to implement the requirements of this section.

§ 2475. Consolidation, restructuring, or reengineering of organizations, functions, or activities: notification requirements

(a) REQUIREMENT TO SUBMIT PLAN ANNUALLY.—Concurrently with the submission of the President's annual budget request under section 1105 of title 31, the Secretary of Defense shall submit

to Congress each Strategic Sourcing Plan of Action for the Department of Defense (as identified in the Department of Defense Interim Guidance dated February 29, 2000, or any successor Department of Defense guidance or directive), for the following year.

(b) NOTIFICATION OF DECISION TO EXECUTE PLAN.—If a decision is made to consolidate, restructure, or reengineer an organization, function, or activity of the Department of Defense pursuant to a Strategic Sourcing Plan of Action described in subsection (a), and such consolidation, restructuring, or reengineering would result in a manpower reduction affecting 50 or more personnel of the Department of Defense (including military and civilian personnel)—

(1) the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing that decision, including—

(A) a projection of the savings that will be realized as a result of the consolidation, restructuring, or reengineering, compared with the cost incurred by the Department of Defense to perform the function or to operate the organization or activity prior to such proposed consolidation, restructuring, or reengineering;

(B) a description of all missions, duties, or military requirements that will be affected as a result of the decision to consolidate, restructure, or reengineer the organization, function, or activity that was analyzed;

(C) the Secretary's certification that the consolidation, restructuring, or reengineering will not result in any diminution of military readiness;

(D) a schedule for performing the consolidation, restructuring, or reengineering; and

(E) the Secretary's certification that the entire analysis for the consolidation, restructuring, or reengineering is available for examination; and

(2) the head of the Defense Agency or the Secretary of the military department concerned may not implement the plan until 30 days after the date that the agency head or Secretary submits notification to the Committees on Armed Services of the Senate and House of Representatives of the intent to carry out such plan.

(Added Pub. L. 106–398, §1 [[div. A], title III, §353(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–72.)

§ 2476. Minimum capital investment for certain depots

(a) MINIMUM INVESTMENT.—Each fiscal year, the Secretary of a military department shall invest in the capital budgets of the covered depots of that military department a total amount equal to not less than six percent of the average total combined maintenance, repair, and overhaul workload funded at all the depots of that military department for the preceding three fiscal years.

(b) CAPITAL BUDGET.—For purposes of this section, the capital budget of a depot includes investment funds spent to modernize or improve the efficiency of depot facilities, equipment, work environment, or processes in direct support of depot operations, but does not include funds spent for sustainment of existing facilities, infrastructure, or equipment.

(c) WAIVER.—The Secretary of Defense may waive the requirement under subsection (a) with respect to a military department for a fiscal year if the Secretary determines that the waiver is necessary for reasons of national security. Whenever the Secretary makes such a waiver, the Secretary shall notify the congressional defense committees of the waiver and the reasons for the waiver.

(d) ANNUAL REPORT.—(1) Not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year under section 1105 of title 31, the Secretary of Defense shall submit to the congressional defense committees a report containing budget justification documents summarizing the level of capital investment for each military department as of the end of the preceding fiscal year.

(2) Each report submitted under paragraph (1) shall include the following:

(A) A specification of any statutory, regulatory, or operational impediments to achieving the requirement under subsection (a) with respect to each military department.

(B) A description of the benchmarks for capital investment established for each covered depot and military department and the relationship of the benchmarks to applicable performance measurement methods used in the private sector.

(C) If the requirement under subsection (a) is not met for a military department for the fiscal year covered by the report, a statement of the reasons why the requirement was not met and a plan of actions for meeting the requirement for the fiscal year beginning in the year in which such report is submitted.

(D) Separate consideration and reporting of Navy depots and Marine Corps depots.

(E) A table showing the funded workload performed by each covered depot for the preceding three fiscal years and actual investment funds allocated to each depot for the period covered by the report.

(e) COVERED DEPOT.—In this section, the term ''covered depot'' means any of the following:

(1) With respect to the Department of the Army:

(A) Anniston Army Depot, Alabama.

(B) Letterkenny Army Depot, Pennsylvania.

(C) Tobyhanna Army Depot, Pennsylvania.

(D) Corpus Christi Army Depot, Texas.

(E) Red River Army Depot, Texas.

(F) Watervliet Arsenal, New York.

(G) Rock Island Arsenal, Illinois.

(H) Pine Bluff Arsenal, Arkansas.

(I) Tooele Army Depot, Utah.

(2) With respect to the Department of the Navy:

(A) The following Navy depots:

(i) Fleet Readiness Center East Site, Cherry Point, North Carolina.

(ii) Fleet Readiness Center Southwest Site, North Island, California.

(iii) Fleet Readiness Center Southeast Site, Jacksonville, Florida.

(iv) Portsmouth Naval Shipyard, Maine.

(v) Pearl Harbor Naval Shipyard, Hawaii.

(vi) Puget Sound Naval Shipyard, Washington.

(vii) Norfolk Naval Shipyard, Virginia.

(B) The following Marine Corps depots:

(i) Marine Corps Logistics Base, Albany, Georgia.

(ii) Marine Corps Logistics Base, Barstow, California.

(3) With respect to the Department of the Air Force:

(A) Warner-Robins Air Logistics Center, Georgia.

(B) Ogden Air Logistics Center, Utah.

(C) Oklahoma City Air Logistics Center, Oklahoma.

(Added Pub. L. 109–364, div. A, title III, § 332(a), Oct. 17, 2006, 120 Stat. 2149; amended Pub. L. 110–417, [div. A], title III, § 327, Oct. 14, 2008, 122 Stat. 4418; Pub. L. 111–383, div. A, title X, § 1075(b)(36), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–81, div. A, title III, § 325, Dec. 31, 2011, 125 Stat. 1364.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–81, § 325(1), inserted ''maintenance, repair, and overhaul'' after ''combined''.

Subsec. (b). Pub. L. 112–81, § 325(2), substituted ''includes investment funds spent to modernize or improve the efficiency of depot facilities, equipment, work environment, or processes in direct support'' for ''includes investment funds spent on depot infrastructure, equipment, and process improvement in direct support'' and inserted '', but does not include funds spent for sustainment of existing facilities, infrastructure, or equipment'' before period at end.

Subsec. (d)(2)(D). Pub. L. 111–383 substituted ''Navy depots'' for ''Navy Depots''.

Subsec. (d)(2)(E). Pub. L. 112–81, § 325(3), which directed addition of subpar. (E) at end of subsec. (d), was executed by adding subpar. (E) at end of par. (2) of subsec. (d) to reflect the probable intent of Congress.

Subsec. (e)(1)(I). Pub. L. 112–81, § 325(4), added subpar. (I).

2008—Subsec. (d)(2)(D). Pub. L. 110–417, § 327(b)(1), added subpar. (D).

Subsec. (e)(1)(F) to (H). Pub. L. 110–417, § 327(a), added subpars. (F) to (H).

Subsec. (e)(2). Pub. L. 110–417, § 327(b)(2), inserted introductory provisions for subpars. (A) and (B), redesignated former subpars. (A) to (G) as cls. (i) to (vii), respectively, of subpar. (A) and realigned margins, and redesignated former subpars. (H) and (I) as cls. (i) and (ii), respectively, of subpar. (B) and realigned margins.

EFFECTIVE DATE

Pub. L. 109–364, div. A, title III, § 332(c), Oct. 17, 2006, 120 Stat. 2150, provided that: ''Section 2476 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2006.''

TWO YEAR PHASE-IN FOR DEPARTMENTS OF THE ARMY AND THE NAVY

Pub. L. 109–364, div. A, title III, § 332(d), Oct. 17, 2006, 120 Stat. 2150, provided that:

''(1) REDUCED PERCENTAGE OF REQUIRED INVESTMENT FOR FISCAL YEARS 2007 AND 2008.—The Secretary of the Army shall apply subsection (a) of section 2476 of title 10, United States Code, as added by subsection (a), to the covered depots of the Army, and the Secretary of the Navy shall apply such subsection to the covered depots of the Department of the Navy—

''(A) for fiscal year 2007, by substituting 'four percent' for 'six percent'; and

''(B) for fiscal year 2008, by substituting 'five percent' for 'six percent'.

''(2) COVERED DEPOTS.—In this subsection, the term 'covered depot' has the meaning given that term in subsection (e) of section 2476 of title 10, United States Code, as added by subsection (a).''

CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES

Subchapter		Sec.
I.	Defense Commissary and Exchange Systems	2481
II.	Relationship, Continuation, and Common Policies of Defense Commissary and Exchange Systems	2487
III.	Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities	2491

AMENDMENTS

2004—Pub. L. 108–375, div. A, title VI, § 651(a)(1), (3), Oct. 28, 2004, 118 Stat. 1964, added items for subchapters I to III and struck out items 2481 ''Existence of defense commissary system and exchange stores system'', 2482 ''Commissary stores: operation'', 2482a ''Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services'', 2483 ''Commissary stores: reimbursement for use of commissary facilities by military departments'', 2484 ''Commissary stores: use of appropriated funds to cover operating expenses'', 2485 ''Donation of unusable food: commissary stores and other activities'', 2486 ''Commissary stores: merchandise that may be sold; uniform surcharges and pricing'', 2487 ''Commissary stores: release of certain commercially valuable information to the public'', 2488 ''Nonappropriated fund instrumentalities: purchase of alcoholic beverages'', 2489 ''Overseas package stores: treatment of United States wines'', 2489a ''Sale or rental of sexually explicit material prohibited'', 2490a ''Combined exchange and commissary stores'', 2492 ''Overseas commissary and exchange stores: access and purchase restrictions'', 2493 ''Fisher Houses: administration as nonappropriated fund instrumentality'', and 2494 ''Uniform funding and management of morale, welfare, and recreation programs''.

2003—Pub. L. 108–136, div. A, title VI, § 652(b), Nov. 24, 2003, 117 Stat. 1522, added item 2481.

2002—Pub. L. 107–314, div. A, title III, § 323(b), Dec. 2, 2002, 116 Stat. 2511, added item 2494.

2001—Pub. L. 107–107, div. A, title III, §§ 332(b), 333(b), Dec. 28, 2001, 115 Stat. 1058, 1059, added item 2483 and substituted ''Commissary stores: release of certain commercially valuable information to the public'' for ''Commissary stores: limitations on release of sales information'' in item 2487.

2000—Pub. L. 106–398, § 1 [[div. A], title III, § 331(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, added item 2484 and struck out former item 2484 ''Commissary stores: expenses''.

1998—Pub. L. 105–261, div. A, title III, § 365(b), title IX, § 906(a)(2), Oct. 17, 1998, 112 Stat. 1987, 2095, added items 2492 and 2493.

1997—Pub. L. 105–85, div. A, title III, § 371(a)(1), (c)(1), Nov. 18, 1997, 111 Stat. 1705, substituted ''COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES'' for ''UTILITIES AND SERVICES'' as chapter heading and struck out items 2481 ''Utilities and services: sale; expansion and extension of systems and facilities'', 2483 ''Sale of electricity from alternate energy and cogeneration production facilities'', and 2490 ''Utility services: furnishing for certain buildings''.

1996—Pub. L. 104–201, div. A, title III, §§ 341(a)(2), 343(a)(2), Sept. 23, 1996, 110 Stat. 2489, 2490, added items 2482a and 2489a.

Pub. L. 104–106, div. A, title III, §§ 331(b), 336(a)(2), Feb. 10, 1996, 110 Stat. 260, 264, substituted ''Commissary

stores: operation'' for ''Commissary stores: private operation'' in item 2482 and added item 2490a.

1993—Pub. L. 103–160, div. A, title XI, §1182(a)(8)(B), Nov. 30, 1993, 107 Stat. 1771, struck out item 2490a ''Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds''.

1992—Pub. L. 102–484, div. A, title III, §§362(b), 364(b)(1), Oct. 23, 1992, 106 Stat. 2380, 2382, substituted ''limitations'' for ''limitation'' in item 2487 and added item 2490a.

1990—Pub. L. 101–510, div. A, title III, §324(b)(2), Nov. 5, 1990, 104 Stat. 1531, amended item 2485 generally, substituting ''Donation of unusable food: commissary stores and other activities'' for ''Commissary stores: donation of unmarketable food''.

1988—Pub. L. 100–370, §1(j)(2), July 19, 1988, 102 Stat. 848, added item 2490.

1987—Pub. L. 100–180, div. A, title III, §§311(a)(2), 313(a)(3), Dec. 4, 1987, 101 Stat. 1073, 1074, inserted ''and pricing'' in item 2486 and added item 2489.

1986—Pub. L. 99–661, div. A, title III, §313(c), Nov. 14, 1986, 100 Stat. 3853, added items 2486, 2487, and 2488.

1985—Pub. L. 99–145, title XIV, §1460(b), Nov. 8, 1985, 99 Stat. 765, added item 2485.

1984—Pub. L. 98–525, title XIV, §1401(i)(2), Oct. 19, 1984, 98 Stat. 2620, added item 2484.

Pub. L. 98–407, title VIII, §810(b), Aug. 28, 1984, 98 Stat. 1523, added item 2483.

SUBCHAPTER I—DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

Sec.

2481. Defense commissary and exchange systems: existence and purpose.
2482. Commissary stores: criteria for establishment or closure; store size.
2483. Commissary stores: use of appropriated funds to cover operating expenses.
2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing.
2485. Commissary stores: operation.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title X, §1071(a)(18), Oct. 17, 2006, 120 Stat. 2399, inserted period at end of item 2481.

2004—Pub. L. 108–375, div. A, title VI, §651(a)(3), Oct. 28, 2004, 118 Stat. 1964, added subchapter heading and items 2481 to 2485.

§ 2481. Defense commissary and exchange systems: existence and purpose

(a) SEPARATE SYSTEMS.—The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title.

(b) PURPOSE OF SYSTEMS.—The defense commissary system and the exchange system are intended to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

(c) OVERSIGHT.—(1) The Secretary of Defense shall designate a senior official of the Department of Defense to oversee the operation of both the defense commissary system and the exchange system.

(2) The Secretary of Defense shall establish an executive governing body to provide advice to the senior official designated under paragraph (1) regarding the operation of the defense commissary and exchange systems and to ensure the complementary operation of the systems.

(d) REDUCED PRICES DEFINED.—In this section, the term ''reduced prices'' means prices for food and other merchandise determined using the price setting process specified in section 2484 of this title.

(Added Pub. L. 108–375, div. A, title VI, §651(a)(3), Oct. 28, 2004, 118 Stat. 1965.)

PRIOR PROVISIONS

A prior section 2481, added Pub. L. 108–136, div. A, title VI, §652(a), Nov. 24, 2003, 117 Stat. 1522, related to the existence of defense commissary system and exchange stores system, prior to repeal by Pub. L. 108–375, div. A, title VI, §651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

Another prior section 2481 was renumbered section 2686 of this title.

PLAN TO OBTAIN BUDGET-NEUTRALITY FOR THE DEFENSE COMMISSARY SYSTEM AND THE MILITARY EXCHANGE SYSTEM

Pub. L. 114–92, div. A, title VI, §651, Nov. 25, 2015, 129 Stat. 854, provided that:

''(a) IN GENERAL.—Not later than March 1, 2016, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth a comprehensive plan to achieve by October 1, 2018, budget-neutrality in the delivery of commissary and exchange benefits while meeting the benchmarks set forth in subsection (c). In preparing the report, the Secretary shall consider the report required by section 634 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3406) and any other previous reports, studies, and surveys of matters appropriate to the report.

''(b) REPORT ELEMENTS.—The report required by subsection (a) shall include the following:

''(1) A description of any modifications to the commissary and exchange benefit systems the Secretary considers appropriate to obtain budget-neutrality in the delivery of commissary and exchange benefits, including the following:

''(A) The establishment of common business processes, practices, and systems to exploit synergies between the operations of defense commissaries and exchanges and to optimize the operations of the resale system and the benefits provided by the commissaries and exchanges.

''(B) The privatization of the defense commissary system and the military exchange system, in whole or in part.

''(C) Engagement of major commercial grocery retailers or other private sector entities to determine their willingness to provide eligible beneficiaries with discount savings on grocery products and certain household goods.

''(D) The closure of commissaries in locations in close proximity to other commissaries or in locations where commercial alternatives, through major grocery retailers, may be available.

''(2) An analysis of different pricing constructs to improve or enhance the delivery of commissary and exchange benefits.

''(3) A description of the impact of any modifications described pursuant to paragraph (1) on Morale, Welfare and Recreation (MWR) quality-of-life programs.

''(4) Such recommendations for legislative action as the Secretary considers appropriate to achieve by October 1, 2018, budget-neutrality in the delivery of commissary and exchange benefits while meeting the benchmarks set forth in subsection (c).

''(c) BENCHMARKS.—The report required by subsection (a) shall ensure—

''(1) the maintenance of high levels of customer satisfaction in the delivery of commissary and exchange benefits;

''(2) the provision of high quality products; and

''(3) the sustainment of discount savings to eligible beneficiaries.

''(d) COMPTROLLER GENERAL ASSESSMENT OF PLAN.—Not later than 120 days after the submittal of the report required by subsection (a), the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth an assessment by the Comptroller General of the plan to achieve budget-neutrality in the delivery of commissary and exchange benefits while meeting the benchmarks set forth in subsection (c) as set forth in the report required by subsection (a).

''(e) PILOT PROGRAMS.—

''(1) PROGRAMS AUTHORIZED.—After the reports required by subsections (a) and (d) have been submitted as described in such subsections, the Secretary may, notwithstanding any requirement in chapter 147 of title 10, United States Code, conduct one or more pilot programs to evaluate the feasibility and advisability of processes and methods for achieving budget-neutrality in the delivery of commissary and exchange benefits and other applicable benchmarks in accordance with this section. The Secretary may authorize any commissary or exchange, or private sector entity, participating in any such pilot program to establish appropriate prices in response to market conditions and customer demand, provided that the level of savings required by paragraph (3) is maintained.

''(2) BENCHMARKS.—If the Secretary conducts a pilot program under this subsection, the Secretary shall establish specific, measurable benchmarks for measuring success in the provision of high quality grocery goods and products, discount savings to patrons, and high levels of customer satisfaction while achieving budget-neutrality in the delivery of commissary and exchange benefits under the pilot program.

''(3) REQUIRED SAVINGS TO PATRONS.—The Secretary shall ensure that the level of savings to commissary and exchange patrons under any pilot program under this subsection is not less than the level of savings to such patrons before the implementation of such pilot program, as follows:

''(A) Before commencing a pilot program the Secretary shall establish a baseline of savings to patrons achieved for each commissary or exchange to participate in such pilot program by comparing prices charged by such commissary or exchange for a representative market basket of goods to prices charged by local competitors for the same market basket of goods.

''(B) After commencement of such pilot program, the Secretary shall ensure that each commissary or exchange, or private sector entity, participating in such pilot program conducts market-basket price comparisons not less than once a month and adjusts pricing as necessary to ensure that pricing achieves savings to patrons under such pilot program that are reasonably consistent with the baseline savings for the commissary or exchange established pursuant to subparagraph (A).

''(4) DURATION OF AUTHORITY.—The authority of the Secretary to carry out a pilot program under this subsection shall expire on the date that is five years after the date of the enactment of this Act [Nov. 25, 2015]. However, if a pilot program achieves budget-neutrality in the delivery of commissary and exchange benefits and other applicable benchmarks, as measured using the benchmarks required by paragraph (2), the Secretary may continue the pilot program for an additional period of up to five years.

''(5) REPORTS.—

''(A) INITIAL REPORTS.—If the Secretary conducts a pilot program under this subsection, the Secretary shall, not later than 30 days before commencing the pilot program, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program, including the following:

''(i) A description of the pilot program.

''(ii) The provisions, if any, of chapter 147 of title 10, United States Code, that will be waived in the conduct of the pilot program.

''(B) FINAL REPORTS.—Not later than 90 days after the date of the completion of any pilot program under this subsection or the date of the commencement of an extension of a pilot program under paragraph (4), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program, including the following:

''(i) A description and assessment of the pilot program.

''(ii) Such recommendations for administrative or legislative action as the Secretary considers appropriate in light of the pilot program.''

§ 2482. Commissary stores: criteria for establishment or closure; store size

(a) PRIMARY CONSIDERATION FOR ESTABLISHMENT.—The needs of members of the armed forces on active duty and the needs of dependents of such members shall be the primary consideration whenever the Secretary of Defense—

(1) assesses the need to establish a commissary store; and

(2) selects the actual location for the store.

(b) STORE SIZE.—In determining the size of a commissary store, the Secretary of Defense shall take into consideration the number of all authorized patrons of the defense commissary system who are likely to use the store.

(c) CLOSURE CONSIDERATIONS.—(1) Whenever assessing whether to close a commissary store, the effect of the closure on the quality of life of members and dependents referred to in subsection (a) who use the store and on the welfare and security of the military community in which the commissary is located shall be a primary consideration.

(2) Whenever assessing whether to close a commissary store, the Secretary of Defense shall also consider the effect of the closure on the quality of life of members of the reserve components of the armed forces.

(d) CONGRESSIONAL NOTIFICATION.—(1) The closure of a commissary store in the United States shall not take effect until the end of the 90-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the reasons supporting the closure. The written notice shall include an assessment of the impact closure will have on the quality of life for military patrons and the welfare and security of the military community in which the commissary is located.

(2) Paragraph (1) shall not apply in the case of the closure of a commissary store as part of the closure of a military installation under a base closure law.

(Added Pub. L. 108–375, div. A, title VI, § 651(a)(3), Oct. 28, 2004, 118 Stat. 1965; amended Pub. L. 112–81, div. A, title X, § 1064(6), Dec. 31, 2011, 125 Stat. 1587.)

PRIOR PROVISIONS

A prior section 2482 was renumbered section 2485 of this title.

A prior section 2482a was renumbered section 2492 of this title.

AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 112–81 inserted ''in the United States'' after ''commissary store''.

PROHIBITION ON CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEPARTMENT OF DEFENSE RETAIL SYSTEMS

Pub. L. 105–261, div. A, title III, § 367, Oct. 17, 1998, 112 Stat. 1987, which provided that the operation and administration of the defense retail systems could not be consolidated or otherwise merged unless the consolidation or merger was specifically authorized by a law enacted after Oct. 17, 1998, was repealed by Pub. L. 108–375, div. A, title VI, § 651(e)(3), Oct. 28, 2004, 118 Stat. 1972.

§ 2483. Commissary stores: use of appropriated funds to cover operating expenses

(a) OPERATION OF AGENCY AND SYSTEM.—Except as otherwise provided in this title, the operation of the Defense Commissary Agency and the defense commissary system shall be funded using such amounts as are appropriated for such purpose.

(b) OPERATING EXPENSES OF COMMISSARY STORES.—Appropriated funds shall be used to cover the expenses of operating commissary stores and central product processing facilities of the defense commissary system. For purposes of this subsection, operating expenses include the following:

(1) Salaries and wages of employees of the United States, host nations, and contractors supporting commissary store operations.

(2) Utilities.

(3) Communications.

(4) Operating supplies and services.

(5) Second destination transportation costs within or outside the United States.

(6) Any cost associated with above-store-level management or other indirect support of a commissary store or a central product processing facility, including equipment maintenance and information technology costs.

(c) SUPPLEMENTAL FUNDS FOR COMMISSARY OPERATIONS.—Amounts appropriated to cover the expenses of operating the Defense Commissary Agency and the defense commissary system may be supplemented with additional funds from manufacturers' coupon redemption fees, handling fees for tobacco products, and other amounts received as reimbursement for other support activities provided by commissary activities.

(Added Pub. L. 98–525, title XIV, § 1401(i)(1), Oct. 19, 1984, 98 Stat. 2619, § 2484; amended Pub. L. 106–398, § 1 [[div. A], title III, § 331(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59; Pub. L. 108–136, div. A, title VI, § 654, Nov. 24, 2003, 117 Stat. 1523; renumbered § 2483, Pub. L. 108–375, div. A, title VI, § 651(a)(2), (4), Oct. 28, 2004, 118 Stat. 1964, 1966.)

PRIOR PROVISIONS

A prior section 2483, added Pub. L. 107–107, div. A, title III, § 332(a), Dec. 28, 2001, 115 Stat. 1058, related to reimbursement for use of commissary facilities by military departments, prior to repeal by Pub. L. 108–375, div. A, title VI, § 651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

Another prior section 2483 was renumbered section 2916 of this title.

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8010], 98 Stat. 1904, 1924.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 713, 97 Stat. 1440.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 714], 96 Stat. 1833, 1852.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 714, 95 Stat. 1580.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 715, 94 Stat. 3083.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 715, 93 Stat. 1155.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 815, 92 Stat. 1246.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 814, 91 Stat. 902.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 714, 90 Stat. 1293.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 714, 90 Stat. 171.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 814, 88 Stat. 1227.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 714, 87 Stat. 1040.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 714, 86 Stat. 1198.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 714, 85 Stat. 729.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 814, 84 Stat. 2032.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 614, 83 Stat. 482.

Oct. 17, 1968, Pub. L. 90–580, title V, § 513, 82 Stat. 1132.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 613, 81 Stat. 244.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 613, 80 Stat. 993.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 613, 79 Stat. 875.

Aug. 19, 1964, Pub. L. 88–446, title V, § 513, 78 Stat. 477.

Oct. 17, 1963, Pub. L. 88–149, title V, § 513, 77 Stat. 266.

Aug. 9, 1962, Pub. L. 87–577, title V, § 513, 76 Stat. 330.

Aug. 17, 1961, Pub. L. 87–144, title VI, § 613, 75 Stat. 377.

July 7, 1960, Pub. L. 86–601, title V, § 513, 74 Stat. 351.

Aug. 18, 1959, Pub. L. 86–166, title V, § 613, 73 Stat. 380.

Aug. 22, 1958, Pub. L. 85–724, title VI, § 613, 72 Stat. 725.

Aug. 2, 1957, Pub. L. 85–117, title VI, § 614, 71 Stat. 325.

July 2, 1956, ch. 488, title VI, § 614, 70 Stat. 469.

July 13, 1955, ch. 358, title VI, § 617, 69 Stat. 317.

June 30, 1954, ch. 432, title VII, § 717, 68 Stat. 353.

Aug. 1, 1953, ch. 305, title VI, § 624, 67 Stat. 353.

July 10, 1952, ch. 630, title VI, § 627, 66 Stat. 535.

Oct. 18, 1951, ch. 512, title VI, § 628, 65 Stat. 449.

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2484 of this title as this section.

2003—Subsec. (a). Pub. L. 108–136, § 654(a)(1), substituted ''shall'' for ''may''.

Subsec. (b). Pub. L. 108–136, § 654(a)(2), substituted ''shall'' for ''may'' in introductory provisions.

Subsec. (c). Pub. L. 108–136, § 654(b), added subsec. (c).

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (d) providing that funds available to the Department of Defense could be used to pay for certain costs in connection with the operation of commissary stores only on a reimbursable basis and allowed transportation and utilities to be furnished for the operation of those stores outside of the United States or in Alaska and Hawaii.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title III, § 331(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2001.''

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing

(a) IN GENERAL.—As provided in section 2481(a) of this title, commissary stores are intended to be similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items in the following categories:

(1) Meat, poultry, seafood, and fresh-water fish.

(2) Nonalcoholic beverages.

(3) Produce.

(4) Grocery food, whether stored chilled, frozen, or at room temperature.

(5) Dairy products.

(6) Bakery and delicatessen items.

(7) Nonfood grocery items.

(8) Tobacco products.

(9) Health and beauty aids.

(10) Magazines and periodicals.

(c) INCLUSION OF OTHER MERCHANDISE ITEMS.—(1) The Secretary of Defense may authorize the sale in, at, or by commissary stores of merchandise not covered by a category specified in subsection (b). The Secretary shall notify Congress of all merchandise authorized for sale pursuant to this paragraph, as well as the removal of any such authorization.

(2) Notwithstanding paragraph (1), the Department of Defense military resale system shall continue to maintain the exclusive right to operate convenience stores, shopettes, and troop stores, including such stores established to support contingency operations.

(3)(A) A military exchange shall be the vendor for the sale of tobacco products in commissary stores and may be the vendor for such merchandise as may be authorized for sale in commissary stores under paragraph (1). Except as provided in subparagraph (B), subsections (d) and (e) shall not apply to the pricing of such an item when a military exchange serves as the vendor of the item. Commissary store and exchange prices shall be comparable for such an item.

(B) When a military exchange is the vendor of tobacco products or other merchandise authorized for sale in a commissary store under paragraph (1), any revenue above the cost of procuring the merchandise shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (d).

(d) UNIFORM SALES PRICE SURCHARGE.—The Secretary of Defense shall apply a uniform surcharge equal to five percent on the sales prices established under subsection (e) for each item of merchandise sold in, at, or by commissary stores.

(e) SALES PRICE ESTABLISHMENT.—(1) The Secretary of Defense shall establish the sales price of each item of merchandise sold in, at, or by commissary stores at the level that will recoup the actual product cost of the item.

(2) Any change in the pricing policies for merchandise sold in, at, or by commissary stores shall not take effect until the Secretary of Defense submits written notice of the proposed change to Congress and a period of 90 days of continuous session of Congress expires following the date on which notice was received. For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment or recess of more than three days to a day certain are excluded in a computation of such 90-day period.

(3) The sales price of merchandise and services sold in, at, or by commissary stores shall be adjusted to cover the following:

(A) The cost of first destination commercial transportation of the merchandise in the United States to the place of sale.

(B) The actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of commissary stores.

(f) PROCUREMENT OF COMMERCIAL ITEMS USING PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—The Secretary of Defense may use the exception provided in section 2304(c)(5) of this title for the procurement of any commercial item (including brand-name and generic items) for resale in, at, or by commissary stores.

(g) SPECIAL RULES FOR CERTAIN MERCHANDISE.—(1) Notwithstanding the general requirement that merchandise sold in, at, or by commissary stores be commissary store inventory, the Secretary of Defense may authorize the sale of tobacco products as noncommissary store inventory. Except as provided in paragraph (2), subsections (d) and (e) shall not apply to the pricing of such merchandise items.

(2) When tobacco products are authorized for sale in a commissary store as noncommissary store inventory, any revenue above the cost of procuring the tobacco products shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (d).

(h) USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1)(A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) only—

(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

(B) In subparagraph (A), the term ''physical infrastructure'' includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(2)(A) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges

under subsection (d) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(B) In subparagraph (A), the term ''construction'', with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(3)(A) The Secretary of Defense may use the proceeds derived from surcharges imposed under subsection (d) in connection with sales of commissary merchandise through initiatives described in subparagraph (B) to offset the cost of such initiatives.

(B) Subparagraph (A) applies with respect to initiatives, utilizing temporary and mobile equipment, intended to provide members of reserve components, retired members, and other persons eligible for commissary benefits, but without reasonable access to commissary stores, improved access to commissary merchandise.

(4) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (d) for any use specified in paragraph (1), (2), or (3), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

(5) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in paragraphs (1), (2), and (3):

(A) Sale of recyclable materials.
(B) Sale of excess and surplus property.
(C) License fees.
(D) Royalties.
(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(Added Pub. L. 99–661, div. A, title III, §313(a), Nov. 14, 1986, 100 Stat. 3852, §2486; amended Pub. L. 100–180, div. A, title III, §313(a)(1), (2), Dec. 4, 1987, 101 Stat. 1073, 1074; Pub. L. 104–201, div. A, title III, §342(a), Sept. 23, 1996, 110 Stat. 2489; Pub. L. 105–85, div. A, title III, §§372(a)–(e), 373, Nov. 18, 1997, 111 Stat. 1706, 1707; Pub. L. 105–261, div. A, title III, §364, Oct. 17, 1998, 112 Stat. 1986; Pub. L. 106–65, div. A, title X, §1066(a)(21), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106–398, §1 [[div. A], title III, §§332(a), 334], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, 1654A–60; Pub. L. 107–314, div. A, title X, §1041(a)(14), Dec. 2, 2002, 116 Stat. 2645; renumbered §2484 and amended Pub. L. 108–375, div. A, title VI, §651(a)(2), (4), (5), Oct. 28, 2004, 118 Stat. 1964, 1966; Pub. L. 109–364, div. A, title VI, §661, title X, §1071(g)(6), Oct. 17, 2006, 120 Stat. 2262, 2402; Pub. L. 110–417, [div. A], title VI, §641, Oct. 14, 2008, 122 Stat. 4493; Pub. L. 113–291, div. A, title VI, §631, Dec. 19, 2014, 128 Stat. 3405.)

PRIOR PROVISIONS

A prior section 2484 was renumbered section 2483 of this title.

AMENDMENTS

2014—Subsec. (f). Pub. L. 113–291 amended subsec. (f) generally. Prior to amendment, text read as follows: ''The Secretary of Defense may not use the exception provided in section 2304(c)(5) of this title regarding the procurement of a brand-name commercial item for resale in, at, or by commissary stores unless the commercial item is regularly sold outside of commissary stores under the same brand name as the name by which the commercial item will be sold in, at, or by commissary stores. In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.''

2008—Subsec. (h)(3) to (5). Pub. L. 110–417 added par. (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and substituted ''paragraph (1), (2), or (3)'' for ''paragraph (1) or (2)'' in par. (4).

2006—Pub. L. 109–364, §1071(g)(6), made technical correction to directory language of Pub. L. 108–375, §651(a)(5)(C). See 2004 Amendment notes for subsecs. (a) to (d) below.

Subsec. (c)(3). Pub. L. 109–364, §661(a), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), subsections'' for ''Subsections'', and added subpar. (B).

Subsec. (g). Pub. L. 109–364, §661(b), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), subsections'' for ''Subsections'', and added par. (2).

2004—Pub. L. 108–375, §651(a)(2), (4), renumbered section 2486 of this title as this section.

Subsecs. (a) to (c). Pub. L. 108–375, §651(a)(5)(C), as amended by Pub. L. 109–364, §1071(g)(6), added subsecs. (a) to (c).

Pub. L. 108–375, §651(a)(5)(A), struck out subsecs. (a) to (c) which related to operation of the Defense Commissary Agency and the defense commissary system, use of funds to cover expenses of operating commissary stores and central product processing facilities, and supplemental funds for commissary operations, respectively.

Subsec. (d). Pub. L. 108–375, §651(a)(5)(C), as amended by Pub. L. 109–364, §1071(g)(6), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108–375, §651(a)(5)(B), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 108–375, §651(a)(5)(D), struck out ''(consistent with this section and section 2685 of this title)'' before period at end.

Subsec. (f). Pub. L. 108–375, §651(a)(5)(B), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 108–375, §651(a)(5)(E), substituted ''Subsections (d) and (e)'' for ''Subsections (c) and (d)'' before ''shall not apply to the pricing''.

Pub. L. 108–375, §651(a)(5)(A), (B), redesignated subsec. (f) as (g) and struck out heading and text of former subsec. (g), which related to the imposition of charges by the Secretary of Defense for the collection of dishonored checks.

Subsec. (h). Pub. L. 108–375, §651(a)(5)(F), added subsec. (h).

2002—Subsec. (b)(12). Pub. L. 107–314 substituted '', except that the Secretary shall notify Congress of any addition of, or change in, a merchandise category under this paragraph.'' for '', except that the Secretary shall submit to Congress, not later than March 1 of each year, a report describing—

''(A) any addition of, or change in, a merchandise category proposed to be made under this paragraph during the one-year period beginning on that date; and

''(B) those additions and changes in merchandise categories actually made during the preceding one-year period.''

2000—Subsec. (b)(11), (12). Pub. L. 106–398, §1 [[div. A], title III, §334(a)], added par. (11) and redesignated former par. (11) as (12).

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title III, §332(a)(1)], substituted ''subsection (d) or section'' for ''section 2484(b) or''.

Subsec. (d)(1). Pub. L. 106–398, §1 [[div. A], title III, §332(a)(2)(A)], substituted ''section 2685'' for ''sections 2484 and 2685''.

Subsec. (d)(3). Pub. L. 106–398, §1 [[div. A], title III, §332(a)(2)(B)], added par. (3).

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title III, §334(b)], struck out ''(1)'' before ''Notwithstanding'', substituted ''tobacco products'' for ''items in the merchandise categories specified in paragraph (2)'', and struck out par. (2) which read as follows: ''The merchandise categories referred to in paragraph (1) are as follows:

''(A) Magazines and other periodicals.

''(B) Tobacco products.''

1999—Subsec. (c). Pub. L. 106–65 substituted ''November 18, 1997,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998,'' in second sentence.

1998—Subsec. (g). Pub. L. 105–261 added subsec. (g).

1997—Subsec. (a). Pub. L. 105–85, §372(e)(1), inserted heading.

Subsec. (b). Pub. L. 105–85, §372(a)(1), inserted heading and substituted ''Merchandise sold in, at, or by commissary stores may include items only in the following categories:'' for ''Merchandise sold in commissary stores may include items in the following categories:'' in introductory provisions.

Subsec. (b)(11). Pub. L. 105–85, §372(a)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''Other categories designated in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense.''

Subsec. (c). Pub. L. 105–85, §372(b), inserted heading, substituted ''in, at, or by commissary stores.'' for ''in commissary stores.'', and inserted at end ''Effective on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998, the uniform percentage shall be equal to five percent and may not be changed except by a law enacted after such date.''

Subsec. (d). Pub. L. 105–85, §372(c), inserted heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prescribe regulations establishing uniform pricing policies for merchandise authorized for sale by this section. The policies in the regulations shall—

''(1) require the establishment of a sales price of each item of merchandise at a level which will recoup the actual product cost of the item (consistent with this section and sections 2484 and 2685 of this title); and

''(2) promote the lowest practical price of merchandise sold at commissary stores.''

Subsec. (e). Pub. L. 105–85, §373, inserted at end ''In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.''

Pub. L. 105–85, §372(e)(2), inserted heading and substituted ''in, at, or by commissary stores'' for ''in commissary stores'' in two places.

Subsec. (f). Pub. L. 105–85, §372(d), added subsec. (f).

1996—Subsec. (e). Pub. L. 104–201 added subsec. (e).

1987—Pub. L. 100–180, §313(a)(2), inserted ''and pricing'' in section catchline.

Subsec. (d). Pub. L. 100–180, §313(a)(1), added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, §1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(6) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title III, §332(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2001.''

REGULATIONS

Pub. L. 100–180, div. A, title III, §313(b), Dec. 4, 1987, 101 Stat. 1074, required Secretary of Defense to prescribe regulations required by subsec. (d) of this section not later than 90 days after Dec. 4, 1987.

SAVINGS PROVISION

Pub. L. 104–201, div. A, title III, §342(b), Sept. 23, 1996, 110 Stat. 2489, provided that: ''Section 2486(e) [now 2484(e)] of title 10, United States Code, as added by subsection (a), shall not affect the terms, conditions, or duration of any contract or other agreement entered into by the Secretary of Defense before the date of the enactment of this Act [Sept. 23, 1996] for the procurement of commercial items for resale in commissary stores.''

COMPETITIVE PRICING OF LEGAL CONSUMER TOBACCO PRODUCTS SOLD IN DEPARTMENT OF DEFENSE RETAIL STORES

Pub. L. 113–291, div. A, title VI, §633, Dec. 19, 2014, 128 Stat. 3405, provided that:

''(a) PROHIBITION ON BANNING SALE OF LEGAL CONSUMER TOBACCO PRODUCTS.—The Secretary of Defense and the Secretaries of the military departments may not take any action to implement any new policy that would ban the sale of any legal consumer tobacco product category sold as of January 1, 2014, within the defense retail systems or on any Department of Defense vessel at sea.

''(b) USE OF PRICES COMPARABLE TO LOCAL PRICES.—The Secretary of Defense shall issue regulations regarding the pricing of tobacco and tobacco-related products sold in an outlet of the defense retail systems inside the United States, including territories and possessions of the United States, to prohibit the sale of a product at a price below the most competitive price for that product in the local community.

''(c) APPLICATION TO OVERSEAS DEFENSE RETAIL SYSTEMS.—The regulations required by subsection (b) shall direct that the price of a tobacco or tobacco-related product sold in an outlet of the defense retail systems outside of the United States shall be within the range of prices established for that product in outlets of the defense retail systems inside the United States.

''(d) DEFENSE RETAIL SYSTEMS DEFINED.—In this section, the term 'defense retail systems' has the meaning given that term in section 2487(b)(2) of title 10, United States Code.''

Pub. L. 114–113, div. C, title VIII, §8033, Dec. 18, 2015, 129 Stat. 2358, provided that: ''The Secretary of Defense shall issue regulations to prohibit the sale of any tobacco or tobacco-related products in military resale outlets in the United States, its territories and possessions at a price below the most competitive price in the local community: *Provided*, That such regulations shall direct that the prices of tobacco or tobacco-related products in overseas military retail outlets shall be within the range of prices established for military retail system stores located in the United States.''

Similar provisions were contained in the following appropriation act:

Pub. L. 113–235, div. C, title VIII, §8073, Dec. 16, 2014, 128 Stat. 2271.

TEST PROGRAM OF SALE OF CERTAIN ITEMS IN COMMISSARY STORES

Pub. L. 108–375, div. A, title VI, §651(g), Oct. 28, 2004, 118 Stat. 1972, provided that:

''(1) The Secretary of Defense may conduct a test program involving the sale of telephone cards, film, and one-time use cameras in not less than 10 commissary stores for a period selected by the Secretary, but not less than six months.

''(2) Within 90 days after the completion of the first year of the test program or within 90 days after the completion of the test program, whichever occurs first, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed

Services of the House of Representatives a report containing the results of the test program. The report shall include an analysis of the impact of the sale of such items on the exchange dividend and such recommendations as the Secretary considers appropriate regarding legislative changes necessary to expand the sale of such items in commissary stores.''

REPORT ON MERCHANDISE CATEGORIES

Pub. L. 105–85, div. A, title III, § 372(f), Nov. 18, 1997, 111 Stat. 1707, provided that, not later than 30 days after Nov. 18, 1997, the Secretary of Defense was to submit to Congress a report specifying the merchandise categories authorized for sale sold in, at, or by commissary stores pursuant to regulations prescribed under subsection (b)(11) of this section, as in effect before Nov. 18, 1997.

§ 2485. Commissary stores: operation

(a) PRIVATE OPERATION.—Under such regulations as the Secretary of Defense may approve, private persons may operate selected commissary store functions, except that such functions may not include functions relating to the procurement of products to be sold in a commissary store or functions relating to the overall management of a commissary system or the management of a commissary store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.

(b) CONTRACTS WITH OTHER AGENCIES AND INSTRUMENTALITIES.—(1) The Defense Commissary Agency, and any other agency of the Department of Defense that supports the operation of the commissary system, may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain services beneficial to the efficient management and operation of the commissary system. However, the Defense Commissary Agency may not pay for any such service provided by the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 107 of title 41.

(2) A commissary store operated by a nonappropriated fund instrumentality of the Department of Defense shall be operated in accordance with section 2483 of this title. Subject to such section, the Secretary of Defense may authorize a transfer of goods, supplies, and facilities of, and funds appropriated for, the Defense Commissary Agency or any other agency of the Department of Defense that supports the operation of the commissary system to a nonappropriated fund instrumentality for the operation of a commissary store.

(c) GOVERNING BOARD.—(1) Notwithstanding section 192(d) of this title, the Secretary of Defense shall establish a governing board for the commissary system to provide advice to the Secretary regarding the prudent operation of the commissary system and to assist in the overall supervision of the Defense Commissary Agency. The Secretary may authorize the board to have such supervisory authority as the Secretary considers appropriate to permit the board to carry out its responsibilities.

(2) The Secretary of Defense shall determine the membership of the governing board, which shall include, at a minimum, appropriate representatives from each military department. The chairman of the governing board shall be a commissioned officer or member of the senior executive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to logistics, military personnel, military entitlements or other experiences of value of management of commissaries.

(3) The governing board shall be accountable only to the Secretary of Defense and to the civilian officer of the Department of Defense who is assigned the responsibility for the overall supervision of the Defense Commissary Agency pursuant to section 192(a) of this title. The Director of the Defense Commissary Agency shall be accountable to and report to the board.

(d) ASSIGNMENT OF ACTIVE DUTY MEMBERS.—(1) Except as provided in paragraph (2), members of the armed forces on active duty may not be assigned to the operation of a commissary store.

(2)(A) The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

(B) Not more than 18 members (in addition to the officer referred to in subparagraph (A)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subparagraph to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisers in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

(e) REIMBURSEMENT FOR USE OF COMMISSARY FACILITIES BY MILITARY DEPARTMENTS.—(1) The Secretary of a military department shall pay the Defense Commissary Agency the amount determined under paragraph (2) for any use of a commissary facility by the military department for a purpose other than commissary sales or operations in support of commissary sales.

(2) The amount payable under paragraph (1) for use of a commissary facility by a military department shall be equal to the share of depreciation of the facility that is attributable to that use, as determined under regulations prescribed by the Secretary of Defense.

(3) The Director of the Defense Commissary Agency shall credit amounts paid under paragraph (1) for use of a facility to an appropriate account to which proceeds of a surcharge applied under section 2484(d) of this title are credited.

(4) This subsection applies with respect to a commissary facility that is acquired, constructed, converted, expanded, installed, or otherwise improved (in whole or in part) with the proceeds of a surcharge applied under section 2484(d) of this title.

(f) DONATION OF UNUSABLE FOOD.—(1) The Secretary of Defense may donate food described in paragraph (2) to any of the following entities:

(A) A charitable nonprofit food bank that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

(B) A State or local agency that is designated by the Secretary of Defense or the

Secretary of Health and Human Services as authorized to receive such donations.

(C) A chapter or other local unit of a recognized national veterans organization that provides services to persons without adequate shelter and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

(D) A not-for-profit organization that provides care for homeless veterans and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

(2) Food that may be donated under this subsection is commissary store food, mess food, meals ready-to-eat (MREs), rations known as humanitarian daily rations (HDRs), and other food available to the Secretary of Defense that—

(A) is certified as edible by appropriate food inspection technicians;

(B) would otherwise be destroyed as unusable; and

(C) in the case of commissary store food, is unmarketable and unsaleable.

(3) In the case of commissary store food, a donation under this subsection shall take place at the site of the commissary store that is donating the food.

(4) This subsection does not authorize any service (including transportation) to be provided in connection with a donation under this subsection.

(g) COLLECTION OF DISHONORED CHECKS.—(1) The Secretary of Defense may impose a charge for the collection of a check accepted at a commissary store that is not honored by the financial institution on which the check is drawn. The imposition and amounts of charges shall be consistent with practices of commercial grocery stores regarding dishonored checks.

(2)(A) The following persons are liable to the United States for the amount of a check referred to in paragraph (1) that is returned unpaid to the United States, together with any charge imposed under that paragraph:

(i) The person who presented the check.

(ii) Any person whose status and relationship to the person who presented the check provide the basis for that person's eligibility to make purchases at a commissary store.

(B) Any amount for which a person is liable under subparagraph (A) may be collected by deducting and withholding such amount from any amounts payable to that person by the United States.

(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund.

(4) Appropriated funds may be used to pay any costs incurred in the collection of checks and charges referred to in paragraph (1). An appropriation account charged a cost under the preceding sentence shall be reimbursed the amount of that cost out of funds in the commissary trust revolving fund.

(5) In this subsection, the term ''commissary trust revolving fund'' means the trust revolving fund maintained by the Department of Defense for surcharge collections and proceeds of sales of commissary stores.

(h) RELEASE OF CERTAIN COMMERCIALLY VALUABLE INFORMATION TO PUBLIC.—(1) The Secretary of Defense may limit the release to the public of any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with paragraph (3).

(2) Paragraph (1) applies to the following:

(A) Information contained in the computerized business systems of commissary stores or the Defense Commissary Agency that is collected through or in connection with the use of electronic scanners in commissary stores, including the following information:

(i) Data relating to sales of goods or services.

(ii) Demographic information on customers.

(iii) Any other information pertaining to commissary transactions and operations.

(B) Business programs, systems, and applications (including software) relating to commissary operations that were developed with funding derived from commissary surcharges.

(3)(A) The Secretary of Defense may, using competitive procedures, enter into a contract to sell information described in paragraph (2).

(B) The Secretary of Defense may release, without charge, information on an item sold in commissary stores to the manufacturer or producer of that item or an agent of the manufacturer or producer.

(C) The Secretary of Defense shall establish performance benchmarks and shall submit information on customer satisfaction and performance data to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(D) The Secretary of Defense may, by contract entered into with a business, grant to the business a license to use business programs referred to in paragraph (2)(B), including software used in or comprising any such program. The fee charged for the license shall be based on the costs of similar programs developed and marketed by businesses in the private sector, determined by means of surveys.

(E) Each contract entered into under this paragraph shall specify the amount to be paid for information released or a license granted under the contract, as the case may be.

(4) Information described in paragraph (2) may not be released, under paragraph (3) or otherwise, in a form that identifies any customer or that provides information making it possible to identify any customer.

(5) Amounts received by the Secretary under this section shall be credited to funds derived from commissary surcharges applied under section 2484(e) of this title, shall be merged with those funds, and shall be available for the same purposes as the funds with which merged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2482; Pub. L. 100–456, div. A, title III, § 321, Sept. 29, 1988, 102 Stat. 1952; Pub. L. 104–106, div. A, title III, § 331(a), Feb. 10, 1996, 110 Stat. 260; Pub. L. 104–201, div. A, title III, § 341(b), Sept. 23, 1996, 110 Stat. 2489; Pub. L. 105–261, div. A, title III,

§§ 361(b), 363(a), Oct. 17, 1998, 112 Stat. 1984, 1985; Pub. L. 108–136, div. A, title VI, § 653, Nov. 24, 2003, 117 Stat. 1522; renumbered § 2485 and amended Pub. L. 108–375, div. A, title VI, § 651(a)(2), (6), (7), Oct. 28, 2004, 118 Stat. 1964, 1968; Pub. L. 109–163, div. A, title VI, § 672, Jan. 6, 2006, 119 Stat. 3319; Pub. L. 111–350, § 5(b)(35), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112–81, div. A, title X, § 1061(16), Dec. 31, 2011, 125 Stat. 1583.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2482	[Uncodified].	Aug. 1, 1953, ch. 305, § 624 (last proviso), 67 Stat. 353.

This section is codified as permanent law on the basis of an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, dated September 28, 1954. The words ''and privately owned organizations'' are omitted as surplusage since under 1 U.S.C. 1 ''person'' includes such an organization.

PRIOR PROVISIONS

A prior section 2485, added Pub. L. 99–145, title XIV, § 1460(a), Nov. 8, 1985, 99 Stat. 764; amended Pub. L. 101–510, div. A, title III, § 324(a), (b)(1), Nov. 5, 1990, 104 Stat. 1530; Pub. L. 104–201, div. A, title III, § 365, Sept. 23, 1996, 110 Stat. 2494, related to donation of unusable food from commissary stores and other activities, prior to repeal by Pub. L. 108–375, div. A, title VI, § 651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

A prior section 2486 was renumbered section 2484 of this title.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–81 struck out par. (1) designation before ''Under such regulations'' and struck out par. (2) which read as follows: ''Any change to private operation of a commissary store function that is being performed by more than 10 Department of Defense civilian employees shall not take effect until the end of the 75-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the change. Until December 31, 2008, the Defense Commissary Agency is not required to conduct any cost-comparison study under the policies and procedures of Office of Management and Budget Circular A–76 relating to the possible contracting out of commissary store functions.''

Subsec. (b)(1). Pub. L. 111–350 substituted ''section 107 of title 41'' for ''section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))''.

2006—Subsec. (a)(2). Pub. L. 109–163 inserted at end ''Until December 31, 2008, the Defense Commissary Agency is not required to conduct any cost-comparison study under the policies and procedures of Office of Management and Budget Circular A–76 relating to the possible contracting out of commissary store functions.''

2004—Pub. L. 108–375, § 651(a)(2), (6), renumbered section 2482 of this title as this section.

Subsec. (b)(2). Pub. L. 108–375, § 651(a)(7)(A), substituted ''section 2483'' for ''section 2484''.

Subsec. (c)(2). Pub. L. 108–375, § 651(a)(7)(B), inserted at end ''The chairman of the governing board shall be a commissioned officer or member of the senior executive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to logistics, military personnel, military entitlements or other experiences of value of management of commissaries.''

Subsecs. (d) to (h). Pub. L. 108–375, § 651(a)(7)(C), added subsecs. (d) to (h).

2003—Subsec. (a). Pub. L. 108–136 designated existing provisions as par. (1), inserted first sentence, added par. (2), and struck out former first and second sentences which read as follows: ''Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve. A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store.''

1998—Subsec. (b)(1). Pub. L. 105–261, § 363(a), inserted at end ''However, the Defense Commissary Agency may not pay for any such service provided by the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).''

Subsec. (c). Pub. L. 105–261, § 361(b), added subsec. (c).

1996—Pub. L. 104–106 struck out ''private'' after ''stores:'' in section catchline, designated existing text as subsec. (a), inserted heading, and added subsec. (b).

Subsec. (b)(1). Pub. L. 104–201 substituted ''another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain services'' for ''another department, agency, or instrumentality of the Department of Defense or another Federal agency to provide services''.

1988—Pub. L. 100–456 inserted at end ''A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, § 363(b), Oct. 17, 1998, 112 Stat. 1986, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services provided or obtained on or after the date of the enactment of this Act [Oct. 17, 1998].''

DEMONSTRATION PROGRAM FOR OPERATION OF CERTAIN COMMISSARY STORES BY NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 102–484, div. A, title III, § 363, Oct. 23, 1992, 106 Stat. 2380, required the Secretary of Defense to establish a demonstration program to determine the feasibility of having nonappropriated fund instrumentalities operate commissary stores at military installations and provided for termination of the program and submission of a report on its implementation, not later than the expiration of the one-year period beginning on Oct. 23, 1992.

SUBCHAPTER II—RELATIONSHIP, CONTINUATION, AND COMMON POLICIES OF DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

Sec.
2487. Relationship between defense commissary system and exchange stores system.
2488. Combined exchange and commissary stores.
2489. Overseas commissary and exchange stores: access and purchase restrictions.

AMENDMENTS

2004—Pub. L. 108–375, div. A, title VI, § 651(b)(1), Oct. 28, 2004, 118 Stat. 1971, added subchapter heading and items 2487 to 2489.

§ 2487. Relationship between defense commissary system and exchange stores system

(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense

commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

(2) Paragraph (1) does not apply to the following:

(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.

(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.

(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.

(2) In this subsection, the term ''defense retail systems'' means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(c) ACCESS OF EXCHANGE STORES SYSTEM TO FEDERAL FINANCING BANK.—To facilitate the provision of in-store credit to patrons of the exchange stores system while reducing the costs of providing such credit, the Army and Air Force Exchange Service, Navy Exchange Service Command, and Marine Corps exchanges may issue and sell their obligations to the Federal Financing Bank as provided in section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285).

(Added Pub. L. 108–375, div. A, title VI, § 651(b)(1), Oct. 28, 2004, 118 Stat. 1971; amended Pub. L. 112–81, div. A, title VI, § 642, Dec. 31, 2011, 125 Stat. 1466.)

PRIOR PROVISIONS

A prior section 2487, added Pub. L. 99–661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3852; amended Pub. L. 102–484, div. A, title III, § 364(a), (b)(2), Oct. 23, 1992, 106 Stat. 2381, 2382; Pub. L. 104–106, div. A, title III, § 332, Feb. 10, 1996, 110 Stat. 260; Pub. L. 107–107, div. A, title III, § 333(a), Dec. 28, 2001, 115 Stat. 1058, related to release of certain commercially valuable information to the public by the Secretary of Defense with respect to commissary stores, prior to repeal by Pub. L. 108–375, div. A, title VI, § 651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

AMENDMENTS

2011—Subsec. (c). Pub. L. 112–81 added subsec. (c).

§ 2488. Combined exchange and commissary stores

(a) AUTHORITY.—The Secretary of Defense may authorize a nonappropriated fund instrumentality to operate a military exchange and a commissary store as a combined exchange and commissary store on a military installation.

(b) LIMITATIONS.—(1) Not more than ten combined exchange and commissary stores may be operated pursuant to this section.

(2) The Secretary may select a military installation for the operation of a combined exchange and commissary store under this section only if—

(A) the installation is to be closed, or has been or is to be realigned, under a base closure law; or

(B) a military exchange and a commissary store are operated at the installation by separate entities at the time of, or immediately before, such selection and it is not economically feasible to continue that separate operation.

(c) OPERATION AT CARSWELL FIELD.—Combined exchange and commissary stores operated under this section shall include the combined exchange and commissary store that is operated at the Naval Air Station Fort Worth, Joint Reserve Center, Carswell Field, Texas, under the authority provided in section 375 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2736).

(d) ADJUSTMENTS AND SURCHARGES.—Adjustments to, and surcharges on, the sales price of a grocery food item sold in a combined exchange and commissary store under this section shall be provided for in accordance with the same laws that govern such adjustments and surcharges for items sold in a commissary store of the Defense Commissary Agency.

(e) USE OF APPROPRIATED FUNDS.—(1) If a nonappropriated fund instrumentality incurs a loss in operating a combined exchange and commissary store at a military installation under this section as a result of the requirement set forth in subsection (d), the Secretary may authorize a transfer of funds available for the Defense Commissary Agency to the nonappropriated fund instrumentality to offset the loss.

(2) The total amount of appropriated funds transferred during a fiscal year to support the operation of a combined exchange and commissary store at a military installation under this section may not exceed an amount that is equal to 25 percent of the amount of appropriated funds that was provided for the operation of the commissary store of the Defense Commissary Agency on that installation during the last full fiscal year of operation of that commissary store.

(f) NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term ''nonappropriated fund instrumentality'' means the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

(Added Pub. L. 104–106, div. A, title III, § 336(a)(1), Feb. 10, 1996, 110 Stat. 263, § 2490a; amended Pub. L. 105–85, div. A, title X, § 1061(d), Nov. 18, 1997, 111 Stat. 1891; Pub. L. 108–136, div. A, title X, § 1043(c)(2), Nov. 24, 2003, 117 Stat. 1611; renumbered § 2488, Pub. L. 108–375, div. A, title VI, § 651(b)(3), Oct. 28, 2004, 118 Stat. 1971; Pub. L. 111–383, div. A, title X, § 1075(b)(37), Jan. 7, 2011, 124 Stat. 4371.)

REFERENCES IN TEXT

Section 375 of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (c), is section 375 of Pub. L. 103–337, div. A, title III, Oct. 5, 1994, 108 Stat. 2736, as amended, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 2488 was renumbered section 2495 of this title.

AMENDMENTS

2011—Subsec. (f). Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces'' in two places.

2004—Pub. L. 108–375 renumbered section 2490a of this title as this section.

2003—Subsec. (f). Pub. L. 108–136, §1043(c)(2), substituted ''NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term'' for ''DEFINITIONS.—In this section:

''(1) The term''

and struck out par. (2) which read as follows: ''The term 'base closure law' has the meaning given such term by section 2667(h) of this title.''

1997—Subsec. (f)(2). Pub. L. 105–85 substituted ''section 2667(h)'' for ''section 2667(g)''.

§ 2489. Overseas commissary and exchange stores: access and purchase restrictions

(a) AUTHORITY TO ESTABLISH RESTRICTIONS.—The Secretary of Defense may establish restrictions on the ability of eligible patrons of commissary and exchange stores located outside of the United States to purchase certain merchandise items (or the quantity of certain merchandise items) otherwise included within an authorized merchandise category if the Secretary determines that such restrictions are necessary to prevent the resale of such merchandise in violation of treaty obligations of the United States or host nation laws (to the extent such laws are not inconsistent with United States laws).

(b) LIMITATIONS ON USE OF AUTHORITY.—In establishing a quantity or other restriction, the Secretary—

(1) may not discriminate among the various categories of eligible patrons of the commissary and exchange system; and

(2) shall ensure that the restriction is consistent with the purpose of the overseas commissary and exchange system to provide reasonable access for eligible patrons to purchase merchandise items made in the United States.

(Added Pub. L. 105–261, div. A, title III, §365(a), Oct. 17, 1998, 112 Stat. 1986, §2492; amended Pub. L. 106–65, div. A, title X, §1066(a)(22), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–314, div. A, title X, §1041(a)(15), Dec. 2, 2002, 116 Stat. 2645; renumbered §2489, Pub. L. 108–375, div. A, title VI, §651(b)(3), Oct. 28, 2004, 118 Stat. 1971; Pub. L. 112–239, div. A, title VI, §651, Jan. 2, 2013, 126 Stat. 1783.)

PRIOR PROVISIONS

A prior section 2489 was renumbered section 2495a of this title.

A prior section 2489a was renumbered section 2495b of this title.

A prior section 2490 was renumbered section 2868 of this title.

A prior section 2490a was renumbered section 2488 of this title.

Another prior section 2490a was renumbered section 2783 of this title.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–239, §651(b)(1), redesignated par. (1) as subsec. (a) and added heading.

Subsec. (b). Pub. L. 112–239, §651(b)(2), (3), redesignated par. (2) of former subsec. (a) as (b), added heading, and redesignated subpars. (A) and (B) of former par. (2) as pars. (1) and (2), respectively.

Pub. L. 112–239, §651(a), struck out subsec. (b). Text read as follows: ''For each location outside the United States that is served by the commissary system or the exchange system, the Secretary of Defense may maintain a list of controlled merchandise items, except that, after October 17, 1998, the Secretary may not change the list to add a merchandise item unless, before making the change, the Secretary submits to Congress a notice of the proposed addition and the reasons for the addition of the item.''

Subsec. (c). Pub. L. 112–239, §651(a), struck out subsec. (c). Text read as follows: ''The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.''

2004—Pub. L. 108–375 renumbered section 2492 of this title as this section.

2002—Subsec. (c). Pub. L. 107–314 added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''October 17, 1998'' for ''the date of the enactment of this section''.

SUBCHAPTER III—MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES

Sec.
2491. Uniform funding and management of morale, welfare, and recreation programs.
2491a. Department of Defense golf courses: limitation on use of appropriated funds.
2491b. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.
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2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services.
2492a. Limitation on Department of Defense entities competing with private sector in offering personal information services.
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2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.
2495a. Overseas package stores: treatment of United States wines.
2495b. Sale or rental of sexually explicit material prohibited.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title VI, §651(b), Oct. 28, 2009, 123 Stat. 2369, added item 2492a.

2004—Pub. L. 108–375, div. A, title VI, §651(c)(1), Oct. 28, 2004, 118 Stat. 1971, added subchapter heading and items 2491 to 2495b.

§ 2491. Uniform funding and management of morale, welfare, and recreation programs

(a) AUTHORITY FOR UNIFORM FUNDING AND MANAGEMENT.—Under regulations prescribed by the

Secretary of Defense, funds appropriated to the Department of Defense and available for morale, welfare, and recreation programs may be treated as nonappropriated funds and expended in accordance with laws applicable to the expenditures of nonappropriated funds. When made available for morale, welfare, and recreation programs under such regulations, appropriated funds shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

(b) CONDITIONS ON AVAILABILITY.—Funds appropriated to the Department of Defense may be made available to support a morale, welfare, or recreation program only if the program is authorized to receive appropriated fund support and only in the amounts the program is authorized to receive.

(c) CONVERSION OF EMPLOYMENT POSITIONS.—(1) The Secretary of Defense may identify positions of employees in morale, welfare, and recreation programs within the Department of Defense who are paid with appropriated funds whose status may be converted from the status of an employee paid with appropriated funds to the status of an employee of a nonappropriated fund instrumentality.

(2) The status of an employee in a position identified by the Secretary under paragraph (1) may, with the consent of the employee, be converted to the status of an employee of a nonappropriated fund instrumentality. An employee who does not consent to the conversion may not be removed from the position because of the failure to provide such consent.

(3) The conversion of an employee from the status of an employee paid by appropriated funds to the status of an employee of a nonappropriated fund instrumentality shall be without a break in service for the concerned employee. The conversion shall not entitle an employee to severance pay, back pay or separation pay under subchapter IX of chapter 55 of title 5, or be considered an involuntary separation or other adverse personnel action entitling an employee to any right or benefit under such title or any other provision of law or regulation.

(4) In this subsection, the term ''an employee of a nonappropriated fund instrumentality'' means an employee described in section 2105(c) of title 5.

(Added Pub. L. 107–314, div. A, title III, § 323(a), Dec. 2, 2002, 116 Stat. 2510, § 2494; renumbered § 2491, Pub. L. 108–375, div. A, title VI, § 651(c)(2), Oct. 28, 2004, 118 Stat. 1972.)

PRIOR PROVISIONS

A prior section 2491 was renumbered section 2500 of this title.

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2494 of this title as this section.

§ 2491a. Department of Defense golf courses: limitation on use of appropriated funds

(a) LIMITATION.—Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to equip, operate, or maintain a golf course at a facility or installation of the Department of Defense.

(b) EXCEPTIONS.—(1) Subsection (a) does not apply to a golf course at a facility or installation outside the United States or at a facility or installation inside the United States at a location designated by the Secretary of Defense as a remote and isolated location.

(2) The Secretary of Defense shall prescribe regulations governing the use of appropriated funds under this subsection.

(Added Pub. L. 103–160, div. A, title III, § 312(a), Nov. 30, 1993, 107 Stat. 1618, § 2246; renumbered § 2491a, Pub. L. 108–375, div. A, title VI, § 651(d), Oct. 28, 2004, 118 Stat. 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2246 of this title as this section.

§ 2491b. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation

(a) LIMITATION.—Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to operate the Armed Forces Recreation Center, Europe.

(b) EXCEPTION.—Subsection (a) does not apply to the use of funds for the payment of utilities, the maintenance, repair, or renovation of real property, and the transportation of products made in the United States.

(Added Pub. L. 103–337, div. A, title III, § 372(a), Oct. 5, 1994, 108 Stat. 2735, § 2247; amended Pub. L. 105–85, div. A, title III, § 375, Nov. 18, 1997, 111 Stat. 1708; renumbered § 2491b, Pub. L. 108–375, div. A, title VI, § 651(d), Oct. 28, 2004, 118 Stat. 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2247 of this title as this section.

1997—Subsec. (b). Pub. L. 105–85 substituted ''the maintenance, repair, or renovation of real property, and the transportation'' for ''real property maintenance, and transportation''.

§ 2491c. Retention of morale, welfare, and recreation funds by military installations: limitation

Amounts may not be retained in a nonappropriated morale, welfare, and recreation account of a military installation of an armed force in excess of the amount necessary to meet cash requirements of that installation. Amounts in excess of that amount shall be transferred to a single nonappropriated morale, welfare, and recreation account for that armed force. This section does not apply to the Coast Guard.

(Added Pub. L. 103–337, div. A, title III, § 373(a), Oct. 5, 1994, 108 Stat. 2736, § 2219; amended Pub. L. 104–106, div. A, title III, § 341, Feb. 10, 1996, 110 Stat. 265; renumbered § 2491c, Pub. L. 108–375, div. A, title VI, § 651(d), Oct. 28, 2004, 118 Stat. 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2219 of this title as this section.

1996—Pub. L. 104–106, in first sentence, substituted ''an armed force'' for ''a military department'', in second sentence, substituted ''a single, nonappropriated

morale, welfare, and recreation account for that armed force'' for ''a single, department-wide nonappropriated morale, welfare, and recreation account of the military department'', and inserted after second sentence ''This section does not apply to the Coast Guard.''

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.

§ 2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services

An agency or instrumentality of the Department of Defense that supports the operation of the exchange system, or the operation of a morale, welfare, and recreation system, of the Department of Defense may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality—

(1) to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system; or

(2) to provide or obtain food services beneficial to the efficient management and operation of the dining facilities on military installations offering food services to members of the armed forces.

(Added Pub. L. 104–201, div. A, title III, § 341(a)(1), Sept. 23, 1996, 110 Stat. 2488, § 2482a; renumbered § 2492, Pub. L. 108–375, div. A, title VI, § 651(c)(3), Oct. 28, 2004, 118 Stat. 1972; amended Pub. L. 113–291, div. A, title VI, § 632, Dec. 19, 2014, 128 Stat. 3405.)

PRIOR PROVISIONS

A prior section 2492 was renumbered section 2489 of this title.

AMENDMENTS

2014—Pub. L. 113–291 substituted ''Federal department, agency, or instrumentality—'' for ''Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system.'' and added pars. (1) and (2).

2004—Pub. L. 108–375 renumbered section 2482a of this title as this section.

§ 2492a. Limitation on Department of Defense entities competing with private sector in offering personal information services

(a) LIMITATION.—(1) Notwithstanding section 2492 of this title, the Secretary of Defense may not authorize a Department of Defense entity to offer or provide personal information services directly to users using Department resources, personnel, or equipment, or compete for contracts to provide such personal information services directly to users, if users will be charged a fee for the personal information services to recover the cost incurred to provide the services or to earn a profit.

(2) The limitation in paragraph (1) shall not be construed to prohibit or preclude the use of Department resources, personnel, or equipment to administer or facilitate personal information services contracts with private contractors.

(b) EXCEPTIONS.—The limitation in subsection (a) shall not apply if the Secretary of Defense determines that—

(1) a private sector vendor is not available to provide the personal information services at specific locations;

(2) the interests of the user population would be best served by allowing the Government to provide such services; or

(3) circumstances (as specified by the Secretary for purposes of this section) are such that the provision of such services by a Department entity is in the best interest of the Government or military users in general.

(c) PERSONAL INFORMATION SERVICES DEFINED.—In this section, the term ''personal information services'' means the provision of Internet, telephone, or television services to consumers.

(Added Pub. L. 111–84, div. A, title VI, § 651(a), Oct. 28, 2009, 123 Stat. 2368.)

SAVINGS PROVISION

Pub. L. 111–84, div. A, title VI, § 651(c), Oct. 28, 2009, 123 Stat. 2369, provided that: ''Section 2492a of title 10, United States Code, as added by subsection (a), does not affect the validity or terms of any contract for the provision of personal information services entered into before the date of the enactment of this Act [Oct. 28, 2009].''

§ 2493. Fisher Houses: administration as nonappropriated fund instrumentality

(a) FISHER HOUSES AND SUITES DEFINED.—In this section:

(1) The term ''Fisher House'' means a housing facility that—

(A) is located in proximity to a health care facility of the Army, the Air Force, or the Navy;

(B) is available for residential use on a temporary basis by authorized Fisher House residents; and

(C) is constructed and donated by—

(i) the Zachary and Elizabeth M. Fisher Armed Services Foundation; or

(ii) another source, if the Secretary of the military department concerned designates the housing facility as a Fisher House.

(2) The term ''Fisher House'' includes the Fisher House for the Families of the Fallen and Meditation Pavilion at Dover Air Force Base, Delaware, so long as such facility is available for residential use on a temporary basis by authorized Fisher House residents.

(3) The term ''Fisher Suite'' means one or more rooms that—

(A) meet the requirements of subparagraphs (A) and (B) of paragraph (1);

(B) are constructed, altered, or repaired and donated by a source described in subparagraph (C) of that paragraph; and

(C) are designated by the Secretary of the military department concerned as a Fisher Suite.

(4) The term ''authorized Fisher House residents'' means the following:

(A) With respect to a Fisher House described in paragraph (1) that is located in proximity to a health care facility of the Army, the Air Force, or the Navy, the following persons:

(i) Patients of that health care facility.

(ii) Members of the families of such patients.

(iii) Other persons providing the equivalent of familial support for such patients.

(B) With respect to the Fisher House described in paragraph (2), the following persons:

(i) The primary next of kin of a member of the armed forces who dies while located or serving overseas.

(ii) Other family members of the deceased member who are eligible for transportation under section 481f(d) of title 37.

(iii) An escort of a family member described in clause (i) or (ii).

(b) NONAPPROPRIATED FUND INSTRUMENTALITY.—The Secretary of each military department shall administer all Fisher Houses and Fisher Suites associated with facilities of that military department as a nonappropriated fund instrumentality of the United States.

(c) GOVERNANCE.—The Secretary of each military department shall establish a system for the governance of the nonappropriated fund instrumentality required by subsection (b) for that military department.

(d) CENTRAL FUND.—The Secretary of each military department shall establish a single fund as the source of funding for the operation, maintenance, and improvement of all Fisher Houses and Fisher Suites of the nonappropriated fund instrumentality required by subsection (b) for that military department.

(e) ACCEPTANCE OF CONTRIBUTIONS; IMPOSITION OF FEES.—(1) The Secretary of a military department may—

(A) accept money, property, and services donated for the support of a Fisher House or Fisher Suite associated with facilities of that military department; and

(B) may impose fees relating to the use of such Fisher Houses and Fisher Suites.

(2) All monetary donations, and the proceeds of the disposal of any other donated property, accepted by the Secretary of a military department under this subsection shall be credited to the fund established under subsection (d) for the Fisher Houses and Fisher Suites associated with facilities of that military department and shall be available to that Secretary to support all such Fisher Houses and Fisher Suites.

(f) BASE OPERATING SUPPORT.—The Secretary of a military department may provide base operating support for Fisher Houses associated with facilities of that military department.

(Added Pub. L. 105–261, div. A, title IX, § 906(a)(1), Oct. 17, 1998, 112 Stat. 2093; amended Pub. L. 106–398, § 1 [[div. A], title IX, § 914(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230; Pub. L. 107–314, div. A, title III, § 321, Dec. 2, 2002, 116 Stat. 2510; Pub. L. 112–81, div. A, title X, § 1061(17), Dec. 31, 2011, 125 Stat. 1584; Pub. L. 112–239, div. A, title VI, § 652(a), (b), Jan. 2, 2013, 126 Stat. 1784; Pub. L. 114–92, div. A, title VI, § 622(b), Nov. 25, 2015, 129 Stat. 841.)

AMENDMENTS

2015—Subsec. (a)(4)(B)(ii). Pub. L. 114–92 substituted ''section 481f(d)'' for ''section 481f(e)''.

2013—Subsec. (a)(1)(B). Pub. L. 112–239. § 652(a)(1), substituted ''by authorized Fisher House residents;'' for ''by patients of that health care facility, members of the families of such patients, and others providing the equivalent of familial support for such patients;''.

Subsec. (a)(2) to (4). Pub. L. 112–239, § 652(a)(2)–(4), added pars. (2) and (4) and redesignated former par. (2) as (3).

Subsecs. (b), (e), (f). Pub. L. 112–239, § 652(b), struck out ''health care'' before ''facilities'' wherever appearing.

2011—Subsec. (g). Pub. L. 112–81 struck out subsec. (g), which required submission of annual report describing the operation of Fisher Houses and Fisher Suites associated with military department health care facilities.

2002—Subsec. (f). Pub. L. 107–314 amended heading and text of subsec. (f) generally. Prior to amendment text read as follows: ''The Secretary of the Navy shall provide base operating support for Fisher Houses associated with health care facilities of the Navy. The level of the support shall be equivalent to the base operating support that the Secretary provides for morale, welfare, and recreation category B community activities (as defined in regulations, prescribed by the Secretary, that govern morale, welfare, and recreation activities associated with Navy installations).''

2000—Subsecs. (f), (g). Pub. L. 106–398 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title IX, § 914(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as of October 17, 1998, as if included in section 2493 of title 10, United States Code, as enacted by section 906(a) of Public Law 105–261.''

SAVINGS PROVISIONS FOR CERTAIN NAVY EMPLOYEES

Pub. L. 106–398, § 1 [[div. A], title IX, § 914(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that:

''(1) The Secretary of the Navy may continue to employ, and pay out of appropriated funds, any employee of the Navy in the competitive service who, as of October 17, 1998, was employed by the Navy in a position at a Fisher House administered by the Navy, but only for so long as the employee is continuously employed in that position.

''(2) After a person vacates a position in which the person was continued to be employed under the authority of paragraph (1), a person employed in that position shall be employed as an employee of a nonappropriated fund instrumentality of the United States and may not be paid for services in that position out of appropriated funds.

''(3) In this subsection:

''(A) The term 'Fisher House' has the meaning given the term in section 2493(a)(1) of title 10, United States Code.

''(B) The term 'competitive service' has the meaning given the term in section 2102 of title 5, United States Code.''

[Pub. L. 106–398, § 1 [[div. A], title IX, § 914(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that: ''Subsection (b) [set out above] applies with respect to the pay period that includes October 17, 1998, and subsequent pay periods.'']

ESTABLISHMENT OF FUNDS AND FUNDING TRANSITION

Pub. L. 105–261, div. A, title IX, § 906(b)–(e), Oct. 17, 1998, 112 Stat. 2095, provided that:

''(b) ESTABLISHMENT OF FUNDS.—Not later than 90 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of each military department shall—

''(1) establish the fund required under section 2493(d) of title 10, United States Code (as added by subsection (a)); and

''(2) close the Fisher House Trust Fund established for that department under section 2221 of such title and transfer the amounts in the closed fund to the newly established fund.

''(c) FUNDING TRANSITION.—(1) Of the amount authorized to be appropriated pursuant to section 301(2) [112 Stat. 1960] for operation and maintenance for the Navy, the Secretary of the Navy shall transfer to the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)), such amount as that Secretary considers appropriate for establishing in the fund a corpus sufficient for operating Fisher Houses and Fisher Suites associated with health care facilities of the Department of the Navy.

''(2) Of the amount authorized to be appropriated pursuant to section 301(4) for operation and maintenance for the Air Force, the Secretary of the Air Force shall transfer to the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)), such amount as that Secretary considers appropriate for establishing in the fund a corpus sufficient for operating Fisher Houses and Fisher Suites associated with health care facilities of the Department of the Air Force.

''(d) REPORTING REQUIREMENTS.—The Secretary of each military department, upon completing the actions required of the Secretary under subsections (b) and (c), shall submit to Congress a report containing—

''(1) the certification of that Secretary that those actions have been completed; and

''(2) a statement of the amount deposited in the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)).

''(e) AVAILABILITY OF TRANSFERRED AMOUNTS.—Amounts transferred under subsection (b) or (c) to a fund established under section 2493(d) of title 10, United States Code (as added by subsection (a)), shall be available without fiscal year limitation for the purposes for which the fund is established and shall be administered as nonappropriated funds.''

§ 2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes

Appropriations for the Department of Defense may be used to provide utility services for—

(1) buildings on military installations authorized by regulation to be used for morale, welfare, and recreation purposes; and

(2) other morale, welfare, and recreation activities for members of the armed forces.

(Added Pub. L. 108–375, div. A, title VI, § 651(c)(4), Oct. 28, 2004, 118 Stat. 1972.)

PRIOR PROVISIONS

A prior section 2494 was renumbered section 2491 of this title.

§ 2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages

(a) The Secretary of Defense shall provide that—

(1) covered alcoholic beverage purchases made for resale on a military installation located in the United States shall be made from the most competitive source and distributed in the most economical manner, price and other factors considered, except that

(2) in the case of malt beverages and wine, such purchases shall be made from, and delivery shall be accepted from, a source within the State in which the military installation concerned is located.

(b) If a military installation located in the contiguous States is located in more than one State, a source of supply in any State in which the installation is located shall be considered for the purposes of subsection (a)(2) to be a source within the State in which the installation is located.

(c)(1) In the case of covered alcoholic beverage purchases of distilled spirits, to determine whether a nonappropriated fund instrumentality of the Department of Defense provides the most economical method of distribution to package stores, the Secretary of Defense shall consider all components of the distribution costs incurred by the nonappropriated fund instrumentality, such as overhead costs (including costs associated with management, logistics, administration, depreciation, and utilities), the costs of carrying inventory, and handling and distribution costs.

(2) The Secretary shall use the agencies performing audit functions on behalf of the armed forces and the Inspector General of the Department of Defense to make determinations under this subsection.

(d) In this section:

(1) The term ''covered alcoholic beverage purchases'' means purchases of alcoholic beverages by a nonappropriated fund instrumentality of the Department of Defense with nonappropriated funds.

(2) The term ''State'' includes the District of Columbia.

(Added Pub. L. 99–661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3853, § 2488; amended Pub. L. 100–180, div. A, title III, § 312(a), Dec. 4, 1987, 101 Stat. 1073; Pub. L. 104–106, div. A, title III, § 333, Feb. 10, 1996, 110 Stat. 261; Pub. L. 106–398, § 1 [[div. A], title III, § 335], Oct. 30, 2000, 114 Stat. 1654, 1654A–61; renumbered § 2495, Pub. L. 108–375, div. A, title VI, § 651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2488 of this title as this section.

2000—Subsec. (c)(2), (3). Pub. L. 106–398 redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''If the use of a private distributor would subject covered alcoholic beverage purchases of distilled spirits to direct or indirect State taxation, a nonappropriated fund instrumentality shall be considered to be the most economical method of distribution regardless of the results of the determination under paragraph (1).''

1996—Subsec. (a)(1). Pub. L. 104–106, § 333(a), inserted ''and distributed in the most economical manner'' after ''most competitive source''.

Subsecs. (c), (d). Pub. L. 104–106, § 333(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Subsec. (a)(2). Pub. L. 100–180 struck out ''purchased for resale on a military installation located in the contiguous States'' after ''malt beverages and wines''.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title III, § 312(b), Dec. 4, 1987, 101 Stat. 1073, provided that: ''The amendment made by

subsection (a) [amending this section] shall apply with respect to purchases of malt beverages and wine after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

PROCUREMENT OF MALT BEVERAGES AND WINE BY NONAPPROPRIATED FUND ACTIVITY

Pub. L. 109–148, div. A, title VIII, § 8080, Dec. 30, 2005, 119 Stat. 2717, which provided that none of the funds appropriated by div. A of Pub. L. 109–148 were to be used for the support of any nonappropriated funds activity of the Department of Defense that procured malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine were procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation was located, was from the Department of Defense Appropriations Act, 2006, and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 108–287, title VIII, § 8087, Aug. 5, 2004, 118 Stat. 991.

Pub. L. 108–87, title VIII, § 8088, Sept. 30, 2003, 117 Stat. 1093.

Pub. L. 107–248, title VIII, § 8092, Oct. 23, 2002, 116 Stat. 1558.

Pub. L. 107–117, div. A, title VIII, § 8108, Jan. 10, 2002, 115 Stat. 2271.

Pub. L. 106–259, title VIII, § 8108, Aug. 9, 2000, 114 Stat. 698.

Pub. L. 106–79, title VIII, § 8132, Oct. 25, 1999, 113 Stat. 1266.

Pub. L. 104–61, title VIII, § 8055, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103–335, title VIII, § 8058A, Sept. 30, 1994, 108 Stat. 2632.

Pub. L. 103–139, title VIII, § 8099A, Nov. 11, 1993, 107 Stat. 1462.

Pub. L. 102–396, title IX, § 9114, Oct. 6, 1992, 106 Stat. 1929.

Pub. L. 102–172, title VIII, § 8111A, Nov. 26, 1991, 105 Stat. 1200.

Pub. L. 101–511, title VIII, § 8068, Nov. 5, 1990, 104 Stat. 1889.

Pub. L. 101–165, title IX, § 9093, Nov. 21, 1989, 103 Stat. 1149.

Pub. L. 100–463, title VIII, § 8122, Oct. 1, 1988, 102 Stat. 2270–40.

Pub. L. 100–202, § 101(b) [title VIII, § 8081], Dec. 22, 1987, 101 Stat. 1329–43, 1329–76.

Pub. L. 99–500, § 101(c) [title IX, § 9090], Oct. 18, 1986, 100 Stat. 1783–82, 1783–116, and Pub. L. 99–591, § 101(c) [title IX, § 9090], Oct. 30, 1986, 100 Stat. 3341–82, 3341–116.

Pub. L. 99–190, § 101(b) [title VIII, § 8099], Dec. 19, 1985, 99 Stat. 1185, 1219.

§ 2495a. Overseas package stores: treatment of United States wines

The Secretary of Defense shall ensure that each nonappropriated-fund activity engaged principally in selling alcoholic beverage products in a packaged form (commonly referred to as a ''package store'') that is located at a military installation outside the United States shall give appropriate treatment with respect to wines produced in the United States to ensure that such wines are given, in general, an equitable distribution, selection, and price when compared with wines produced by the host nation.

(Added Pub. L. 100–180, div. A, title III, § 311(a)(1), Dec. 4, 1987, 101 Stat. 1073, § 2489; renumbered § 2495a, Pub. L. 108–375, div. A, title VI, § 651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2489 of this title as this section.

REGULATIONS DEADLINE

Pub. L. 100–180, div. A, title III, § 311(b), Dec. 4, 1987, 101 Stat. 1073, directed Secretary of Defense to prescribe regulations to implement this section not later than 90 days after Dec. 4, 1987.

§ 2495b. Sale or rental of sexually explicit material prohibited

(a) PROHIBITION OF SALE OR RENTAL.—The Secretary of Defense may not permit the sale or rental of sexually explicit material on property under the jurisdiction of the Department of Defense.

(b) PROHIBITION OF OFFICIALLY PROVIDED SEXUALLY EXPLICIT MATERIAL.—A member of the armed forces or a civilian officer or employee of the Department of Defense acting in an official capacity may not provide for sale, remuneration, or rental sexually explicit material to another person.

(c) RESALE ACTIVITIES REVIEW BOARD.—(1) The Secretary of Defense shall establish a nine-member board to make recommendations to the Secretary regarding whether material sold or rented, or proposed for sale or rental, on property under the jurisdiction of the Department of Defense is barred from sale or rental by subsection (a).

(2)(A) The Secretary of Defense shall appoint six members of the board to broadly represent the interests of the patron base served by the defense commissary system and the exchange system. The Secretary shall appoint one of the members to serve as the chairman of the board. At least one member appointed under this subparagraph shall be a person with experience managing or advocating for military family programs and who is also an eligible patron of the defense commissary system and the exchange system.

(B) The Secretary of each of the military departments shall appoint one member of the board.

(C) A vacancy on the board shall be filled in the same manner as the original appointment.

(3) The Secretary of Defense may detail persons to serve as staff for the board. At a minimum, the Secretary shall ensure that the board is assisted at meetings by military resale and legal advisors.

(4) The recommendations made by the board under paragraph (1) shall be made available to the public. The Secretary of Defense shall publicize the availability of such recommendations by such means as the Secretary considers appropriate.

(5) Members of the board shall be allowed travel expense, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the board.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(e) DEFINITIONS.—In this section:

(1) The term ''sexually explicit material'' means an audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium, the dominant theme of which depicts or describes nudity, including sexual or excretory activities or organs, in a lascivious way.

(2) The term ''property under the jurisdiction of the Department of Defense'' includes commissaries, all facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Services Support Office, Marine Corps exchanges, and ships' stores.

(Added Pub. L. 104–201, div. A, title III, §343(a)(1), Sept. 23, 1996, 110 Stat. 2489, §2489a; renumbered §2495b, Pub. L. 108–375, div. A, title VI, §651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972; amended Pub. L. 110–417, [div. A], title VI, §642(a), Oct. 14, 2008, 122 Stat. 4493.)

AMENDMENTS

2008—Subsecs. (c) to (e). Pub. L. 110–417 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

2004—Pub. L. 108–375 renumbered section 2489a of this title as this section.

EFFECTIVE DATE

Pub. L. 104–201, div. A, title III, §343(b), Sept. 23, 1996, 110 Stat. 2490, provided that: ''Subsection (a) of section 2489a [now 2495b] of title 10, United States Code, as added by subsection (a) of this section, shall take effect 90 days after the date of the enactment of this Act [Sept. 23, 1996].''

RESALE ACTIVITIES REVIEW BOARD: ESTABLISHMENT AND INITIAL MEETING

Pub. L. 110–417, [div. A], title VI, §642(b), Oct. 14, 2008, 122 Stat. 4494, provided that:

''(1) ESTABLISHMENT.—The board required by subsection (c) of section 2495b of title 10, United States Code, as added by subsection (a), shall be established, and its initial nine members appointed, not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008].

''(2) MEETINGS.—The board shall conduct an initial meeting within one year after the date of the appointment of the initial members of the board. At the discretion of the board, the board may consider all materials previously reviewed under such section as available for reconsideration for a minimum of 180 days following the initial meeting of the board.''

CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION

Subchapter		Sec.
I.	Definitions	2500
II.	Policies and Planning	2501
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PRIOR PROVISIONS

A prior chapter 148, comprised of section 2501 et seq., relating to defense industrial base, was repealed, except for sections 2504 to 2507, by Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2504 to 2507 of that chapter were renumbered sections 2531 to 2534, respectively, of this chapter by Pub. L. 102–484, §4202(a).

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260, added item for subchapter VII.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(4), Oct. 17, 1998, 112 Stat. 2136, substituted ''2500'' for ''2491'' in item for subchapter I and struck out ''and Dual-Use Assistance Extension Programs'' after ''Technology'' in item for subchapter IV.

1996—Pub. L. 104–106, div. A, title XIII, §1321(a)(2), Feb. 10, 1996, 110 Stat. 477, added item for subchapter VI.

SUBCHAPTER I—DEFINITIONS

Sec.
2500. Definitions.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title III, §371(c)(4), Nov. 18, 1997, 111 Stat. 1705, renumbered item 2491 as 2500.

§ 2500. Definitions

In this chapter:

(1) The term ''national technology and industrial base'' means the persons and organizations that are engaged in research, development, production, integration, services, or information technology activities conducted within the United States and Canada.

(2) The term ''dual-use'' with respect to products, services, standards, processes, or acquisition practices, means products, services, standards, processes, or acquisition practices, respectively, that are capable of meeting requirements for military and nonmilitary applications.

(3) The term ''dual-use critical technology'' means a critical technology that has military applications and nonmilitary applications.

(4) The term ''technology and industrial base sector'' means a group of public or private persons and organizations that engage in, or are capable of engaging in, similar research, development, production, integration, services, or information technology activities.

(5) The terms ''Federal laboratory'' and ''laboratory'' have the meaning given the term ''laboratory'' in section 12(d)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)), except that such terms include a federally funded research and development center sponsored by a Federal agency.

(6) The term ''critical technology'' means a technology that is—

(A) a national critical technology; or

(B) a defense critical technology.

(7) The term ''national critical technology'' means a technology that appears on the list of national critical technologies contained in the most recent biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d)[1] of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)).

(8) The term ''defense critical technology'' means a technology that is identified under

[1] See References in Text note below.

section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.

(9) The term ''eligible firm'' means a company or other business entity that, as determined by the Secretary of Commerce—

(A) conducts a significant level of its research, development, engineering, manufacturing, integration, services, and information technology activities in the United States; and

(B) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(i) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(ii) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States.

Such term includes a consortium of such companies or other business entities, as determined by the Secretary of Commerce.

(10) The term ''manufacturing technology'' means techniques and processes designed to improve manufacturing quality, productivity, and practices, including quality control, shop floor management, inventory management, and worker training, as well as manufacturing equipment and software.

(11) The term ''Small Business Innovation Research Program'' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) through (*l*).

(12) The term ''Small Business Technology Transfer Program'' means the program established under the following provisions of such section:

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) and (n) through (p).

(13) The term ''significant equity percentage'' means—

(A) a level of contribution and participation sufficient, when compared to the other non-Federal participants in the partnership or other cooperative arrangement involved, to demonstrate a comparable long-term financial commitment to the product or process development involved; and

(B) any other criteria the Secretary may consider necessary to ensure an appropriate equity mix among the participants.

(14) The term ''person of a foreign country'' has the meaning given such term in section 3502(d) of the Primary Dealers Act of 1988 (22 U.S.C. 5342(d)).

(15) The term ''integration'' means the process of providing systems engineering and technical direction for a system for the purpose of achieving capabilities that satisfy program requirements.

(Added Pub. L. 102–484, div. D, title XLII, § 4203(a), Oct. 23, 1992, 106 Stat. 2661, § 2491; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(9), title XIII, § 1315(f), Nov. 30, 1993, 107 Stat. 1771, 1788; Pub. L. 103–337, div. A, title XI, §§ 1113(d), 1115(e), Oct. 5, 1994, 108 Stat. 2866, 2869; Pub. L. 104–106, div. A, title X, § 1081(h), Feb. 10, 1996, 110 Stat. 455; renumbered § 2500 and amended Pub. L. 105–85, div. A, title III, § 371(b)(3), title X, § 1073(a)(53), Nov. 18, 1997, 111 Stat. 1705, 1903; Pub. L. 111–383, div. A, title VIII, § 895(a), Jan. 7, 2011, 124 Stat. 4313.)

REFERENCES IN TEXT

Section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in par. (7), was classified to section 6683 of Title 42, The Public Health and Welfare, and was omitted from the Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in former sections 2511 and 2521 of this title prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2011—Par. (1). Pub. L. 111–383, § 895(a)(1), substituted ''integration, services, or information technology'' for ''or maintenance''.

Par. (4). Pub. L. 111–383, § 895(a)(2), substituted ''production, integration, services, or information technology'' for ''or production''.

Par. (9)(A). Pub. L. 111–383, § 895(a)(3), substituted ''manufacturing, integration, services, and information technology'' for ''and manufacturing''.

Par. (15). Pub. L. 111–383, § 895(a)(4), added par. (15).

1997—Pub. L. 105–85, § 371(b)(3), renumbered section 2491 of this title as this section.

Par. (8). Pub. L. 105–85, § 1073(a)(53), substituted ''that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.'' for ''that appears on the list of critical technologies contained, pursuant to subsection (b)(4) of section 2505 of this title, in the most recent national technology and industrial base assessment submitted to Congress by the Secretary of Defense pursuant to section 2506(e) of this title.''

1996—Pars. (11) to (16). Pub. L. 104–106 redesignated pars. (13) to (16) as (11) to (14), respectively, and struck out former pars. (11) and (12) which read as follows:

''(11) The term 'manufacturing extension program' means a public or private, nonprofit program for the improvement of the quality, productivity, and performance of United States-based small manufacturing firms in the United States.

''(12) The term 'United States-based small manufacturing firm' means a company or other business entity that, as determined by the Secretary of Commerce—

''(A) engages in manufacturing;

''(B) has less than 500 employees; and

''(C) is an eligible firm.''

1994—Par. (5). Pub. L. 103–337, § 1113(d), inserted before period at end '', except that such terms include a federally funded research and development center sponsored by a Federal agency''.

Par. (16). Pub. L. 103–337, § 1115(e), added par. (16).

1993—Par. (2). Pub. L. 103–160, § 1182(a)(9)(A), substituted ''nonmilitary applications'' for ''nonmilitary application''.

Par. (8). Pub. L. 103–160, § 1182(a)(9)(B), substituted ''subsection (b)(4)'' for ''subsection (f)''.

Pars. (13) to (15). Pub. L. 103–160, §1315(f), added pars. (13) to (15).

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title XI, §1101, Oct. 5, 1994, 108 Stat. 2862, provided that: ''This title [enacting sections 2519 and 2520 of this title, amending this section, sections 1151, 1152, 2391, 2511 to 2513, and 2524 of this title, and sections 1662d and 1662d–1 of Title 29, Labor, and enacting and amending provisions set out as notes under section 2501 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title XIII, §1301, Nov. 30, 1993, 107 Stat. 1783, provided that: ''This title [enacting sections 1152 and 1153 of this title and sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending this section, sections 1142, 1151, 1598, 2410j, 2501, 2502, 2511 to 2513, 2523, and 2524 of this title, sections 1551 and 1662d–1 of Title 29, Labor, section 31326 of Title 46, and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, repealing section 2504 of this title, enacting provisions set out as notes under sections 1143, 1151, 2501, 2511, 2701, and 5013 of this title, section 1662d–1 of Title 29, and sections 1279b and 1279d of the Appendix to Title 46, amending provisions set out as notes under sections 1143, 2391, and 2501 of this title, and repealing provisions set out as a note under section 2701 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993'.''

SHORT TITLE

Pub. L. 102–484, div. D, §4001, Oct. 23, 1992, 106 Stat. 2658, provided that: ''This division [div. D (§§4001–4501) of Pub. L. 102–484, see Tables for classification] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Act of 1992'.''

TREATMENT OF INTERAGENCY AND STATE AND LOCAL PURCHASES WHEN THE DEPARTMENT OF DEFENSE ACTS AS CONTRACT INTERMEDIARY FOR THE GENERAL SERVICES ADMINISTRATION

Pub. L. 114–92, div. A, title VIII, §897, Nov. 25, 2015, 129 Stat. 954, provided that: ''Contracts executed by the Department of Defense as a result of the transfer of contracts from the General Services Administration or for which the Department serves as an item manager for products on behalf of the General Services Administration shall not be subject to requirements under chapter 148 of title 10, United States Code, to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by section 1315(f) of Pub. L. 103–160 not to alter financial commitment requirements in effect on the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

CONGRESSIONAL FINDINGS

Pub. L. 102–484, div. D, title XLI, §4101, Oct. 23, 1992, 106 Stat. 2658, provided that: ''Congress makes the following findings:

''(1) The collapse of communism in Eastern Europe and the dissolution of the Soviet Union have fundamentally changed the military threat that formed the basis for the national security policy of the United States since the end of World War II.

''(2) The change in the military threat presents a unique opportunity to restructure and reduce the military requirements of the United States.

''(3) As the United States proceeds with the post-Cold War defense build down, the Nation must recognize and address the impact of reduced defense spending on the military personnel, civilian employees, and defense industry workers who have been the foundation of the national defense policies of the United States.

''(4) The defense build down will have a significant impact on communities as procurements are reduced and military installations are closed and realigned.

''(5) Despite the changes in the military threat, the United States must maintain the capability to respond to regional conflicts that threaten the national interests of the United States, and to reconstitute forces in the event of an extended conflict.

''(6) The skills and capabilities of military personnel, civilian employees of the Department of Defense, defense industry workers, and defense industries represent an invaluable national resource that can contribute to the economic growth of the United States and to the long-term vitality of the national technology and industrial base.

''(7) Prompt and vigorous implementation of defense conversion, reinvestment, and transition assistance programs is essential to ensure that the defense build down is structured in a manner that—

''(A) enhances the long-term ability of the United States to maintain a strong and vibrant national technology and industrial base; and

''(B) promotes economic growth.''

PURPOSES OF TITLE XLII OF PUB. L. 102–484

Pub. L. 102–484, div. D, title XLII, §4201, Oct. 23, 1992, 106 Stat. 2659, provided that: ''The purposes of this title [see Tables for classification] are to consolidate, revise, clarify, and reenact policies and requirements, and to enact additional policies and requirements, relating to the national technology and industrial base, defense reinvestment, and defense conversion programs that further national security objectives.''

TRANSITION PROVISION; ''DEFENSE CRITICAL TECHNOLOGY'' DEFINED

Pub. L. 102–484, div. D, title XLII, §4203(b), Oct. 23, 1992, 106 Stat. 2662, provided that until first national technology and industrial base assessment was submitted to Congress by Secretary of Defense pursuant to former section 2506(e) of this title, the term ''defense critical technology'' for purposes of this chapter, would have meaning given such term in section 2521 of this title, as in effect on day before Oct. 23, 1992.

SUBCHAPTER II—POLICIES AND PLANNING

Sec.
2501. National security strategy for national technology and industrial base.
2502. National Defense Technology and Industrial Base Council.
2503. National defense program for analysis of the technology and industrial base.
2504. Annual report to Congress.
2505. National technology and industrial base: periodic defense capability assessments.
2506. Department of Defense technology and industrial base policy guidance.
2507. Data collection authority of President.
2508. Industrial Base Fund

AMENDMENTS

2013—Pub. L. 112–239, div. A, title XVI, §1603(a)(2), Jan. 2, 2013, 126 Stat. 2063, substituted ''National security strategy for national technology and industrial base'' for ''National security objectives concerning national technology and industrial base'' in item 2501.

2011—Pub. L. 111–383, div. A, title VIII, §896(b)(2), Jan. 7, 2011, 124 Stat. 4316, which directed amendment of table of sections at the beginning of this chapter by adding item 2508 at the end, was executed by adding

item 2508 at the end of the table of sections at the beginning of this subchapter to reflect the probable intent of Congress.

1996—Pub. L. 104–201, div. A, title VIII, § 829(g), Sept. 23, 1996, 110 Stat. 2614, added item 2504 and substituted ''Department of Defense technology and industrial base policy guidance'' for ''National technology and industrial base: periodic defense capability plan'' in item 2506.

Pub. L. 104–106, div. A, title X, § 1081(i)(1), Feb. 10, 1996, 110 Stat. 455, substituted ''National security objectives concerning national technology and industrial base'' for ''Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion'' in item 2501.

1993—Pub. L. 103–160, div. A, title XIII, § 1312(a)(2), Nov. 30, 1993, 107 Stat. 1786, struck out item 2504 ''Center for the Study of Defense Economic Adjustment''.

§ 2501. National security strategy for national technology and industrial base

(a) NATIONAL SECURITY STRATEGY FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—The Secretary of Defense shall develop a national security strategy for the national technology and industrial base. Such strategy shall be based on a prioritized assessment of risks and challenges to the defense supply chain and shall ensure that the national technology and industrial base is capable of achieving the following national security objectives:

(1) Supplying, equipping, and supporting the force structure of the armed forces that is necessary to achieve—

(A) the objectives set forth in the national security strategy report submitted to Congress by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043);

(B) the policy guidance of the Secretary of Defense provided pursuant to section 113(g) of this title; and

(C) the future-years defense program submitted to Congress by the Secretary of Defense pursuant to section 221 of this title.

(2) Sustaining production, maintenance, repair, logistics, and other activities in support of military operations of various durations and intensity.

(3) Maintaining advanced research and development activities to provide the armed forces with systems capable of ensuring technological superiority over potential adversaries.

(4) Reconstituting within a reasonable period the capability to develop, produce, and support supplies and equipment, including technologically advanced systems, in sufficient quantities to prepare fully for a war, national emergency, or mobilization of the armed forces before the commencement of that war, national emergency, or mobilization.

(5) Providing for the development, manufacture, and supply of items and technologies critical to the production and sustainment of advanced military weapon systems within the national technology and industrial base.

(6) Providing for the generation of services capabilities that are not core functions of the armed forces and that are critical to military operations within the national technology and industrial base.

(7) Providing for the development, production, and integration of information technology within the national technology and industrial base.

(8) Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries.

(9) Ensuring reliable sources of materials that are critical to national security, such as specialty metals, essential minerals, armor plate, and rare earth elements.

(10) Reducing, to the maximum extent practicable, the presence of counterfeit parts in the supply chain and the risk associated with such parts.

(b) CIVIL-MILITARY INTEGRATION POLICY.—It is the policy of Congress that the United States attain the national technology and industrial base objectives set forth in subsection (a) through acquisition policy reforms that have the following objectives:

(1) Relying, to the maximum extent practicable, upon the commercial national technology and industrial base that is required to meet the national security needs of the United States.

(2) Reducing the reliance of the Department of Defense on technology and industrial base sectors that are economically dependent on Department of Defense business.

(3) Reducing Federal Government barriers to the use of commercial products, processes, and standards.

(Added Pub. L. 102–484, div. D, title XLII, § 4211, Oct. 23, 1992, 106 Stat. 2662; amended Pub. L. 103–35, title II, § 201(c)(7), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title XI, § 1182(a)(10), title XIII, § 1313, Nov. 30, 1993, 107 Stat. 1771, 1786; Pub. L. 104–106, div. A, title X, § 1081(a), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(a), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 111–23, title III, § 303(a), May 22, 2009, 123 Stat. 1731; Pub. L. 111–383, div. A, title VIII, § 895(b), Jan. 7, 2011, 124 Stat. 4314; Pub. L. 112–239, div. A, title XVI, § 1603(a)(1), Jan. 2, 2013, 126 Stat. 2062; Pub. L. 113–291, div. A, title X, § 1071(c)(2), Dec. 19, 2014, 128 Stat. 3508.)

PRIOR PROVISIONS

A prior section 2501, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2014, related to centralized guidance, analysis, and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2501 was renumbered section 2533 of this title.

AMENDMENTS

2014—Subsec. (a)(1)(A). Pub. L. 113–291 substituted ''(50 U.S.C. 3043)'' for ''(50 U.S.C. 404a)''.

2013—Pub. L. 112–239, § 1603(a)(1)(A), substituted ''strategy for'' for ''objectives concerning'' in section catchline.

Subsec. (a). Pub. L. 112–239, § 1603(a)(1)(B)(i), (ii), substituted ''Strategy'' for ''Objectives'' in heading and ''The Secretary of Defense shall develop a national security strategy for the national technology and industrial base. Such strategy shall be based on a prioritized assessment of risks and challenges to the defense supply chain and shall ensure that the national technology and industrial base is capable of achieving the following national security objectives:'' for ''It is the policy

of Congress that the national technology and industrial base be capable of meeting the following national security objectives:'' in introductory provisions.

Subsec. (a)(9), (10). Pub. L. 112–239, §1603(a)(1)(B)(iii), added pars. (9) and (10).

2011—Subsec. (a)(1). Pub. L. 111–383, §895(b)(1), substituted ''Supplying, equipping, and supporting'' for ''Supplying and equipping'' in introductory provisions.

Subsec. (a)(2). Pub. L. 111–383, §895(b)(2), substituted ''logistics, and other activities in support of'' for ''and logistics for''.

Subsec. (a)(4). Pub. L. 111–383, §895(b)(3), substituted '', produce, and support'' for ''and produce''.

Subsec. (a)(6) to (8). Pub. L. 111–383, §895(b)(4), added pars. (6) and (7) and redesignated former par. (6) as (8).

2009—Subsec. (a)(6). Pub. L. 111–23 added par. (6).

1996—Pub. L. 104–106, §1081(a)(2), substituted ''National security objectives concerning national technology and industrial base'' for ''Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion'' as section catchline.

Subsec. (a). Pub. L. 104–106, §1081(a)(1)(A)(i), substituted ''National Security'' for ''Defense Policy'' in heading.

Subsec. (a)(5). Pub. L. 104–201 added par. (5).

Pub. L. 104–106, §1081(a)(1)(A)(ii), struck out par. (5) which read as follows: ''Furthering the missions of the Department of Defense through the support of policy objectives and programs relating to the defense reinvestment, diversification, and conversion objectives specified in subsection (b).''

Subsecs. (b), (c). Pub. L. 104–106, §1081(a)(1)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which stated policy objectives of Congress relating to defense reinvestment, diversification, and conversion.

1993—Subsec. (a)(1)(A). Pub. L. 103–35 substituted ''section 108'' for ''section 104''.

Subsec. (a)(5). Pub. L. 103–160, §1313, added par. (5).

Subsec. (b)(2). Pub. L. 103–160, §1182(a)(10), substituted ''that, by reducing the public sector demand for capital, increases the amount of capital available'' for ''and thereby free up capital''.

DEPARTMENT OF DEFENSE TECHNOLOGY OFFSET PROGRAM TO BUILD AND MAINTAIN THE MILITARY TECHNOLOGICAL SUPERIORITY OF THE UNITED STATES

Pub. L. 114–92, div. A, title II, §218, Nov. 25, 2015, 129 Stat. 772, provided that:

''(a) PROGRAM ESTABLISHED.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a technology offset program to build and maintain the military technological superiority of the United States by—

''(A) accelerating the fielding of offset technologies that would help counter technological advantages of potential adversaries of the United States, including directed energy, low-cost, high-speed munitions, autonomous systems, undersea warfare, cyber technology, and intelligence data analytics, developed using research funding of the Department of Defense and accelerating the commercialization of such technologies; and

''(B) developing and implementing new policies and acquisition and business practices.

''(2) GUIDELINES.—Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall issue guidelines for the operation of the program established under paragraph (1), including—

''(A) criteria for an application for funding by a military department, Defense Agency, or a combatant command;

''(B) the purposes for which such a department, agency, or command may apply for funds and appropriate requirements for technology development or commercialization to be supported using program funds;

''(C) the priorities, if any, to be provided to field or commercialize offset technologies developed by certain types of research funding of the Department; and

''(D) criteria for evaluation of an application for funding or changes to policies or acquisition and business practices by such a department, agency, or command for purposes of the program.

''(b) APPLICATIONS FOR FUNDING.—

''(1) IN GENERAL.—Under the program established under subsection (a)(1), not less frequently than annually, the Secretary shall solicit from the heads of the military departments, the Defense Agencies, and the combatant commands applications for funding to be used to enter into contracts, cooperative agreements, or other transaction agreements entered into pursuant to section 2371b of title 10, United States Code, as added by section 815, with appropriate entities for the fielding or commercialization of technologies.

''(2) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require any official of the Department of Defense to provide funding under this section to any Congressional earmark as defined pursuant to clause 9 of rule XXI of the Rules of the House of Representatives or any congressionally directed spending item as defined pursuant to paragraph 5 of rule XLIV of the Standing Rules of the Senate.

''(c) FUNDING.—

''(1) IN GENERAL.—Subject to the availability of appropriations for such purpose, of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2016 for research, development, test, and evaluation, Defense-wide, not more than $300,000,000 may be used for each such fiscal year for the program established under subsection (a)(1).

''(2) AMOUNT FOR DIRECTED ENERGY.—Of the funds specified in paragraph (1) for any of fiscal years 2016 through 2020, not more than $150,000,000 may be used for each such fiscal year for activities in the field of directed energy.

''(d) TRANSFER AUTHORITY.—

''(1) IN GENERAL.—The Secretary may transfer funds available for the program established under subsection (a)(1) to the research, development, test, and evaluation accounts of a military department, Defense Agency, or a combatant command pursuant to an application, or any part of an application, that the Secretary determines would support the purposes of the program.

''(2) SUPPLEMENT NOT SUPPLANT.—The transfer authority provided in paragraph (1) is in addition to any other transfer authority available to the Secretary of Defense.

''(e) TERMINATION.—

''(1) IN GENERAL.—The authority to carry out the program under subsection (a)(1) shall terminate on September 30, 2020.

''(2) TRANSFER AFTER TERMINATION.—Any amounts made available for the program that remain available for obligation on the date on which the program terminates may be transferred under subsection (d) during the 180-day period beginning on the date of the termination of the program.''

EXPANSION OF THE INDUSTRIAL BASE

Pub. L. 111–383, div. A, title VIII, §891, Jan. 7, 2011, 124 Stat. 4310, provided that:

''(a) PROGRAM TO EXPAND INDUSTRIAL BASE REQUIRED.—The Secretary of Defense shall establish a program to expand the industrial base of the Department of Defense to increase the Department's access to innovation and the benefits of competition.

''(b) IDENTIFYING AND COMMUNICATING WITH FIRMS THAT ARE NOT TRADITIONAL SUPPLIERS.—The program established under subsection (a) shall use tools and resources available within the Federal Government and available from the private sector to provide a capability for identifying and communicating with firms that are not traditional suppliers, including commercial

firms and firms of all business sizes, that are engaged in markets of importance to the Department of Defense in which such firms can make a significant contribution.

''(c) OUTREACH TO LOCAL FIRMS NEAR DEFENSE INSTALLATIONS.—The program established under subsection (a) shall include outreach, using procurement technical assistance centers, to firms of all business sizes in the vicinity of Department of Defense installations regarding opportunities to obtain contracts and subcontracts to perform work at such installations.

''(d) INDUSTRIAL BASE REVIEW.—The program established under subsection (a) shall include a continuous effort to review the industrial base supporting the Department of Defense, including the identification of markets of importance to the Department of Defense in which firms that are not traditional suppliers can make a significant contribution.

''(e) FIRMS THAT ARE NOT TRADITIONAL SUPPLIERS.—For purposes of this section, a firm is not a traditional supplier of the Department of Defense if it does not currently have contracts and subcontracts to perform work for the Department of Defense with a total combined value in excess of $500,000.

''(f) PROCUREMENT TECHNICAL ASSISTANCE CENTER.—In this section, the term 'procurement technical assistance center' means a center operating under a cooperative agreement with the Defense Logistics Agency to provide procurement technical assistance pursuant to the authority provided in chapter 142 of title 10, United States Code.''

EXECUTIVE AGENT FOR PRINTED CIRCUIT BOARD TECHNOLOGY

Pub. L. 110–417, [div. A], title II, § 256, Oct. 14, 2008, 122 Stat. 4404, provided that:

''(a) EXECUTIVE AGENT.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall designate a senior official of the Department of Defense to act as the executive agent for printed circuit board technology.

''(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—

''(1) ESTABLISHMENT.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], and in accordance with Directive 5101.1, the Secretary of Defense shall prescribe the roles, responsibilities, and authorities of the executive agent designated under subsection (a).

''(2) SPECIFICATION.—The roles and responsibilities of the executive agent designated under subsection (a) shall include each of the following:

''(A) Development and maintenance of a printed circuit board and interconnect technology roadmap that ensures that the Department of Defense has access to the manufacturing capabilities and technical expertise necessary to meet future military requirements regarding such technology.

''(B) Development of recommended funding strategies necessary to meet the requirements of the roadmap developed under subparagraph (A).

''(C) Assessment of the vulnerabilities, trustworthiness, and diversity of the printed circuit board supply chain, including the development of trustworthiness requirements for printed circuit boards used in defense systems, and to develop strategies to address matters that are identified as a result of such assessment.

''(D) Such other roles and responsibilities as the Secretary of Defense considers appropriate.

''(c) SUPPORT WITHIN DEPARTMENT OF DEFENSE.—In accordance with Directive 5101.1, the Secretary of Defense shall ensure that the military departments, Defense Agencies, and other components of the Department of Defense provide the executive agent designated under subsection (a) with the appropriate support and resources needed to perform the roles, responsibilities, and authorities of the executive agent.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Directive 5101.1' means Department of Defense Directive 5101.1, or any successor directive relating to the responsibilities of an executive agent of the Department of Defense.

''(2) The term 'executive agent' has the meaning given the term 'DoD Executive Agent' in Directive 5101.1.''

REQUIREMENT FOR SEPARATE REPORTS ON TECHNOLOGY AREA REVIEW AND ASSESSMENT SUMMARIES

Pub. L. 109–163, div. A, title II, § 253(c), Jan. 6, 2006, 119 Stat. 3180, provided that whenever the Secretary of Defense provided for the conduct of a study referred to as a Technology Area Review and Assessment, the Secretary, not later than March 1 of the year following the year in which that study was conducted, was to submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives a report containing a summary of each such Technology Area Review and Assessment conducted during that year, prior to repeal by Pub. L. 110–181, div. A, title II, § 236, Jan. 28, 2008, 122 Stat. 47.

ESSENTIAL ITEMS IDENTIFICATION AND DOMESTIC PRODUCTION CAPABILITIES IMPROVEMENT PROGRAM

Pub. L. 108–136, div. A, title VIII, subtitle B, part I, Nov. 24, 2003, 117 Stat. 1542, as amended by Pub. L. 109–364, div. A, title VIII, § 841, Oct. 17, 2006, 120 Stat. 2335; Pub. L. 111–84, div. A, title VIII, § 846, Oct. 28, 2009, 123 Stat. 2420; Pub. L. 112–81, div. A, title X, § 1062(g)(2), Dec. 31, 2011, 125 Stat. 1585; Pub. L. 113–291, div. A, title X, § 1071(b)(5)(A), (d)(1)(C), Dec. 19, 2014, 128 Stat. 3506, 3509, provided that:

''SEC. 811. CONSISTENCY WITH UNITED STATES OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS.

''No provision of this subtitle [subtitle B (§§ 811–828) of title VIII of div. A of Pub. L. 108–136, enacting section 2436 of this title, amending sections 2533a and 2534 of this title, and enacting provisions set out as notes under sections 2436, 2505, 2521, and 2534 of this title] or any amendment made by this subtitle shall apply to the extent the Secretary of Defense, in consultation with the Secretary of Commerce, the United States Trade Representative, and the Secretary of State, determines that it is inconsistent with United States obligations under an international agreement.

''SEC. 812. ASSESSMENT AND ANNUAL REPORT OF UNITED STATES DEFENSE INDUSTRIAL BASE CAPABILITIES AND ACQUISITIONS OF ARTICLES, MATERIALS, AND SUPPLIES MANUFACTURED OUTSIDE THE UNITED STATES.

''(a) ASSESSMENT PROGRAM.—(1) The Secretary of Defense shall establish a program to assess—

''(A) the degree to which the United States is dependent on foreign sources of supply; and

''(B) the capabilities of the United States defense industrial base to produce military systems necessary to support the national security objectives set forth in section 2501 of title 10, United States Code.

''(2) For purposes of the assessment program, the Secretary shall use existing data, as required under subsection (b), and submit an annual report, as required under subsection (c).

''(b) USE OF EXISTING DATA.—(1) At a minimum, with respect to each prime contract with a value greater than $25,000 for the procurement of defense items and components, the following information from existing sources shall be used for purposes of the assessment program:

''(A) Whether the contractor is a United States or foreign contractor.

''(B) The principal place of business of the contractor and the principal place of performance of the contract.

''(C) Whether the contract was awarded on a sole source basis or after receipt of competitive offers.

''(D) The dollar value of the contract.

''(2) The Federal Procurement Data System described in section 1122(a)(4)(A) of title 41, United States Code,

or any successor system, shall collect from contracts described in paragraph (1) the information specified in that paragraph.

''(3) Information obtained in the implementation of this section is subject to the same limitations on disclosure, and penalties for violation of such limitations, as is provided under section 2507 of title 10, United States Code. Such information also shall be exempt from release under section 552 of title 5, United States Code.

''(4) For purposes of meeting the requirements set forth in this section, the Secretary of Defense may not require the provision of information beyond the information that is currently provided to the Department of Defense through existing data collection systems by non-Federal entities with respect to contracts and subcontracts with the Department of Defense or any military department.

''[(c) Repealed. Pub. L. 112–81, div. A, title X, § 1062(g)(2), Dec. 31, 2011, 125 Stat. 1585.]

''(d) PUBLIC AVAILABILITY.—The Secretary of Defense shall make the report submitted under subsection (c) publicly available to the maximum extent practicable.

''(e) APPLICABILITY.—This section shall not apply to acquisitions made by an agency, or component thereof, that is an element of the intelligence community as set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

''[SEC. 813. Repealed. Pub. L. 111–84, div. A, title VIII, § 846, Oct. 28, 2009, 123 Stat. 2420.]

''SEC. 814. PRODUCTION CAPABILITIES IMPROVEMENT FOR CERTAIN ESSENTIAL ITEMS USING DEFENSE INDUSTRIAL BASE CAPABILITIES FUND.

''(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a separate fund to be known as the Defense Industrial Base Capabilities Fund (hereafter in this section referred to as the 'Fund').

''(b) MONEYS IN FUND.—There shall be credited to the Fund amounts appropriated to it.

''(c) USE OF FUND.—The Secretary of Defense is authorized to use all amounts in the Fund, subject to appropriation, for the purposes of enhancing or reconstituting United States industrial capability to produce items on the military system essential item breakout list (as described in section 812(b)) or items subject to section 2534 of title 10, United States Code, in the quantity and of the quality necessary to achieve national security objectives.

''(d) LIMITATION ON USE OF FUND.—Before the obligation of any amounts in the Fund, the Secretary of Defense shall submit to Congress a report describing the Secretary's plans for implementing the Fund established in subsection (a), including the priorities for the obligation of amounts in the Fund, the criteria for determining the recipients of such amounts, and the mechanisms through which such amounts may be provided to the recipients.

''(e) AVAILABILITY OF FUNDS.—Amounts in the Fund shall remain available until expended.

''(f) FUND MANAGER.—The Secretary of Defense shall designate a Fund manager. The duties of the Fund manager shall include—

''(1) ensuring the visibility and accountability of transactions engaged in through the Fund; and

''(2) reporting to Congress each year regarding activities of the Fund during the previous fiscal year.''

AIR FORCE SCIENCE AND TECHNOLOGY PLANNING

Pub. L. 107–107, div. A, title II, subtitle D, Dec. 28, 2001, 115 Stat. 1041, provided that:

''SEC. 251. SHORT TITLE.

''This subtitle may be cited as the 'Air Force Science and Technology for the 21st Century Act'.

''SEC. 252. SCIENCE AND TECHNOLOGY INVESTMENT AND DEVELOPMENT PLANNING.

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Air Force should carry out each of the following:

''(1) Continue and improve efforts to ensure that—

''(A) the Air Force science and technology community is represented, and the recommendations of that community are considered, at all levels of program planning and budgetary decisionmaking within the Air Force;

''(B) advocacy for science and technology development is institutionalized across all levels of Air Force management in a manner that is not dependent on individuals; and

''(C) the value of Air Force science and technology development is made increasingly apparent to the warfighters, by linking the needs of those warfighters with decisions on science and technology development.

''(2) Complete and adopt a policy directive that provides for changes in how the Air Force makes budgetary and nonbudgetary decisions with respect to its science and technology development programs and how it carries out those programs.

''(3) At least once every five years, conduct a review of the long-term challenges and short-term objectives of the Air Force science and technology programs that is consistent with the review specified in section 252 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–46 [set out as a note below]).

''(4) Ensure that development and science and technology planning and investment activities are carried out for future space warfighting systems and for future nonspace warfighting systems in an integrated manner.

''(5) Elevate the position within the Office of the Secretary of the Air Force that has primary responsibility for budget and policy decisions for science and technology programs.

''(b) REINSTATEMENT OF DEVELOPMENT PLANNING.—(1) The Secretary of the Air Force shall reinstate and implement a revised development planning process that provides for each of the following:

''(A) Coordinating the needs of Air Force warfighters with decisions on science and technology development.

''(B) Giving input into the establishment of priorities among science and technology programs.

''(C) Analyzing Air Force capability options for the allocation of Air Force resources.

''(D) Developing concepts for technology, warfighting systems, and operations with which the Air Force can achieve its critical future goals.

''(E) Evaluating concepts for systems and operations that leverage technology across Air Force organizational boundaries.

''(F) Ensuring that a 'system-of-systems' approach is used in carrying out the various Air Force capability planning exercises.

''(G) Utilizing existing analysis capabilities within the Air Force product centers in a collaborative and integrated manner.

''(2) Not later than one year after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of the Air Force shall submit to Congress a report on the implementation of the planning process required by paragraph (1). The report shall include the annual amount that the Secretary considers necessary to carry out paragraph (1).

''SEC. 253. STUDY AND REPORT ON EFFECTIVENESS OF AIR FORCE SCIENCE AND TECHNOLOGY PROGRAM CHANGES.

''(a) REQUIREMENT.—The Secretary of the Air Force, in cooperation with the National Research Council of the National Academy of Sciences, shall carry out a study to determine how the changes to the Air Force science and technology program implemented during the past two years affect the future capabilities of the Air Force.

''(b) MATTERS STUDIED.—(1) The study shall review and assess whether such changes as a whole are sufficient to ensure the following:

''(A) That the concerns about the management of the science and technology program that have been raised by Congress, the Defense Science Board, the Air Force Science Advisory Board, and the Air Force Association have been adequately addressed.

''(B) That appropriate and sufficient technology is available to ensure the military superiority of the United States and counter future high-risk threats.

''(C) That the science and technology investments are balanced to meet the near-, mid-, and long-term needs of the Air Force.

''(D) That technologies are made available that can be used to respond flexibly and quickly to a wide range of future threats.

''(E) That the Air Force organizational structure provides for a sufficiently senior level advocate of science and technology to ensure an ongoing, effective presence of the science and technology community during the budget and planning process.

''(2) In addition, the study shall assess the specific changes to the Air Force science and technology program as follows:

''(A) Whether the biannual science and technology summits provide sufficient visibility into, and understanding and appreciation of, the value of the science and technology program to the senior level of Air Force budget and policy decisionmakers.

''(B) Whether the applied technology councils are effective in contributing the input of all levels beneath the senior leadership into the coordination, focus, and content of the science and technology program.

''(C) Whether the designation of the commander of the Air Force Materiel Command as the science and technology budget advocate is effective to ensure that an adequate Air Force science and technology budget is requested.

''(D) Whether the revised development planning process is effective to aid in the coordination of the needs of the Air Force warfighters with decisions on science and technology investments and the establishment of priorities among different science and technology programs.

''(E) Whether the implementation of section 252 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–46 [set out as a note below]) is effective to identify the basis for the appropriate science and technology program funding level and investment portfolio.

''(c) REPORT.—Not later than May 1, 2003, the Secretary of the Air Force shall submit to Congress the results of the study.''

Pub. L. 106–398, §1 [[div. A], title II, §252], Oct. 30, 2000, 114 Stat. 1654, 1654A–46, provided that:

''(a) REQUIREMENT FOR REVIEW.—The Secretary of the Air Force shall conduct a review of the long-term challenges and short-term objectives of the Air Force science and technology programs. The Secretary shall complete the review not later than one year after the date of the enactment of this Act [Oct. 30, 2000].

''(b) MATTERS TO BE REVIEWED.—The review shall include the following:

''(1) An assessment of the budgetary resources that are being used for fiscal year 2001 for addressing the long-term challenges and the short-term objectives of the Air Force science and technology programs.

''(2) The budgetary resources that are necessary to address those challenges and objectives adequately.

''(3) A course of action for each projected or ongoing Air Force science and technology program that does not address either the long-term challenges or the short-term objectives.

''(4) The matters required under subsection (c)(5) and (d)(6).

''(c) LONG-TERM CHALLENGES.—(1) The Secretary of the Air Force shall establish an integrated product team to identify high-risk, high-payoff challenges that will provide a long-term focus and motivation for the Air Force science and technology programs over the next 20 to 50 years following the enactment of this Act [Oct. 30, 2000]. The integrated product team shall include representatives of the Office of Scientific Research and personnel from the Air Force Research Laboratory.

''(2) The team shall solicit views from the entire Air Force science and technology community on the matters under consideration by the team.

''(3) The team—

''(A) shall select for consideration science and technology challenges that involve—

''(i) compelling requirements of the Air Force;

''(ii) high-risk, high-payoff areas of exploration; and

''(iii) very difficult, but probably achievable, results; and

''(B) should not select a linear extension of any ongoing Air Force science and technology program for consideration as a science and technology challenge under subparagraph (A).

''(4) The Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering shall designate a technical coordinator and a management coordinator for each science and technology challenge identified pursuant to this subsection. Each technical coordinator shall have sufficient expertise in fields related to the challenge to be able to identify other experts in such fields and to affirm the credibility of the challenge. The coordinator for a science and technology challenge shall conduct workshops within the relevant scientific and technological community to obtain suggestions for possible approaches to addressing the challenge and to identify ongoing work that addresses the challenge, deficiencies in current work relating to the challenge, and promising areas of research.

''(5) In carrying out subsection (a), the Secretary of the Air Force shall review the science and technology challenges identified pursuant to this subsection and, for each such challenge, at a minimum—

''(A) consider the results of the workshops conducted pursuant to paragraph (4); and

''(B) identify any work not currently funded by the Air Force that should be performed to meet the challenge.

''(d) SHORT-TERM OBJECTIVES.—(1) The Secretary of the Air Force shall establish a task force to identify short-term technological objectives of the Air Force science and technology programs. The task force shall be chaired by the Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering and shall include representatives of the Chief of Staff of the Air Force and the specified combatant commands of the Air Force.

''(2) The task force shall solicit views from the entire Air Force requirements community, user community, and acquisition community.

''(3) The task force shall select for consideration short-term objectives that involve—

''(A) compelling requirements of the Air Force;

''(B) support in the user community; and

''(C) likely attainment of the desired benefits within a five-year period.

''(4) The Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering shall establish an integrated product team for each short-term objective identified pursuant to this subsection. Each integrated product team shall include representatives of the requirements community, the user community, and the science and technology community with relevant expertise.

''(5) The integrated product team for a short-term objective shall be responsible for—

''(A) identifying, defining, and prioritizing the enabling capabilities that are necessary for achieving the objective;

''(B) identifying deficiencies in the enabling capabilities that must be addressed if the short-term objective is to be achieved; and

''(C) working with the Air Force science and technology community to identify science and technology

projects and programs that should be undertaken to eliminate each deficiency in an enabling capability.

''(6) In carrying out subsection (a), the Secretary of the Air Force shall review the short-term science and technology objectives identified pursuant to this subsection and, for each such objective, at a minimum—

''(A) consider the work of the integrated product team conducted pursuant to paragraph (5); and

''(B) identify the science and technology work of the Air Force that should be undertaken to eliminate each deficiency in enabling capabilities that is identified by the integrated product team pursuant to subparagraph (B) of that paragraph.

''(e) COMPTROLLER GENERAL REVIEW.—(1) Not later than 90 days after the Secretary of the Air Force completes the review required by subsection (a), the Comptroller General shall submit to Congress a report on the results of the review. The report shall include the Comptroller General's assessment regarding the extent to which the review was conducted in compliance with the requirements of this section.

''(2) Immediately upon completing the review required by subsection (a), the Secretary of Defense shall notify the Comptroller General of the completion of the review. For the purposes of paragraph (1), the date of the notification shall be considered the date of the completion of the review.''

REPORT BY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS

Pub. L. 106–65, div. A, title II, §243, Oct. 5, 1999, 113 Stat. 551, required the Under Secretary of Defense for Acquisition, Technology, and Logistics to submit to the congressional defense committees a report on the actions necessary to promote the research base and technological development needed for ensuring that the Armed Forces had the military capabilities necessary for meeting national security requirements over the next two to three decades.

SENSE OF CONGRESS ON DEFENSE SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 106–65, div. A, title II, §212, Oct. 5, 1999, 113 Stat. 542, as amended by Pub. L. 108–136, div. A, title X, §1031(h)(1), Nov. 24, 2003, 117 Stat. 1604; Pub. L. 109–364, div. A, title II, §217, Oct. 17, 2006, 120 Stat. 2125, which provided the sense of Congress as to funding objectives for the Defense Science and Technology Program, was repealed by Pub. L. 111–84, div. A, title II, §213, Oct. 28, 2009, 123 Stat. 2226.

Pub. L. 105–261, div. A, title II, §214, Oct. 17, 1998, 112 Stat. 1948, provided that:

''(a) FUNDING REQUIREMENTS FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM BUDGET.—It is the sense of Congress that, for each of the fiscal years 2000 through 2008, it should be an objective of the Secretary of Defense to increase the budget for the Defense Science and Technology Program for the fiscal year over the budget for that program for the preceding fiscal year by a percent that is at least two percent above the rate of inflation as determined by the Office of Management and Budget.

''(b) GUIDELINES FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM.—

''(1) RELATIONSHIP OF DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO UNIVERSITY RESEARCH.—It is the sense of Congress that the following should be key objectives of the Defense Science and Technology Program:

''(A) The sustainment of research capabilities in scientific and engineering disciplines critical to the Department of Defense.

''(B) The education and training of the next generation of scientists and engineers in disciplines that are relevant to future defense systems, particularly through the conduct of basic research.

''(C) The continued support of the Defense Experimental Program to Stimulate Competitive Research and research programs at historically black colleges and universities and minority institutions.

''(2) RELATIONSHIP OF THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO COMMERCIAL RESEARCH AND TECHNOLOGY.—(A) It is the sense of Congress that, in supporting projects within the Defense Science and Technology Program, the Secretary of Defense should attempt to leverage commercial research, technology, products, and processes for the benefit of the Department of Defense.

''(B) It is the sense of Congress that funds made available for projects and programs of the Defense Science and Technology Program should be used only for the benefit of the Department of Defense, which includes—

''(i) the development of technology that has only military applications;

''(ii) the development of militarily useful, commercially viable technology; and

''(iii) the adaptation of commercial technology, products, or processes for military purposes.

''(3) SYNERGISTIC MANAGEMENT OF RESEARCH AND DEVELOPMENT.—It is the sense of Congress that the Secretary of Defense should have the flexibility to allocate a combination of funds available for the Department of Defense for basic and applied research and for advanced development to support any individual project or program within the Defense Science and Technology Program, but such flexibility should not change the allocation of funds in any fiscal year among basic and applied research and advanced development.

''(4) MANAGEMENT OF SCIENCE AND TECHNOLOGY.—It is the sense of Congress that—

''(A) management and funding for the Defense Science and Technology Program for each military department should receive a level of priority and leadership attention equal to the level received by program acquisition, and the Secretary of each military department should ensure that a senior official in the department holds the appropriate title and responsibility to ensure effective oversight and emphasis on science and technology;

''(B) to ensure an appropriate long-term focus for investments, a sufficient percentage of science and technology funds should be directed toward new technology areas, and annual reviews should be conducted for ongoing research areas to ensure that those funded initiatives are either integrated into acquisition programs or discontinued when appropriate;

''(C) the Secretary of each military department should take appropriate steps to ensure that sufficient numbers of officers and civilian employees in the department hold advanced degrees in technical fields; and

''(D) of particular concern, the Secretary of the Air Force should take appropriate measures to ensure that sufficient numbers of scientists and engineers are maintained to address the technological challenges faced in the areas of air, space, and information technology.

''(c) STUDY.—

''(1) REQUIREMENT.—The Secretary of Defense, in cooperation with the National Research Council of the National Academy of Sciences, shall conduct a study on the technology base of the Department of Defense.

''(2) MATTERS COVERED.—The study shall—

''(A) result in recommendations on the minimum requirements for maintaining a technology base that is sufficient, based on both historical developments and future projections, to project superiority in air and space weapons systems and in information technology;

''(B) address the effects on national defense and civilian aerospace industries and information technology of reducing funding below the goal described in subsection (a); and

''(C) result in recommendations on the appropriate levels of staff with baccalaureate, masters, and doctorate degrees, and the optimal ratio of ci-

vilian and military staff holding such degrees, to ensure that science and technology functions of the Department of Defense remain vital.

''(3) REPORT.—Not later than 120 days after the date on which the study required under paragraph (1) is completed, the Secretary shall submit to Congress a report on the results of the study.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Defense Science and Technology Program' means basic and applied research and advanced development.

''(2) The term 'basic and applied research' means work funded in program elements for defense research and development under Department of Defense category 6.1 or 6.2.

''(3) The term 'advanced development' means work funded in program elements for defense research and development under Department of Defense category 6.3.''

BIENNIAL JOINT WARFIGHTING SCIENCE AND TECHNOLOGY PLAN

Pub. L. 104–201, div. A, title II, § 270, Sept. 23, 1996, 110 Stat. 2469, as amended by Pub. L. 106–65, div. A, title II, § 242, title X, § 1067(5), Oct. 5, 1999, 113 Stat. 551, 774; Pub. L. 109–163, div. A, title II, § 253(a), (b), Jan. 6, 2006, 119 Stat. 3179, 3180, which required biennial submission to Congress by the Secretary of Defense of a plan for ensuring that the science and technology program of the Department of Defense supported the development of the future joint warfighting capabilities identified as priority requirements for the Armed Forces, was repealed by Pub. L. 111–84, div. A, title II, § 241, Oct 28, 2009, 123 Stat. 2237.

COST REIMBURSEMENT RULES FOR INDIRECT COSTS ATTRIBUTABLE TO PRIVATE SECTOR WORK OF DEFENSE CONTRACTORS

Pub. L. 104–106, div. A, title VIII, § 808, Feb. 10, 1996, 110 Stat. 393, authorized Secretary of Defense to enter into agreements with defense contractors under which certain cost reimbursement rules would be applied and required submission of report to congressional defense committees not later than one year after Feb. 10, 1996, prior to repeal by Pub. L. 105–85, div. A, title X, § 1027(d), Nov. 18, 1997, 111 Stat. 1880. See section 7315 of this title.

DOCUMENTATION FOR AWARDS FOR COOPERATIVE AGREEMENTS OR OTHER TRANSACTIONS UNDER DEFENSE TECHNOLOGY REINVESTMENT PROGRAMS

Pub. L. 103–337, div. A, title XI, § 1118, Oct. 5, 1994, 108 Stat. 2870, provided that: ''At the time of the award for a cooperative agreement or other transaction under a program carried out under chapter 148 of title 10, United States Code, the head of the agency concerned shall include in the file pertaining to such agreement or transaction a brief explanation of the manner in which the award advances and enhances a particular national security objective set forth in section 2501(a) of such title or a particular policy objective set forth in [former] section 2501(b) of such title.''

REPORTS ON DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE PROGRAMS

Pub. L. 103–160, div. A, title XIII, § 1303, Nov. 30, 1993, 107 Stat. 1784, provided that during each of the fiscal years 1994, 1995, and 1996, the Secretary of Defense was to prepare a report that assessed the effectiveness of all defense conversion, reinvestment, and transition assistance programs, as defined in section 1302 of Pub. L. 103–160, 107 Stat. 1783, during the preceding fiscal year.

NATIONAL SHIPBUILDING INITIATIVE

Pub. L. 103–160, div. A, title XIII, §§ 1351–1354, Nov. 30, 1993, 107 Stat. 1809, 1810, as amended by Pub. L. 104–201, div. A, title X, § 1073(e)(1)(F), (2)(B), (3), Sept. 23, 1996, 110 Stat. 2658, provided that:

''SEC. 1351. SHORT TITLE.

''This subtitle [subtitle D, §§ 1351–1363 of title XIII of div. A of Pub. L. 103–160, enacting sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending section 31326 of Title 46 and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, and enacting provisions set out as notes under sections 1279b and 1279d of the Appendix to Title 46] may be cited as the 'National Shipbuilding and Shipyard Conversion Act of 1993'.

''SEC. 1352. NATIONAL SHIPBUILDING INITIATIVE.

''(a) ESTABLISHMENT OF PROGRAM.—There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

''(b) ADMINISTERING DEPARTMENTS.—The program shall be carried out—

''(1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

''(2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

''(c) PROGRAM ELEMENTS.—The National Shipbuilding Initiative shall consist of the following program elements:

''(1) FINANCIAL INCENTIVES PROGRAM.—A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

''(2) TECHNOLOGY DEVELOPMENT PROGRAM.—A technology development program, to be carried out within the Department of Defense by the Defense Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for innovative commercial ship design and production processes and technologies.

''(3) NAVY'S AFFORDABILITY THROUGH COMMONALITY PROGRAM.—Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

''(4) NAVY'S MANUFACTURING TECHNOLOGY AND TECHNOLOGY BASE PROGRAMS.—Enhanced support by the Secretary of Defense for, and strengthened funding for, that portion of the Manufacturing Technology program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

''SEC. 1353. DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.

''The Secretary of Defense shall designate the Defense Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

''SEC. 1354. DEFENSE ADVANCED RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.

''(a) DARPA FUNCTIONS.—The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

''(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the Na-

tional Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oceanic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

''(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

''(B) assessments of potential markets for maritime products; and

''(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short- and long-term manufacturing technology investment strategies.

''(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

''(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

''(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Defense Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense conversion potential.

''(b) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—

''(1) MAXIMUM DEPARTMENT OF DEFENSE SHARE.—The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

''(2) REGULATIONS.—The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.''

[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.]

ARMAMENT RETOOLING AND MANUFACTURING SUPPORT INITIATIVE

Pub. L. 102–484, div. A, title I, §§191–195, Oct. 23, 1992, 106 Stat. 2347–2349, as amended by Pub. L. 103–35, title II, §202(a)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–337, div. A, title XI, §1141(a), (b), Oct. 5, 1994, 108 Stat. 2879; Pub. L. 104–201, div. A, title I, §143, Sept. 23, 1996, 110 Stat. 2449; Pub. L. 105–261, div. A, title I, §115, Oct. 17, 1998, 112 Stat. 1939; Pub. L. 106–65, div. A, title I, §116, Oct. 5, 1999, 113 Stat. 533, known as the ''Armament Retooling and Manufacturing Support Act of 1992'', authorized the Secretary of the Army, during fiscal years 1993 through 2001, to carry out the Armament Retooling and Manufacturing Support Initiative, prior to repeal by Pub. L. 106–398, §1 [[div. A], title III, §344(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.

IMPLEMENTATION OF REQUIREMENTS FOR ASSESSMENT, PLANNING, AND ANALYSIS

Pub. L. 102–484, div. D, title XLII, §4218, Oct. 23, 1992, 106 Stat. 2671, related to collection of information, completion of assessments, and issuance of plans required by this subchapter, prior to repeal by Pub. L. 104–201, div. A, title VIII, §829(h), Sept. 23, 1996, 110 Stat. 2614.

INDUSTRIAL DIVERSIFICATION PLANNING FOR DEFENSE CONTRACTORS

Pub. L. 102–484, div. D, title XLII, §4239, Oct. 23, 1992, 106 Stat. 2694, provided that: ''Not later than 120 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall prescribe regulations to encourage defense contractors to engage in industrial diversification planning.''

NOTICE TO CONTRACTORS AND EMPLOYEES UPON PROPOSED AND ACTUAL TERMINATION OR SUBSTANTIAL REDUCTION IN MAJOR DEFENSE PROGRAMS

Pub. L. 102–484, div. D, title XLIV, §4471, Oct. 23, 1992, 106 Stat. 2753, as amended by Pub. L. 103–160, div. A, title XIII, §1372, Nov. 20, 1993, 107 Stat. 1817; Pub. L. 103–337, div. A, title XI, §1142, Oct. 5, 1994, 108 Stat. 2881; Pub. L. 104–201, div. A, title VIII, §824, Sept. 23, 1996, 110 Stat. 2610; Pub. L. 105–85, div. A, title X, §1073(d)(2)(C), Nov. 18, 1997, 111 Stat. 1905; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(7)(C), (f)(6)(C)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430, provided that:

''(a) NOTICE REQUIREMENT AFTER ENACTMENT OF APPROPRIATIONS ACT.—Each year, not later than 60 days after the date of the enactment of an Act appropriating funds for the military functions of the Department of Defense, the Secretary of Defense, in accordance with regulations prescribed by the Secretary—

''(1) shall identify each contract (if any) under major defense programs of the Department of Defense that will be terminated or substantially reduced as a result of the funding levels provided in that Act; and

''(2) shall ensure that notice of the termination of, or substantial reduction in, the funding of the contract is provided—

''(A) directly to the prime contractor under the contract; and

''(B) directly to the Secretary of Labor.

''(b) NOTICE TO SUBCONTRACTORS.—Not later than 60 days after the date on which the prime contractor for a contract under a major defense program receives notice under subsection (a), the prime contractor shall—

''(1) provide notice of that termination or substantial reduction to each person that is a first-tier subcontractor under that prime contract for subcontracts in an amount not less than $500,000; and

''(2) require that each such subcontractor—

''(A) provide such notice to each of its subcontractors for subcontracts in an amount in excess of $100,000; and

''(B) impose a similar notice and pass through requirement to subcontractors in an amount in excess of $100,000 at all tiers.

''(c) CONTRACTOR NOTICE TO EMPLOYEES AND STATE DISLOCATED WORKER UNIT.—Not later than two weeks after a defense contractor receives notice under subsection (a), the contractor shall provide notice of such termination or substantial reduction to—

''(1)(A) each representative of employees whose work is directly related to the defense contract under such program and who are employed by the defense contractor; or

''(B) if there is no such representative at that time, each such employee; and

''(2) the State or entity designated by the State to carry out rapid response activities under [former] section 134(a)(2)(A) of the Workforce Investment Act of 1998 [former 29 U.S.C. 2864(a)(2)(A)], and the chief elected official of the unit of general local government within which the adverse effect may occur.

''(d) CONSTRUCTIVE NOTICE.—The notice of termination of, or substantial reduction in, a defense contract provided under subsection (c)(1) to an employee of a contractor shall have the same effect as a notice of termination to such employee for the purposes of determining whether such employee is eligible to participate in employment and training activities carried out under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], except in a case in which the employer has specified that the termination of, or substantial reduction in, the contract is not likely to result in plant closure or mass layoff.

''(e) LOSS OF ELIGIBILITY.—An employee who receives a notice of withdrawal or cancellation of the termination of, or substantial reduction in, contract funding shall not be eligible, on the basis of any related reduction in funding under the contract, to participate in employment and training activities under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], beginning on the date on which the employee receives the notice.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'major defense program' means a program that is carried out to produce or acquire a major system (as defined in section 2302(5) of title 10, United States Code).

''(2) The terms 'substantial reduction' and 'substantially reduced', with respect to a defense contract under a major defense program, mean a reduction of 25 percent or more in the total dollar value of the funds obligated by the contract.''

§ 2502. National Defense Technology and Industrial Base Council

(a) ESTABLISHMENT.—There is a National Defense Technology and Industrial Base Council.

(b) COMPOSITION.—The Council is composed of the following members:

(1) The Secretary of Defense, who shall serve as chairman.

(2) The Secretary of Energy.

(3) The Secretary of Commerce.

(4) The Secretary of Labor.

(5) Such other officials as may be determined by the President.

(c) RESPONSIBILITIES.—The Council shall have the responsibility to ensure effective cooperation among departments and agencies of the Federal Government, and to provide advice and recommendations to the President, the Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor, concerning—

(1) the capabilities of the national technology and industrial base to meet the national security objectives set forth in section 2501(a) of this title;

(2) programs for achieving such national security objectives; and

(3) changes in acquisition policy that strengthen the national technology and industrial base.

(d) ALTERNATIVE PERFORMANCE OF RESPONSIBILITIES.—Notwithstanding subsection (c), the President may assign the responsibilities of the Council to another interagency organization of the executive branch that includes among its members the officials specified in paragraphs (1) through (4) of subsection (b).

(Added Pub. L. 102–484, div. D, title XLII, § 4212(a), Oct. 23, 1992, 106 Stat. 2664; amended Pub. L. 103–160, div. A, title XIII, § 1312(b), Nov. 30, 1993, 107 Stat. 1786; Pub. L. 103–337, div. A, title X, § 1070(a)(12), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title X, § 1081(b), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(c)(2), formerly § 829(c)(2), (3), Sept. 23, 1996, 110 Stat. 2613, renumbered Pub. L. 105–85, div. A, title X, § 1073(c)(7)(B), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 105–85, div. A, title X, § 1073(c)(7)(A), Nov. 18, 1997, 111 Stat. 1904.)

PRIOR PROVISIONS

A prior section 2502, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2015, related to defense industrial base policies, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2502 was renumbered section 2534 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85, § 1073(c)(7)(A), made technical correction to directory language of Pub. L. 104–201, § 829(c)(2). See 1996 Amendment note below.

1996—Subsec. (c). Pub. L. 104–201, § 829(c)(2), formerly § 829(c)(2), (3), as renumbered and amended by Pub. L. 105–85, substituted ''the responsibility to ensure effective cooperation'' for ''the following responsibilities:'', struck out ''(1) To ensure the effective cooperation'' before ''among departments'', struck out par. (2), redesignated subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively, and adjusted margins of such pars. Prior to repeal, par. (2) read as follows: ''To prepare the periodic assessment and the periodic plan required by sections 2505 and 2506 of this title, respectively.''

Subsec. (c)(1)(B). Pub. L. 104–106, § 1081(b)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''programs for achieving, during a period of reduction in defense expenditures, the defense reinvestment, diversification, and conversion objectives set forth in section 2501(b) of this title; and''.

Subsec. (c)(2), (3). Pub. L. 104–106, § 1081(b)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''To provide overall policy guidance to ensure effective implementation by agencies of the Federal Government of defense reinvestment and conversion activities during a period of reduction in defense expenditures.''

1994—Subsec. (d). Pub. L. 103–337 substituted ''executive'' for ''Executive''.

1993—Subsec. (d). Pub. L. 103–160 added subsec. (d).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title X, § 1073(c), Nov. 18, 1997, 111 Stat. 1904, provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

§ 2503. National defense program for analysis of the technology and industrial base

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a program for analysis of the national technology and industrial base.

(b) SUPERVISION OF PROGRAM.—The Secretary of Defense shall carry out the program through the Under Secretary of Defense for Acquisition, Technology, and Logistics. In carrying out the program, the Under Secretary shall consult with the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor.

(c) FUNCTIONS.—The functions of the program shall include, with respect to the national technology and industrial base, the following:

(1) The assembly of timely and authoritative information.

(2) Initiation of studies and analyses.

(3) Provision of technical support and assistance to—

(A) the Secretary of Defense for the preparation of the periodic assessments required by section 2505 of this title;

(B) the defense acquisition university structure and its elements; and

(C) other departments and agencies of the Federal Government in accordance with guidance established by the Council.

(4) Dissemination, through the National Technical Information Service of the Department of Commerce, of unclassified information and assessments for further dissemination within the Federal Government and to the private sector.

(Added Pub. L. 102–484, div. D, title XLII, § 4213(a), Oct. 23, 1992, 106 Stat. 2665; amended Pub. L. 104–201, div. A, title VIII, § 829(b), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 107–107, div. A, title X, § 1048(b)(4), Dec. 28, 2001, 115 Stat. 1225.)

PRIOR PROVISIONS

A prior section 2503, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2016; amended Pub. L. 101–189, div. A, title VIII, § 842(a), (b), Nov. 29, 1989, 103 Stat. 1514, 1515; Pub. L. 102–25, title VII, § 701(f)(4), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–484, div. A, title X, § 1052(32), Oct. 23, 1992, 106 Stat. 2501, established defense industrial base office, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition''.

1996—Subsec. (a). Pub. L. 104–201, § 829(b)(1), substituted ''The Secretary of Defense'' for ''(1) The Secretary of Defense, in consultation with the National Defense Technology and Industrial Base Council,'' and struck out pars. (2) to (4) which read as follows:

''(2) As determined by the Secretary of Defense, the program shall be administered by one of the following:

''(A) An existing federally funded research and development center.

''(B) A consortium of existing federally funded research and development centers and other nonprofit entities.

''(C) A private sector entity (other than a federally funded research and development center).

''(D) The National Defense University.

''(3) A contract may be awarded under subparagraph (A), (B), or (C) of paragraph (2) only through the use of competitive procedures.

''(4) The Secretary of Defense shall ensure that there is appropriate coordination between the program and the Critical Technologies Institute.''

Subsec. (c)(3)(A). Pub. L. 104–201, § 829(b)(2), substituted ''the Secretary of Defense for'' for ''the National Defense Technology and Industrial Base Council in'' and struck out ''and the periodic plans required by section 2506 of this title'' after ''section 2505 of this title''.

DEADLINE FOR ESTABLISHING PROGRAM

Pub. L. 102–484, div. D, title XLII, § 4213(b), Oct. 23, 1992, 106 Stat. 2666, provided that: ''The Secretary of Defense shall establish the program required by section 2503 of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Oct. 23, 1992]. The Secretary of Defense shall ensure that a contract solicitation is issued and a contract is awarded in a timely manner to facilitate the establishment of that program within the period set forth in the preceding sentence. The preceding sentence shall not apply if the Secretary determines that the program shall be administered by the National Defense University.''

§ 2504. Annual report to Congress

The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of each year a report which shall include the following information:

(1) A description of the departmental guidance prepared pursuant to section 2506 of this title.

(2) A description of the assessments prepared pursuant to section 2505 of this title and other analyses used in developing the budget submission of the Department of Defense for the next fiscal year.

(3) Based on the strategy required by section 2501 of this title and on the assessments prepared pursuant to section 2505 of this title—

(A) a description of any mitigation strategies necessary to address any gaps or vulnerabilities in the national technology and industrial base; and

(B) any other steps necessary to foster and safeguard the national technology and industrial base.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

(Added Pub. L. 104–201, div. A, title VIII, § 829(e), Sept. 23, 1996, 110 Stat. 2614; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–239, div. A, title XVI, § 1603(b), Jan. 2, 2013, 126 Stat. 2063.)

PRIOR PROVISIONS

A prior section 2504, added Pub. L. 102–484, div. D, title XLII, § 4214(a), Oct. 23, 1992, 106 Stat. 2666, established Center for Study of Defense Economic Adjustment, prior to repeal by Pub. L. 103–160, div. A, title XIII, § 1312(a)(1), Nov. 30, 1993, 107 Stat. 1786.

Another prior section 2504 was renumbered section 2531 of this title.

AMENDMENTS

2013—Pars. (2), (3). Pub. L. 112–239 added par. (3), redesignated former par. (3) as (2) and struck out former par. (2) which read as follows: ''A description of the methods and analyses being undertaken by the Department of Defense alone or in cooperation with other Federal agencies, to identify and address concerns regarding technological and industrial capabilities of the national technology and industrial base.''

1999—Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

STRATEGY FOR SECURING THE DEFENSE SUPPLY CHAIN AND INDUSTRIAL BASE

Pub. L. 112–81, div. A, title VIII, § 852, Dec. 31, 2011, 125 Stat. 1517, as amended by Pub. L. 112–239, div. A, title XVI, § 1603(d), Jan. 2, 2013, 126 Stat. 2063, provided that:

''(a) REPORT REQUIRED.—The Secretary of Defense shall ensure that the annual report to Congress on the defense industrial base submitted for fiscal year 2012 pursuant to section 2504 of title 10, United States Code, includes a description of, and a status report on, the sector-by-sector, tier-by-tier assessment of the industrial base undertaken by the Department of Defense.

''(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include, at a minimum, a description of the steps taken and planned to be taken—

''(1) to identify current and emerging sectors of the defense industrial base that are critical to the national security of the United States;

''(2) in each sector, to identify items that are critical to military readiness, including key components, subcomponents, and materials;

''(3) to examine the structure of the industrial base, including the competitive landscape, relationships, risks, and opportunities within that structure;

''(4) to map the supply chain for critical items identified under paragraph (2) in a manner that provides the Department of Defense visibility from raw material to final products;

''(5) to perform a risk assessment of the supply chain for such critical items and conduct an evaluation of the extent to which—

''(A) the supply chain for such items is subject to disruption by factors outside the control of the Department of Defense; and

''(B) such disruption would adversely affect the ability of the Department of Defense to fill its national security mission.

''(c) FOLLOW-UP REVIEW.—The Secretary of Defense shall ensure that the annual report to Congress on the defense industrial base submitted for each of fiscal years 2013, 2014, and 2015 includes an update on the steps taken by the Department of Defense to act on the findings of the sector-by-sector, tier-by-tier assessment of the industrial base and implement the strategy required by section 2501 of title 10, United States Code. Such updates shall, at a minimum—

''(1) be conducted based on current mapping of the supply chain and industrial base structure, including an analysis of the competitive landscape, relationships, risks, and opportunities within that structure; and

''(2) take into account any changes or updates to the National Defense Strategy, National Military Strategy, national counterterrorism policy, homeland security policy, and applicable operational or contingency plans.''

§ 2505. National technology and industrial base: periodic defense capability assessments

(a) PERIODIC ASSESSMENT.—Each fiscal year, the Secretary of Defense shall prepare selected assessments of the capability of the national technology and industrial base to attain the national security objectives set forth in section 2501(a) of this title. The Secretary of Defense shall prepare such assessments in consultation with the Secretary of Commerce and the Secretary of Energy.

(b) ASSESSMENT PROCESS.—The Secretary of Defense shall ensure that technology and industrial capability assessments—

(1) describe sectors or capabilities, their underlying infrastructure and processes;

(2) analyze present and projected financial performance of industries supporting the sectors or capabilities in the assessment;

(3) determine the extent to which the requirements associated with defense acquisition programs can be satisfied by the present and projected performance capacities of industries supporting the sectors or capabilities in the assessment, evaluate the reasons for any variance from applicable preceding determinations, and identify the extent to which those industries are comprised of only one potential source in the national technology and industrial base or have multiple potential sources;

(4) determine the extent to which the requirements associated with defense acquisition programs can be satisfied by the present and projected performance capacities of industries that do not actively support Department of Defense acquisition programs and identify the barriers to the participation of those industries;

(5) identify technological and industrial capabilities and processes for which there is potential for the national industrial and technology base not to be able to support the achievement of national security objectives; and

(6) consider the effects of the termination of major defense acquisition programs (as the term is defined in section 2430 of this title) or major automated information system programs (as defined in section 2445a of this title) in the previous fiscal year on the sectors and capabilities in the assessment.

(c) ASSESSMENT OF EXTENT OF DEPENDENCY ON FOREIGN SOURCE ITEMS.—Each assessment under subsection (a) shall include a separate discussion and presentation regarding the extent to which the national technology and industrial base is dependent on items for which the source of supply, manufacture, or technology is outside of the United States and Canada and for which there is no immediately available source in the United States or Canada. The discussion and presentation regarding foreign dependency shall—

(1) identify cases that pose an unacceptable risk of foreign dependency, as determined by the Secretary; and

(2) present actions being taken or proposed to be taken to remedy the risk posed by the cases identified under paragraph (1), including efforts to develop a domestic source for the item in question.

(d) ASSESSMENT OF EXTENT OF EFFECTS OF FOREIGN BOYCOTTS.—Each assessment under subsection (a) shall include an examination of the extent to which the national technology and industrial base is affected by foreign boycotts. If it is determined that a foreign boycott (other than a boycott addressed in a previous assessment) is subjecting the national technology and industrial base to significant harm, the assessment shall include a separate discussion and presentation regarding that foreign boycott that shall, at a minimum—

(1) identify the sectors that are subject to such harm;

(2) describe the harm resulting from such boycott; and

(3) identify actions necessary to minimize the effects of such boycott on the national technology and industrial base.

(e) INTEGRATED PROCESS.—The Secretary of Defense shall ensure that consideration of the technology and industrial base assessments is integrated into the overall budget, acquisition, and logistics support decision processes of the Department of Defense.

(Added Pub. L. 102–484, div. D, title XLII, § 4215, Oct. 23, 1992, 106 Stat. 2667; amended Pub. L. 103–35, title II, § 201(g)(7), May 31, 1993, 107 Stat. 100; Pub. L. 104–201, div. A, title VIII, § 829(c)(1), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 111–23, title III, § 303(b), May 22, 2009, 123 Stat. 1731; Pub. L. 111–383, div. A, title VIII, § 895(c), Jan. 7, 2011, 124 Stat. 4314; Pub. L. 112–239, div. A, title XVI, § 1602, Jan. 2, 2013, 126 Stat. 2062; Pub. L. 114–92,

div. A, title VIII, §876, Nov. 25, 2015, 129 Stat. 941.)

PRIOR PROVISIONS

A prior section 2505 was renumbered section 2532 of this title.

AMENDMENTS

2015—Subsec. (b)(3) to (6). Pub. L. 114–92 added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

2013—Subsecs. (d), (e). Pub. L. 112–239 added subsec. (d) and redesignated former subsec. (d) as (e).

2011—Subsec. (b)(4). Pub. L. 111–383 inserted ''or major automated information system programs (as defined in section 2445a of this title)'' after ''section 2430 of this title)''.

2009—Subsec. (b)(4). Pub. L. 111–23 added par. (4).

1996—Pub. L. 104–201 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) providing for National Defense Technology and Industrial Base Council to prepare, at least annually through fiscal year 1997 and biennially thereafter, a comprehensive assessment of capability of the national technology and industrial base to attain national security objectives.

1993—Pub. L. 103–35 substituted ''capability'' for ''capabilty'' in section catchline.

STUDY OF BERYLLIUM INDUSTRIAL BASE

Pub. L. 108–136, div. A, title VIII, §824, Nov. 24, 2003, 117 Stat. 1547, required the Secretary of Defense to conduct a study of the adequacy of the industrial base of the United States to meet defense requirements of the United States for beryllium and to submit a report on the results of the study to Congress not later than Mar. 31, 2005.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC ASSESSMENT

Pub. L. 102–484, div. D, title XLII, §4219, Oct. 23, 1992, 106 Stat. 2671, as amended by Pub. L. 103–35, title II, §202(a)(14), May 31, 1993, 107 Stat. 101, set forth requirements for the initial regulations prescribed to implement this section, prior to repeal by Pub. L. 104–201, div. A, title VIII, §829(h), Sept. 23, 1996, 110 Stat. 2614.

§ 2506. Department of Defense technology and industrial base policy guidance

(a) DEPARTMENTAL GUIDANCE.—The Secretary of Defense shall prescribe departmental guidance for the attainment of each of the national security objectives set forth in section 2501(a) of this title. Such guidance shall provide for technological and industrial capability considerations to be integrated into the strategy, management, budget allocation, acquisition, and logistics support decision processes.

(b) REPORT TO CONGRESS.—The Secretary of Defense shall report on the implementation of the departmental guidance in the annual report to Congress submitted pursuant to section 2504 of this title.

(Added Pub. L. 102–484, div. D, title XLII, §4216(a), Oct. 23, 1992, 106 Stat. 2668; amended Pub. L. 104–201, div. A, title VIII, §829(d), Sept. 23, 1996, 110 Stat. 2613; Pub. L. 111–383, div. A, title VIII, §895(d), Jan. 7, 2011, 124 Stat. 4314.)

PRIOR PROVISIONS

A prior section 2506 was renumbered section 2533 of this title.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 substituted ''strategy, management, budget allocation,'' for ''budget allocation, weapons''.

1996—Pub. L. 104–201 substituted ''Department of Defense technology and industrial base policy guidance'' for ''National technology and industrial base: periodic defense capability plan'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (e) providing for the National Defense Technology and Industrial Base Council to prepare, at least annually through fiscal year 1997 and biennially thereafter, a multiyear plan for ensuring that the policies and programs of the Department of Defense, the Department of Energy, and other Federal departments and agencies were planned, coordinated, funded, and implemented in a manner designed to attain national security objectives.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC PLAN

Pub. L. 102–484, div. D, title XLII, §4220, Oct. 23, 1992, 106 Stat. 2675, set forth requirements for the initial regulations prescribed to implement this section, prior to repeal by Pub. L. 104–201, div. A, title VIII, §829(h), Sept. 23, 1996, 110 Stat. 2614.

§ 2507. Data collection authority of President

(a) AUTHORITY.—The President shall be entitled, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in the President's discretion, to the enforcement or the administration of this chapter and the regulations issued under this chapter.

(b) CONDITION FOR USE OF AUTHORITY.—The President shall issue regulations insuring that the authority of this section will be used only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.

(c) PENALTY FOR NONCOMPLIANCE.—Any person who willfully performs any act prohibited or willfully fails to perform any act required by the provisions of subsection (a), or any rule, regulation, or order thereunder, shall be fined under title 18 or imprisoned not more than one year, or both.

(d) LIMITATIONS ON DISCLOSURE OF INFORMATION.—Information obtained under subsection (a) which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense. Any person who willfully violates this subsection shall be fined under title 18 or imprisoned not more than one year, or both.

(e) REGULATIONS.—The President may make such rules, regulations, and orders as he considers necessary or appropriate to carry out the provisions of this section. Any regulation or order under this section may be established in

such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this section, or to prevent circumvention or evasion, or to facilitate enforcement of this section, or any rule, regulation, or order issued under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''person'' includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing, except that no punishment provided by this section shall apply to the United States, or to any such government, political subdivision, or government agency.

(2) The term ''national defense'' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, space, and directly related activity.

(Added Pub. L. 102–484, div. D, title XLII, § 4217, Oct. 23, 1992, 106 Stat. 2670; amended Pub. L. 103–160, div. A, title XI, § 1182(b)(1), Nov. 30, 1993, 107 Stat. 1772; Pub. L. 109–163, div. A, title X, § 1056(c)(5), Jan. 6, 2006, 119 Stat. 3439.)

PRIOR PROVISIONS

A prior section 2507 was renumbered section 2534 of this title.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–163 substituted ''subsection (a)'' for ''section (a)''.

1993—Pub. L. 103–160 inserted headings in subsecs. (a) to (f).

§ 2508. Industrial Base Fund

(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Industrial Base Fund (in this section referred to as the ''Fund'').

(b) CONTROL OF FUND.—The Fund shall be under the control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting through the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy.

(c) AMOUNTS IN FUND.—The Fund shall consist of amounts appropriated or otherwise made available to the Fund.

(d) USE OF FUND.—Subject to subsection (e), the Fund shall be used—

(1) to support the monitoring and assessment of the industrial base required by this chapter;

(2) to address critical issues in the industrial base relating to urgent operational needs;

(3) to support efforts to expand the industrial base; and

(4) to address supply chain vulnerabilities.

(e) USE OF FUND SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to use the Fund under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(f) EXPENDITURES.—The Secretary shall establish procedures for expending monies in the Fund in support of the uses identified in subsection (d), including the following:

(1) Direct obligations from the Fund.

(2) Transfers of monies from the Fund to relevant appropriations of the Department of Defense.

(Added Pub. L. 111–383, div. A, title VIII, § 896(b)(1), Jan. 7, 2011, 124 Stat. 4315.)

CODIFICATION

Pub. L. 111–383, div. A, title VIII, § 896(b)(1), Jan. 7, 2011, 124 Stat. 4315, which directed the addition of section 2508 at end of this chapter, was executed by adding this section at the end of subchapter II of this chapter to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 2508 was renumbered section 2522 of this title and subsequently repealed.

A prior section 2509, added Pub. L. 101–510, div. A, title VIII, § 825(a), Nov. 5, 1990, 104 Stat. 1604; amended Pub. L. 102–484, div. A, title X, § 1052(34), Oct. 23, 1992, 106 Stat. 2501, required submission of defense industrial base annual reports, prior to repeal by Pub. L. 102–484, § 4202(a).

A prior section 2510, added Pub. L. 101–510, div. A, title VIII, § 826(a)(1), Nov. 5, 1990, 104 Stat. 1605, related to defense industrial base for textile and apparel products, prior to repeal by Pub. L. 102–484, § 4202(a).

SUBCHAPTER III—PROGRAMS FOR DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

Sec.
2511. Defense dual-use critical technology program.
[2512, 2513. Repealed.]
2514. Encouragement of technology transfer.
2515. Office of Technology Transition.
[2516. Repealed.]
2517. Office for Foreign Defense Critical Technology Monitoring and Assessment.
2518. Overseas foreign critical technology monitoring and assessment financial assistance program.
2519. Federal Defense Laboratory Diversification Program.
[2520. Repealed.]

AMENDMENTS

1996—Pub. L. 104–106, div. A, title X, § 1081(i)(2), Feb. 10, 1996, 110 Stat. 455, substituted ''program'' for ''partnerships'' in item 2511 and struck out items 2512 ''Commercial-military integration partnerships'', 2513 ''Regional technology alliances assistance program'', 2516 ''Military-Civilian Integration and Technology Transfer Advisory Board'', and 2520 ''Navy Reinvestment Program''.

1994—Pub. L. 103–337, div. A, title XI, § 1113(c), Oct. 5, 1994, 108 Stat. 2866, added items 2519 and 2520.

§ 2511. Defense dual-use critical technology program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program to further the national security objectives set forth in section 2501(a) of this title by encouraging and providing for research, development, and application of dual-use critical technologies. The Secretary may make grants, enter into contracts, or enter into cooperative agreements and other transactions pursuant to section 2371 of this title in furtherance of the program. The

Secretary shall identify projects to be conducted as part of the program.

(b) ASSISTANCE AUTHORIZED.—The Secretary of Defense may provide technical and other assistance to facilitate the achievement of the purposes of projects conducted under the program. In providing such assistance, the Secretary shall make available, as appropriate for the work to be performed, equipment and facilities of Department of Defense laboratories (including the scientists and engineers at those laboratories) for purposes of projects selected by the Secretary.

(c) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The total amount of funds provided by the Federal Government for a project conducted under the program may not exceed 50 percent of the total cost of the project. However, the Secretary of Defense may agree to a project in which the total amount of funds provided by the Federal Government exceeds 50 percent if the Secretary determines the project is particularly meritorious, but the project would not otherwise have sufficient non-Federal funding or in-kind contributions.

(2) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a project conducted under the program for the purpose of calculating the share of the project costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of project activities. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the project from non-Federal sources.

(3) The Secretary shall consider a project proposal submitted by a small business concern without regard to the ability of the small business concern to immediately meet its share of the anticipated project costs. Upon the selection of a project proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the project from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated project costs, the Secretary shall revoke the selection of the project proposal submitted by the small business concern.

(d) SELECTION PROCESS.—Competitive procedures shall be used in the conduct of the program.

(e) SELECTION CRITERIA.—The criteria for the selection of projects under the program shall include the following:

(1) The extent to which the proposed project advances and enhances the national security objectives set forth in section 2501(a) of this title.

(2) The technical excellence of the proposed project.

(3) The qualifications of the personnel proposed to participate in the research activities of the proposed project.

(4) An assessment of timely private sector investment in activities to achieve the goals and objectives of the proposed project other than through the project.

(5) The potential effectiveness of the project in the further development and application of each technology proposed to be developed by the project for the national technology and industrial base.

(6) The extent of the financial commitment of eligible firms to the proposed project.

(7) The extent to which the project does not unnecessarily duplicate projects undertaken by other agencies.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the purposes of this section.

(Added Pub. L. 102–484, div. D, title XLII, § 4221(a), Oct. 23, 1992, 106 Stat. 2677; amended Pub. L. 103–160, div. A, title XIII, §§ 1315(a), 1317(c), Nov. 30, 1993, 107 Stat. 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(a), Oct. 5, 1994, 108 Stat. 2868; Pub. L. 104–106, div. A, title X, § 1081(c), Feb. 10, 1996, 110 Stat. 452.)

PRIOR PROVISIONS

A prior section 2511, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600; amended Pub. L. 102–190, div. A, title VIII, § 824(b), Dec. 5, 1991, 105 Stat. 1438, defined ''manufacturing technology'', ''manufacturing extension program'', and ''United States-based small manufacturing firm'' for purposes of former chapter 149 of this title, prior to repeal and restatement in section 2491 of this title by Pub. L. 102–484, §§ 4202(a), 4203(a).

Another prior section 2511 was renumbered section 2540 of this title and subsequently repealed.

Provisions similar to those in this section were contained in section 2523 of this title, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1996—Pub. L. 104–106 substituted ''program'' for ''partnerships'' in section catchline and amended text generally. Prior to amendment, text related to program for establishment of cooperative arrangements between Department of Defense and eligible entities.

1994—Subsec. (c)(3). Pub. L. 103–337 added par. (3).

1993—Subsec. (c). Pub. L. 103–160, § 1315(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Defense shall ensure that, to the maximum extent he determines to be practicable, the amount of the funds provided by the Federal Government under a partnership does not exceed the total amount provided by non-Federal Government participants in that partnership.''

Subsec. (e). Pub. L. 103–160, § 1317(c), struck out '', except that procedures other than competitive procedures may be used in any case in which an exception set out in section 2304(c) of this title applies'' after ''partnerships''.

DUAL-USE SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 105–85, div. A, title II, § 203, Nov. 18, 1997, 111 Stat. 1655, as amended by Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(a) FUNDING 1998.—Of the amounts authorized to be appropriated by section 201 [111 Stat. 1655], $75,000,000 is authorized for dual-use projects.

''(b) GOALS.—(1) Subject to paragraph (3), it shall be the objective of the Secretary of each military department to obligate for dual-use projects in each fiscal year referred to in paragraph (2), out of the total amount authorized to be appropriated for such fiscal year for the applied research programs of the military department, the percent of such amount that is specified for that fiscal year in paragraph (2).

''(2) The objectives for fiscal years under paragraph (1) are as follows:

''(A) For fiscal year 1998, 5 percent.

''(B) For fiscal year 1999, 7 percent.

''(C) For fiscal year 2000, 10 percent.

''(D) For fiscal year 2001, 15 percent.

''(3) The Secretary of Defense may establish for a military department for a fiscal year an objective different from the objective set forth in paragraph (2) if the Secretary—

''(A) determines that compelling national security considerations require the establishment of the different objective; and

''(B) notifies Congress of the determination and the reasons for the determination.

''(c) DESIGNATION OF OFFICIAL FOR DUAL-USE PROGRAMS.—(1) The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense to carry out responsibilities for dual-use projects under this subsection. The designated official shall report directly to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(2) The primary responsibilities of the designated official shall include developing policy and overseeing the establishment of, and adherence to, procedures for ensuring that dual-use projects are initiated and administered effectively and that applicable commercial technologies are integrated into current and future military systems.

''(3) In carrying out the responsibilities, the designated official shall ensure that—

''(A) dual-use projects are consistent with the joint warfighting science and technology plan referred to in section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note); and

''(B) the dual-use projects of the military departments and defense agencies of the Department of Defense are coordinated and avoid unnecessary duplication.

''(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—The total amount of funds provided by a military department for a dual-use project entered into by the Secretary of that department shall not exceed 50 percent of the total cost of the project. In the case of a dual-use project initiated after the date of the enactment of this Act [Nov. 18, 1997], the Secretary may consider in-kind contributions by non-Federal participants only to the extent such contributions constitute 50 percent or less of the share of the project costs by such participants.

''(e) USE OF COMPETITIVE PROCEDURES.—Funds obligated for a dual-use project may be counted toward meeting an objective under subsection (a) only if the funds are obligated for a contract, grant, cooperative agreement, or other transaction that was entered into through the use of competitive procedures.

''(f) REPORT.—(1) Not later than March 1 of each of 1998, 1999, and 2000, the Secretary of Defense shall submit a report to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] on the progress made by the Department of Defense in meeting the objectives set forth in subsection (b) during the preceding fiscal year.

''(2) The report for a fiscal year shall contain, at a minimum, the following:

''(A) The aggregate value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research programs in the Department of Defense for that fiscal year.

''(B) For each military department, the value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research program of the military department for that fiscal year.

''(C) A summary of the cost-sharing arrangements in dual-use projects that were initiated during the fiscal year and are counted toward reaching an objective under this section.

''(D) A description of the regulations, directives, or other procedures that have been issued by the Secretary of Defense or the Secretary of a military department to increase the percentage of the total value of the dual-use projects undertaken to meet or exceed an objective under this section.

''(E) Any recommended legislation to facilitate achievement of objectives under this section.

''(g) COMMERCIAL OPERATIONS AND SUPPORT SAVINGS INITIATIVE.—(1) The Secretary of Defense shall establish a Commercial Operations and Support Savings Initiative (in this subsection referred to as the 'Initiative') to develop commercial products and processes that the military departments can incorporate into operational military systems to reduce costs of operations and support.

''(2) Of the amounts authorized to be appropriated by section 201, $50,000,000 is authorized for the Initiative.

''(3) Projects and participants in the Initiative shall be selected through the use of competitive procedures.

''(4) The budget submitted to Congress by the President for fiscal year 1999 and each fiscal year thereafter pursuant to section 1105(a) of title 31, United States Code, shall set forth separately the funding request for the Initiative.

''(h) REPEAL OF SUPERSEDED AUTHORITY.—[Repealed section 203 of Pub. L. 104–201, 110 Stat. 2451.]

''(i) DEFINITIONS.—In this section:

''(1) The term 'applied research program' means a program of a military department which is funded under the 6.2 Research, Development, Test and Evaluation account of that department.

''(2) The term 'dual-use project' means a project under a program of a military department or a defense agency under which research or development of a dual-use technology is carried out and the costs of which are shared by the Department of Defense and non-Government entities.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Pub. L. 103–160, div. A, title XIII, §1315(g), Nov. 30, 1993, 107 Stat. 1789, provided that in the case of projects funded under section 2511, 2512, 2513, 2523, or 2524 of this title with funds appropriated for a fiscal year beginning before Oct. 1, 1993, the amendments made by section 1315 of Pub. L. 103–160 would not alter the financial commitment requirements in effect on Nov. 30, 1993, for the non-Federal Government participants in the project.

[§§ 2512, 2513. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section 2512, added Pub. L. 102–484, div. D, title XLII, § 4222(a), Oct. 23, 1992, 106 Stat. 2679; amended Pub. L. 103–160, div. A, title XIII, §1315(b), Nov. 30, 1993, 107 Stat. 1787; Pub. L. 103–337, div. A, title XI, § 1115(b), Oct. 5, 1994, 108 Stat. 2868, related to commercial-military integration partnerships.

A prior section 2512, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600, related to responsibility of Secretary of Defense to provide management and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Section 2513, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1428, § 2524; renumbered

§ 2513 and amended Pub. L. 102–484, div. D, title XLII, § 4223(a)–(f), Oct. 23, 1992, 106 Stat. 2681; Pub. L. 103–35, title II, § 201(d)(3), (e)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title XI, § 1182(g)(2), title XIII, §§ 1315(c), 1316, Nov. 30, 1993, 107 Stat. 1774, 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(c), Oct. 5, 1994, 108 Stat. 2868, related to regional technology alliances assistance program.

A prior section 2513, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601; amended Pub. L. 102–190, div. A, title II, § 203(c), Dec. 5, 1991, 105 Stat. 1314, required annual National Defense Manufacturing Technology Plan, prior to repeal by Pub. L. 102–484, § 4202(a).

§ 2514. Encouragement of technology transfer

(a) ENCOURAGEMENT OF TRANSFER REQUIRED.—The Secretary of Defense shall encourage, to the extent consistent with national security objectives, the transfer of technology between laboratories and research centers of the Department of Defense and other Federal agencies, State and local governments, colleges and universities, and private persons in cases that are likely to result in accomplishing the objectives set forth in section 2501(a) of this title.

(b) EXAMINATION AND IMPLEMENTATION OF METHODS TO ENCOURAGE TRANSFER.—The Secretary shall examine and implement methods, in addition to the encouragement referred to in subsection (a) and the program described in subsection (c), that are consistent with national security objectives and will enable Department of Defense personnel to promote technology transfer.

(c) PROGRAM TO ENCOURAGE DIVERSIFICATION OF DEFENSE LABORATORIES.—(1) The Secretary of Defense shall establish and implement a program to be known as the Federal Defense Laboratory Diversification Program (hereinafter in this subsection referred to as the ''Program''). The purpose of the Program shall be to encourage greater cooperation in research and production activities carried out by defense laboratories and by private industry of the United States in order to enhance and improve the products of such research and production activities.

(2) Under the Program, the defense laboratories, in coordination with the Office of Technology Transfer in the Office of the Secretary of Defense, shall carry out cooperative activities with private industry in order to promote (by the use or exchange of patents, licenses, cooperative research and development agreements and other cooperative agreements, and the use of symposia, meetings, and other similar mechanisms) the transfer of defense or dual-use technologies from the defense laboratories to private industry, and the development and application of such technologies by the defense laboratories and private industry, for the purpose of the commercial utilization of such technologies by private industry.

(3) The Secretary of Defense shall develop and annually update a plan for each defense laboratory that participates in the Program under which plan the laboratory shall carry out cooperative activities with private industry to promote the transfers described in subsection (b).

(4) In this subsection, the term ''defense laboratory'' means any laboratory owned or operated by the Department of Defense that carries out research in fiscal year 1993 in an amount in excess of $50,000,000.

(Added Pub. L. 102–484, div. D, title XLII, § 4224(a), Oct. 23, 1992, 106 Stat. 2682; amended Pub. L. 104–201, div. A, title VIII, § 829(f), Sept. 23, 1996, 110 Stat. 2614.)

PRIOR PROVISIONS

A prior section 2514, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601, directed Secretary of Defense to enhance research relating to manufacturing technology, prior to repeal by Pub. L. 102–484, § 4202(a).

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 2363 of this title prior to repeal by Pub. L. 102–484, §§ 4224(c), 4271(a)(2).

AMENDMENTS

1996—Subsec. (c)(5). Pub. L. 104–201 struck out par. (5) which read as follows: ''The Secretary shall coordinate the Program with the National Defense Technology and Industrial Base Council.''

NATIONAL ACTION PLAN ON ADVANCED SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Superconductivity research and development activities by Secretary of Defense and by Defense Advanced Research Projects Agency, see section 5207 of Title 15, Commerce and Trade.

ENHANCED TRANSFER OF TECHNOLOGY DEVELOPED AT DEPARTMENT OF DEFENSE LABORATORIES

Pub. L. 113–66, div. A, title VIII, § 801, Dec. 26, 2013, 127 Stat. 802, provided that:

''(a) DEFINITIONS.—As used in this section:

''(1) The term 'military department' has the meaning provided in section 101 of title 10, United States Code.

''(2) The term 'DOD laboratory' or 'laboratory' means any facility or group of facilities that—

''(A) is owned, leased, operated, or otherwise used by the Department of Defense; and

''(B) meets the definition of 'laboratory' as provided in subsection (d)(2) of section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

''(b) AUTHORITY.—

''(1) IN GENERAL.—The Secretary of Defense and the Secretary of a military department each may authorize the heads of DOD laboratories to grant nonexclusive, exclusive, or partially exclusive licenses, royalty free or for royalties or for rights to other intellectual property, for computer software and its related documentation developed at a DOD laboratory, but only if—

''(A) the computer software and related documentation would be a trade secret under the meaning of section 552(b)(4) of title 5, United States Code, if the information had been obtained from a non-Federal party;

''(B) the public is notified of the availability of the software and related documentation for licensing and interested parties have a fair opportunity to submit applications for licensing;

''(C) such licensing activities and licenses comply with the requirements under section 209 of title 35, United States Code; and

''(D) the software originally was developed to meet the military needs of the Department of Defense.

''(2) PROTECTIONS AGAINST UNAUTHORIZED DISCLOSURE.—The Secretary of Defense and the Secretary of a military department each shall provide appropriate precautions against the unauthorized disclosure of any computer software or documentation covered by paragraph (1)(A), including exemption from section

552 of title 5, United States Code, for a period of up to 5 years after the development of the computer software by the DOD laboratory.

''(c) ROYALTIES.—

''(1) USE OF ROYALTIES.—Except as provided in paragraph (2), any royalties or other payments received by the Department of Defense or a military department from licensing computer software or documentation under paragraph (b)(1) shall be retained by the Department of Defense or the military department and shall be disposed of as follows:

''(A)(i) The Department of Defense or the military department shall pay each year the first $2,000, and thereafter at least 15 percent, of the royalties or other payments, to be divided among the employees who developed the computer software.

''(ii) The Department of Defense or the military department may provide appropriate lesser incentives, from the royalties or other payments, to laboratory employees who are not developers of such computer software but who substantially increased the technical value of the software.

''(iii) The Department of Defense or the military department shall retain the royalties and other payments received until it makes payments to employees of a DOD laboratory under clause (i) or (ii).

''(iv) The Department of Defense or the military department may retain an amount reasonably necessary to pay expenses incidental to the administration and distribution of royalties or other payments under this section by an organizational unit of the Department of Defense or military department other than its laboratories.

''(B) The balance of the royalties or other payments shall be transferred by the Department of Defense or the military department to its laboratories, with the majority share of the royalties or other payments going to the laboratory where the development occurred. The royalties or other payments so transferred to any DOD laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the 2 succeeding fiscal years—

''(i) to reward scientific, engineering, and technical employees of the DOD laboratory, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications;

''(ii) to further scientific exchange among the laboratories of the agency;

''(iii) for education and training of employees consistent with the research and development missions and objectives of the Department of Defense, military department, or DOD laboratory, and for other activities that increase the potential for transfer of the technology of the DOD laboratory;

''(iv) for payment of expenses incidental to the administration and licensing of computer software or other intellectual property made at the DOD laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services; or

''(v) for scientific research and development consistent with the research and development missions and objectives of the DOD laboratory.

''(C) All royalties or other payments retained by the Department of Defense, military department, or DOD laboratory after payments have been made pursuant to subparagraphs (A) and (B) that are unobligated and unexpended at the end of the second fiscal year succeeding the fiscal year in which the royalties and other payments were received shall be paid into the Treasury of the United States.

''(2) EXCEPTION.—If, after payments under paragraph (1)(A), the balance of the royalties or other payments received by the Department of Defense or the military department in any fiscal year exceed 5 percent of the funds received for use by the DOD laboratory for research, development, engineering, testing, and evaluation or other related administrative, processing, or value-added activities for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated under paragraph (1)(B). Any funds not so used or obligated shall be paid into the Treasury of the United States.

''(3) STATUS OF PAYMENTS TO EMPLOYEES.—Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which the employee is otherwise entitled or for which the employee is otherwise eligible or limit the amount thereof except that the monetary value of an award for the same project or effort shall be deducted from the amount otherwise available under this paragraph. Payments, determined under the terms of this paragraph and made to an employee developer as such, may continue after the developer leaves the DOD laboratory or the Department of Defense or military department. Payments made under this section shall not exceed $75,000 per year to any one person, unless the President approves a larger award (with the excess over $75,000 being treated as a Presidential award under section 4504 of title 5, United States Code).

''(d) INFORMATION IN REPORT.—The report required by [former] section 2515(d) of title 10, United States Code, shall include information regarding the implementation and effectiveness of this section.

''(e) EXPIRATION.—The authority provided in this section shall expire on December 31, 2017.''

TECHNOLOGY TRANSFER TO PRIVATE SECTOR

Pub. L. 100–180, div. A, title II, § 218(c), Dec. 4, 1987, 101 Stat. 1053, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall take appropriate action to ensure that high-temperature superconductivity technology resulting from the research activities of the Department of Defense is transferred to the private sector. Such transfer shall be made in accordance with section 10(e) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)), other applicable provisions of law, and Executive Order Number 12591, dated April 10, 1987 [set out as a note under 15 U.S.C. 3710].

''(2) The Secretary of Energy, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall ensure that the national laboratories of the Department of Energy participate, to the maximum appropriate extent, in the transfer to the private sector of technology developed under the Department of Defense superconductivity program in the national laboratories.''

§ 2515. Office of Technology Transition

(a) ESTABLISHMENT.—The Secretary of Defense shall establish within the Office of the Secretary of Defense an Office of Technology Transition.

(b) PURPOSE.—The purpose of the office shall be to ensure, to the maximum extent practicable, that technology developed for national security purposes is integrated into the private sector of the United States in order to enhance national technology and industrial base, reinvestment, and conversion activities consistent with the objectives set forth in section 2501(a) of this title.

(c) DUTIES.—The head of the office shall ensure that the office—

(1) monitors all research and development activities that are carried out by or for the military departments and Defense Agencies;

(2) identifies all such research and development activities that use technologies, or result in technological advancements, having potential nondefense commercial applications;

(3) serves as a clearinghouse for, coordinates, and otherwise actively facilitates the transition of such technologies and technological advancements from the Department of Defense to the private sector;

(4) conducts its activities in consultation and coordination with the Department of Energy and the Department of Commerce; and

(5) provides private firms with assistance to resolve problems associated with security clearances, proprietary rights, and other legal considerations involved in such a transition of technology.

(Added Pub. L. 102–484, div. D, title XLII, §4225(a), Oct. 23, 1992, 106 Stat. 2683; amended Pub. L. 104–106, div. A, title XV, §1502(a)(22), Feb. 10, 1996, 110 Stat. 505; 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)(23), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 108–375, div. A, title X, §1084(b)(3), Oct. 28, 2004, 118 Stat. 2060; Pub. L. 112–81, div. A, title X, §1061(18), Dec. 31, 2011, 125 Stat. 1584.)

PRIOR PROVISIONS

A prior section 2515, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to computer-integrated manufacturing technology, prior to repeal by Pub. L. 102–484, §4202(a).

AMENDMENTS

2011—Subsec. (d). Pub. L. 112–81 struck out subsec. (d). Prior to amendment, text read as follows: ''The Secretary of Defense shall submit to the congressional defense committees a biennial report on the activities of the Office. The report shall be submitted each even-numbered year at the same time that the budget is submitted to Congress by the President pursuant to section 1105 of title 31. The report shall contain a discussion of the accomplishments of the Office during the two fiscal years preceding the fiscal year in which the report is submitted.''

2004—Subsec. (d). Pub. L. 108–375 struck out par. (1) designation before ''The Secretary'', substituted ''congressional defense committees'' for ''congressional committees specified in paragraph (2)'', and struck out par. (2) which read as follows: ''The committees referred to in paragraph (1) are—

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

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

2003—Subsec. (d). Pub. L. 108–136, §1031(a)(23)(A), substituted ''Biennial'' for ''Annual'' in heading.

Subsec. (d)(1). Pub. L. 108–136, §1031(a)(23)(B), substituted ''a biennial report'' for ''an annual report'' in first sentence, ''each even-numbered year'' for ''each year'' in second sentence, and ''during the two fiscal years'' for ''during the fiscal year'' in third sentence.

1999—Subsec. (d)(2)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106 substituted ''Annual Report'' for ''Reporting Requirement'' in heading, designated existing provisions as par. (1), substituted ''The Secretary of Defense shall submit to the congressional committees specified in paragraph (2) an annual report on the activities of the Office. The report shall be submitted each year at the same time'' for ''The Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives an annual report on the activities of the Office at the same time'', and added par. (2).

SCHEDULE FOR ESTABLISHMENT OF OFFICE OF TECHNOLOGY TRANSITION

Pub. L. 102–484, div. D, title XLII, §4225(b), Oct. 23, 1992, 106 Stat. 2683, provided that: ''The Office of Technology Transition shall commence operations within 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

SUBMISSION OF ANNUAL REPORT

Pub. L. 102–484, div. D, title XLII, §4225(c)(2), Oct. 23, 1992, 106 Stat. 2684, provided that: ''Notwithstanding section 2515(d) of title 10, United States Code (as added by subsection (a))—

''(A) the first report under that section shall be submitted not later than one year after the date of the enactment of this Act [Oct. 23, 1992]; and

''(B) no additional report is necessary under that section in the fiscal year in which such first report is submitted.''

[§ 2516. Repealed. Pub. L. 104–106, div. A, title X, § 1081(g), Feb. 10, 1996, 110 Stat. 455]

Section, added Pub. L. 102–484, div. D, title XLII, §4226(a), Oct. 23, 1992, 106 Stat. 2684; amended Pub. L. 103–35, title II, §201(g)(8), May 31, 1993, 107 Stat. 100, related to Military-Civilian Integration and Technology Transfer Advisory Board.

A prior section 2516, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to enhancement of concurrent engineering practices in design and development of weapon systems, prior to repeal by Pub. L. 102–484, §4202(a).

§ 2517. Office for Foreign Defense Critical Technology Monitoring and Assessment

(a) IN GENERAL.—The Secretary of Defense shall establish within the Office of the Assistant Secretary of Defense for Research and Engineering an office known as the ''Office for Foreign Defense Critical Technology Monitoring and Assessment'' (hereinafter in this section referred to as the ''Office'').

(b) RELATIONSHIP TO DEPARTMENT OF COMMERCE.—The head of the Office shall consult closely with appropriate officials of the Department of Commerce in order—

(1) to minimize the duplication of any effort of the Department of Commerce by the Department of Defense regarding the monitoring of foreign activities related to defense critical technologies that have potential commercial uses; and

(2) to ensure that the Office is effectively utilized to disseminate information to users of such information within the Federal Government.

(c) RESPONSIBILITIES.—The Office shall have the following responsibilities:

(1) To maintain within the Department of Defense a central library for the compilation and appropriate dissemination of unclassified and classified information and assessments regarding significant foreign activities in research, development, and applications of defense critical technologies.

(2) To establish and maintain—

(A) a widely accessible unclassified data base of information and assessments regarding foreign science and technology activities that involve defense critical technologies, including, especially, activities in Europe and in Pacific Rim countries; and

(B) a classified data base of information and assessments regarding such activities.

(3) To perform liaison activities among the military departments, Defense Agencies, and other appropriate elements of the Department of Defense, with appropriate agencies and offices of the Department of Commerce and the Department of State, and with other departments and agencies of the Federal Government in order to ensure that significant activities in research, development, and applications of defense critical technologies are identified, monitored, and assessed by an appropriate department or agency of the Federal Government.

(4) To ensure the maximum practicable public availability of information and assessments contained in the unclassified data bases established pursuant to paragraph (2)—

(A) by limiting, to the maximum practicable extent, restrictive classification of such information and assessments; and

(B) by disseminating to the National Technical Information Service of the Department of Commerce information and assessments regarding defense critical technologies having potential commercial uses.

(5) To disseminate through the National Technical Information Service of the Department of Commerce unclassified information and assessments regarding defense critical technologies having potential commercial uses so that such information and assessments may be further disseminated within the Federal Government and to the private sector.

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1430, § 2525; renumbered § 2517 and amended Pub. L. 102–484, div. D, title XLII, § 4227, Oct. 23, 1992, 106 Stat. 2685; Pub. L. 111–383, div. A, title IX, § 901(j)(4), Jan. 7, 2011, 124 Stat. 4324.)

PRIOR PROVISIONS

A prior section 2517 was renumbered section 2523 of this title and subsequently repealed.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

1992—Pub. L. 102–484 renumbered section 2525 of this title as this section and inserted ''Critical'' after ''Foreign Defense'' in subsec. (a).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

§ 2518. Overseas foreign critical technology monitoring and assessment financial assistance program

(a) ESTABLISHMENT AND PURPOSE OF PROGRAM.—The Secretary of Defense may establish a foreign critical technology monitoring and assessment program. Under the program, the Secretary may enter into cooperative arrangements with one or more eligible not-for-profit organizations in order to provide financial assistance for the establishment of foreign critical technology monitoring and assessment offices in Europe, Pacific Rim countries, and such other countries as the Secretary considers appropriate.

(b) ELIGIBLE ORGANIZATIONS.—Any not-for-profit industrial or professional organization that has economic and scientific interests in research, development, and applications of dual-use critical technologies is eligible to enter into a cooperative arrangement referred to in subsection (a).

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1431, § 2526; renumbered § 2518, Pub. L. 102–484, div. D, title XLII, § 4228, Oct. 23, 1992, 106 Stat. 2685.)

PRIOR PROVISIONS

A prior section 2518 was renumbered section 2522 of this title and subsequently repealed.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2526 of this title as this section.

§ 2519. Federal Defense Laboratory Diversification Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program in accordance with this section for the purpose of promoting cooperation between Department of Defense laboratories and industry on research and development of dual-use technologies in order to further the national security objectives set forth in section 2501(a) of this title.

(b) PARTNERSHIPS.—(1) The Secretary shall provide for the establishment under the program of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between a Department of Defense laboratory and eligible firms and nonprofit research corporations. A partnership may also include one or more additional Federal laboratories, institutions of higher education, agencies of State and local governments, and other entities, as determined appropriate by the Secretary.

(2) For purposes of this section, a federally funded research and development center shall be considered a Department of Defense laboratory if the center is sponsored by the Department of Defense.

(c) ASSISTANCE AUTHORIZED.—(1) The Secretary may make grants, enter into contracts, enter into cooperative agreements and other transactions pursuant to section 2371 of this title, and enter into cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) in order to establish partnerships.

(2) Subject to subsection (d), the Secretary may provide a partnership with technical and other assistance in order to facilitate the achievement of the purpose of this section.

(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary

shall ensure that the non-Federal Government participants in a partnership make a substantial contribution to the total cost of partnership activities. The amount of the contribution shall be commensurate with the risk undertaken by such participants and the potential benefits of the activities for such participants.

(2) The regulations prescribed pursuant to section 2511(c)(2) of this title shall apply to in-kind contributions made by non-Federal Government participants in a partnership.

(e) SELECTION PROCESS.—Competitive procedures shall be used in the establishment of partnerships.

(f) SELECTION CRITERIA.—The criteria for the selection of a proposed partnership for establishment under this section shall include the criteria set forth in section 2511(e) of this title.

(g) REGULATIONS.—The Secretary shall prescribe regulations for the purposes of this section.

(Added Pub. L. 103–337, div. A, title XI, §1113(a), Oct. 5, 1994, 108 Stat. 2864; amended Pub. L. 104–106, div. A, title X, §1081(d), Feb. 10, 1996, 110 Stat. 454.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, §1081(d)(1), struck out ''referred to in section 2511(b) of this title'' after ''corporations''.

Subsec. (f). Pub. L. 104–106, §1081(d)(2), substituted ''section 2511(e)'' for ''section 2511(f)''.

[§ 2520. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section, added Pub. L. 103–337, div. A, title XI, §1113(b), Oct. 5, 1994, 108 Stat. 2865, related to Navy Reinvestment Program.

SUBCHAPTER IV—MANUFACTURING TECHNOLOGY

Sec.
2521. Manufacturing Technology Program.
2522. Armament retooling and manufacturing.
[2523, 2524. Repealed.]
[2525. Renumbered.]

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title III, §344(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, redesignated item 2525 as 2521 and added item 2522.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(5), Oct. 17, 1998, 112 Stat. 2136, struck out ''AND DUAL-USE ASSISTANCE EXTENSION PROGRAMS'' after ''TECHNOLOGY'' in subchapter heading.

1996—Pub. L. 104–106, div. A, title II, §276(b), title X, §1081(i)(3), Feb. 10, 1996, 110 Stat. 242, 455, struck out items 2521 ''National Defense Manufacturing Technology Program'', 2522 ''Defense Advanced Manufacturing Technology Partnerships'', 2523 ''Manufacturing extension programs'', and 2524 ''Defense dual-use assistance extension program'' and substituted ''Manufacturing Technology Program'' for ''Manufacturing Science and Technology Program'' in item 2525.

1994—Pub. L. 103–337, div. A, title II, §256(a)(2), Oct. 5, 1994, 108 Stat. 2704, substituted ''Manufacturing Science and'' for ''Industrial Preparedness Manufacturing'' in item 2525.

1993—Pub. L. 103–160, div. A, title VIII, §801(a)(2), Nov. 30, 1993, 107 Stat. 1701, added item 2525.

§ 2521. Manufacturing Technology Program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Manufacturing Technology Program to further the national security objectives of section 2501(a) of this title through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems. The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program. The Under Secretary of Defense for Acquisition, Technology, and Logistics shall administer the program.

(b) PURPOSE OF PROGRAM.—The Secretary of Defense shall use the program—

(1) to provide centralized guidance and direction (including goals, milestones, and priorities) to the military departments and the Defense Agencies on all matters relating to manufacturing technology;

(2) to direct the development and implementation of Department of Defense plans, programs, projects, activities, and policies that promote the development and application of advanced technologies to manufacturing processes, tools, and equipment;

(3) to improve the manufacturing quality, productivity, technology, and practices of businesses and workers providing goods and services to the Department of Defense;

(4) to focus Department of Defense support for the development and application of advanced manufacturing technologies and processes for use to meet manufacturing requirements that are essential to the national defense, as well as for repair and remanufacturing in support of the operations of systems commands, depots, air logistics centers, and shipyards;

(5) to disseminate information concerning improved manufacturing improvement concepts, including information on such matters as best manufacturing practices, product data exchange specifications, computer-aided acquisition and logistics support, and rapid acquisition of manufactured parts;

(6) to sustain and enhance the skills and capabilities of the manufacturing work force;

(7) to promote high-performance work systems (with development and dissemination of production technologies that build upon the skills and capabilities of the work force), high levels of worker education and training; and

(8) to ensure appropriate coordination between the manufacturing technology programs and industrial preparedness programs of the Department of Defense and similar programs undertaken by other departments and agencies of the Federal Government or by the private sector.

(c) EXECUTION.—(1) The Secretary may carry out projects under the program through the Secretaries of the military departments and the heads of the Defense Agencies.

(2) In the establishment and review of requirements for an advanced manufacturing technology or process, the Secretary shall ensure the participation of those prospective technology users that are expected to be the users of that technology or process.

(3) The Secretary shall ensure that each project under the program for the development

of an advanced manufacturing technology or process includes an implementation plan for the transition of that technology or process to the prospective technology users that will be the users of that technology or process.

(4) In the periodic review of a project under the program, the Secretary shall ensure participation by those prospective technology users that are the expected users for the technology or process being developed under the project.

(5) In order to promote increased dissemination and use of manufacturing technology throughout the national defense technology and industrial base, the Secretary shall seek, to the maximum extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.

(6) In this subsection, the term ''prospective technology users'' means the following officials and elements of the Department of Defense:

(A) Program and project managers for defense weapon systems.

(B) Systems commands.

(C) Depots.

(D) Air logistics centers.

(E) Shipyards.

(d) COMPETITION AND COST SHARING.—(1) In accordance with the policy stated in section 2374 of this title, competitive procedures shall be used for awarding all grants and entering into all contracts, cooperative agreements, and other transactions under the program.

(2) Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project. For a project for which the Government receives an offer from only one offeror, the contracting officer shall negotiate the ratio of contract recipient cost to Government cost that represents the best value to the Government.

(e) JOINT DEFENSE MANUFACTURING TECHNOLOGY PANEL.—(1) There is in the Department of Defense the Joint Defense Manufacturing Technology Panel.

(2)(A) The Chair of the Joint Defense Manufacturing Technology Panel shall be the head of the Panel. The Chair shall be appointed, on a rotating basis, from among the appropriate personnel of the military departments and Defense Agencies with manufacturing technology programs.

(B) The Panel shall be composed of at least one individual from among appropriate personnel of each military department and Defense Agency with manufacturing technology programs. The Panel may include as ex-officio members such individuals from other government organizations, academia, and industry as the Chair considers appropriate.

(3) The purposes of the Panel shall be as follows:

(A) To identify and integrate requirements for the program.

(B) To conduct joint planning for the program.

(C) To develop joint strategies for the program.

(4) In carrying out the purposes specified in paragraph (3), the Panel shall perform the functions as follows:

(A) Conduct comprehensive reviews and assessments of defense-related manufacturing issues being addressed by the manufacturing technology programs and related activities of the Department of Defense.

(B) Execute strategic planning to identify joint planning opportunities for increased cooperation in the development and implementation of technological products and the leveraging of funding for such purposes with the private sector and other government agencies.

(C) Ensure the integration and coordination of requirements and programs under the program with the Office of the Secretary of Defense and other national-level initiatives, including the establishment of information exchange processes with other government agencies, private industry, academia, and professional associations.

(D) Conduct such other functions as the Under Secretary of Defense for Acquisition, Technology, and Logistics shall specify.

(5) The Panel shall report to and receive direction from one or more individuals designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics for purposes of this paragraph on manufacturing technology issues of multi-service concern and application.

(6) The administrative expenses of the Panel shall be borne by each military department and Defense Agency with manufacturing technology programs in such manner as the Panel shall provide.

(f) FIVE-YEAR STRATEGIC PLAN.—(1) The Secretary shall develop a plan for the program that includes the following:

(A) The overall manufacturing technology goals, milestones, priorities, and investment strategy for the program.

(B) The objectives of, and funding for, the program for each military department and each Defense Agency that shall participate in the program during the period of the plan.

(2) The Secretary shall include in the plan mechanisms for assessing the effectiveness of the program under the plan.

(3) The Secretary shall update the plan not less frequently than once every four years.

(4) Each plan, and each update to the plan, shall cover a period of five fiscal years.

(Added Pub. L. 103–160, div. A, title VIII, §801(a)(1), Nov. 30, 1993, 107 Stat. 1700, §2525; amended Pub. L. 103–337, div. A, title II, §256(a)(1), Oct. 5, 1994, 108 Stat. 2704; Pub. L. 104–106, div. A, title II, §276(a), title X, §1081(e), title XV, §1503(a)(28), Feb. 10, 1996, 110 Stat. 241, 454, 512; Pub. L. 105–85, div. A, title II, §211(a), (b), Nov. 18, 1997, 111 Stat. 1657; Pub. L. 105–261, div. A, title II, §213, Oct. 17, 1998, 112 Stat. 1947; Pub. L. 106–65, div. A, title II, §216, Oct. 5, 1999, 113 Stat. 543; renumbered §2521, Pub. L. 106–398, §1 [[div. A], title III, §344(c)(1)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title II, §213, Dec. 2, 2002, 116 Stat. 2481; Pub. L. 108–136, div. A, title X, §1031(a)(24), Nov. 24, 2003, 117 Stat. 1598; Pub. L.

110–181, div. A, title II, § 238(a), Jan. 28, 2008, 122 Stat. 48; Pub. L. 111–84, div. A, title II, § 212, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949; Pub. L. 113–291, div. A, title II, § 212, Dec. 19, 2014, 128 Stat. 3325.)

PRIOR PROVISIONS

A prior section 2521, added Pub. L. 102–484, div. D, title XLII, § 4231(a), Oct. 23, 1992, 106 Stat. 2686, related to National Defense Manufacturing Technology Program, prior to repeal by Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454.

Another prior section 2521, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1426, defined terms for purposes of former chapter 150 of this title, prior to repeal and restatement in section 2491 [now 2500] of this title by Pub. L. 102–484, §§ 4202(a), 4203(a).

Another prior section 2521 was renumbered section 2540 of this title and subsequently repealed.

AMENDMENTS

2014—Subsec. (e)(5). Pub. L. 113–291, § 212(a), substituted ''one or more individuals designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics for purposes of this paragraph'' for ''the Assistant Secretary of Defense for Research and Engineering''.

Subsec. (f)(3). Pub. L. 113–291, § 212(b), substituted ''not less frequently than once every four years'' for ''on a biennial basis''.

2013—Subsec. (e)(5). Pub. L. 112–239 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

2009—Subsecs. (e), (f). Pub. L. 111–84 added subsec. (e) and redesignated former subsec. (e) as (f).

2008—Subsec. (e). Pub. L. 110–181 added subsec. (e).

2003—Subsec. (e). Pub. L. 108–136 struck out heading and text of subsec. (e) which related to preparation and maintenance of a five-year plan for the Manufacturing Technology Program by the Secretary of Defense.

2002—Subsec. (e)(1). Pub. L. 107–314, § 213(a), substituted ''prepare and maintain a five-year plan for the program.'' for ''prepare a five-year plan for the program which establishes—

''(A) the overall manufacturing technology goals, milestones, priorities, and investment strategy for the program; and

''(B) for each of the five fiscal years covered by the plan, the objectives of, and funding for the program by, each military department and each Defense Agency participating in the program.''

Subsec. (e)(2). Pub. L. 107–314, § 213(a), substituted ''establish'' for ''include'' in introductory provisions and amended subpars. (A) and (B) generally. Prior to amendment, text read as follows:

''(A) An assessment of the effectiveness of the program, including a description of all completed projects and status of implementation.

''(B) An assessment of the extent to which the costs of projects are being shared by the following:

''(i) Commercial enterprises in the private sector.

''(ii) Department of Defense program offices, including weapon system program offices.

''(iii) Departments and agencies of the Federal Government outside the Department of Defense.

''(iv) Institutions of higher education.

''(v) Other institutions not operated for profit.

''(vi) Other sources.''

Subsec. (e)(3). Pub. L. 107–314, § 213(b), substituted ''biennially'' for ''annually'' and ''for each even-numbered fiscal year'' for ''for a fiscal year''.

2001—Subsec. (a). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

2000—Pub. L. 106–398 renumbered section 2525 of this title as this section.

1999—Subsec. (a). Pub. L. 106–65, § 216(a), in first sentence, inserted ''through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems'' after ''title''.

Subsec. (b)(4). Pub. L. 106–65, § 216(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''to promote dual-use manufacturing processes;''.

Subsec. (c)(2) to (6). Pub. L. 106–65, § 216(c), added pars. (2) to (4), redesignated former par. (2) as (5), and added par. (6).

Subsec. (d). Pub. L. 106–65, § 216(d), struck out ''(A)'' before ''In accordance with'' in par. (1), redesignated par. (1)(B) as par. (2), substituted ''Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project.'' for ''For each grant awarded and each contract, cooperative agreement, or other transaction entered into on a cost-share basis under the program, the ratio of contract recipient cost to Government cost shall be determined by competitive procedures.'', and struck out former pars. (2) and (3) which required grants, contracts, cooperative agreements, and other transactions to be awarded or entered into on a cost-sharing basis unless the Secretary of Defense made certain determinations and specified as a goal that at least 25 percent of the funds available for the program for each fiscal year be used for grants, contracts, cooperative agreements, and other transactions on a cost-share basis under which the ratio of recipient cost to Government cost was two to one.

Subsec. (e)(2)(A). Pub. L. 106–65, § 216(e)(1), inserted '', including a description of all completed projects and status of implementation'' before period at end.

Subsec. (e)(2)(C). Pub. L. 106–65, § 216(e)(2), added subpar. (C).

1998—Subsec. (d)(1). Pub. L. 105–261, § 213(a), designated existing provisions as subpar. (A), substituted ''In accordance with the policy stated in section 2374 of this title, competitive'' for ''Competitive'', and added subpar. (B).

Subsec. (d)(2). Pub. L. 105–261, § 213(b), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and added subpars. (B) and (C).

Subsec. (d)(3). Pub. L. 105–261, § 213(c)(2), substituted ''As a goal, at least'' for ''At least'' and ''should'' for ''shall'' and inserted at end ''The Secretary of Defense, in coordination with the Secretaries of the military departments and upon recommendation of the Under Secretary of Defense for Acquisition and Technology, shall establish annual objectives to meet such goal.''

Subsec. (d)(4). Pub. L. 105–261, § 213(c)(1), struck out par. (4) which read as follows: ''If the requirement of paragraph (3) cannot be met by July 15 of a fiscal year, the Under Secretary of Defense for Acquisition and Technology may waive the requirement and obligate the balance of the funds available for the program for that fiscal year on a cost-share basis under which the ratio of recipient cost to Government cost is less than two to one. Before implementing any such waiver, the Under Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives the reasons for the waiver.''

Subsec. (e)(2). Pub. L. 105–261, § 213(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The plan shall include an assessment of the effectiveness of the program.''

1997—Subsec. (c)(2). Pub. L. 105–85, § 211(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall seek, to the extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.''

Subsec. (e). Pub. L. 105–85, § 211(b), added subsec. (e).

1996—Pub. L. 104–106, § 276(a)(1), amended section catchline, as amended by Pub. L. 104–106, §§ 1503(a)(28), 1506, by striking out ''Science and'' after ''Manufacturing''.

Pub. L. 104–106, § 1503(a)(28), substituted ''Science and Technology Program'' for ''science and technology program'' in section catchline.

Subsec. (a). Pub. L. 104–106, § 276(a)(2), struck out ''Science and'' after ''Manufacturing'' and inserted after first sentence ''The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program.''

Subsec. (b). Pub. L. 104–106, § 1081(e), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''PURPOSE.—The purpose of the program is to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

Subsec. (c). Pub. L. 104–106, § 276(a)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2)(C). Pub. L. 104–106, § 276(a)(4)(A), added subpar. (C).

Subsec. (d)(3), (4). Pub. L. 104–106, § 276(a)(4)(B), added pars. (3) and (4).

1994—Pub. L. 103–337 substituted ''Manufacturing science and technology program'' for ''Industrial Preparedness Manufacturing Technology Program'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall establish an Industrial Preparedness Manufacturing Technology program to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

LIMITATION ON USE OF FUNDS FOR DEFENSE-WIDE MANUFACTURING SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 110–181, div. A, title II, § 214, Jan. 28, 2008, 122 Stat. 36, as amended by Pub. L. 111–383, div. A, title IX, § 901(*l*)(2), Jan. 7, 2011, 124 Stat. 4326; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(F), Jan. 2, 2013, 126 Stat. 1950, provided that: ''No funds available to the Office of the Secretary of Defense for any fiscal year may be obligated or expended for the defense-wide manufacturing science and technology program unless the Assistant Secretary of Defense for Research and Engineering ensures each of the following:

''(1) A component of the Department of Defense has requested and evaluated—

''(A) competitive proposals, for each project under the program that is not a project covered by subparagraph (B); and

''(B) proposals from as many sources as is practicable under the circumstances, for a project under the program if the disclosure of the needs of the Department of Defense with respect to that project would compromise the national security.

''(2) Each project under the program is carried out—

''(A) in accordance with the statutory requirements of the Manufacturing Technology Program established by section 2521 of title 10, United States Code; and

''(B) in compliance with all requirements of any directive that applies to manufacturing technology.

''(3) An implementation plan has been developed.''

[Pub. L. 111–383, div. A, title IX, § 901(*l*)(2), Jan. 7, 2011, 124 Stat. 4326, which directed amendment of section 214 of Pub. L. 110–181, set out above, by substituting ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering'', was executed by making the substitution for ''Director, Defense Research and Engineering,'' to reflect the probable intent of Congress.]

INITIAL DEVELOPMENT AND SUBMISSION OF PLAN

Pub. L. 110–181, div. A, title II, § 238(b), Jan. 28, 2008, 122 Stat. 48, provided that:

''(1) DEVELOPMENT.—The Secretary of Defense shall develop the strategic plan required by subsection (e) [now (f)] of section 2521 of title 10, United States Code (as added by subsection (a) of this section), so that the plan goes into effect at the beginning of fiscal year 2009.

''(2) SUBMISSION.—Not later than the date on which the budget of the President for fiscal year 2010 is submitted to Congress under section 1105 of title 31, United States Code, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the plan specified in paragraph (1).''

HIGH-PERFORMANCE DEFENSE MANUFACTURING TECHNOLOGY RESEARCH AND DEVELOPMENT

Pub. L. 109–163, div. A, title II, subtitle D, Jan. 6, 2006, 119 Stat. 3175, as amended by Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(ii), Jan. 2, 2013, 126 Stat. 1949, provided that:

''SEC. 241. PILOT PROGRAM FOR IDENTIFICATION AND TRANSITION OF ADVANCED MANUFACTURING PROCESSES AND TECHNOLOGIES.

''(a) PILOT PROGRAM REQUIRED.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall conduct a pilot program under the authority of section 2521 of title 10, United States Code, to identify and transition advanced manufacturing processes and technologies the utilization of which would achieve significant productivity and efficiency gains in the defense manufacturing base.

''(b) CONSIDERATION OF DEFENSE PRIORITIES.—In carrying out subsection (a), the Under Secretary shall take into consideration the defense priorities established in the most current Joint Warfighting Science and Technology plan, as required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note).

''(c) IDENTIFICATION FOR TRANSITION.—In identifying manufacturing processes and technologies for transition to the defense manufacturing base under the pilot program, the Under Secretary shall select the most promising transformational technologies and manufacturing processes, in consultation with the Assistant Secretary of Defense for Research and Engineering, the Joint Defense Manufacturing Technology Panel, and other such entities as may be appropriate, including the Director of the Small Business Innovation Research Program.

''SEC. 242. TRANSITION OF TRANSFORMATIONAL MANUFACTURING PROCESSES AND TECHNOLOGIES TO DEFENSE MANUFACTURING BASE.

''(a) PROTOTYPES AND TEST BEDS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall undertake the development of prototypes and test beds to validate the manufacturing processes and technologies selected for transition under the pilot program under section 241.

''(b) DIFFUSION OF ENHANCEMENTS.—The Under Secretary shall seek the cooperation of industry in adopting such manufacturing processes and technologies through the following:

''(1) The Manufacturing Extension Partnership Program.

''(2) The identification of incentives for industry to incorporate and utilize such manufacturing processes and technologies.

''SEC. 243. MANUFACTURING TECHNOLOGY STRATEGIES.

''(a) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics may—

''(1) identify an area of technology where the development of an industry-prepared roadmap for new manufacturing and technology processes applicable to defense manufacturing requirements would be beneficial to the Department of Defense; and

''(2) establish a task force, and act in cooperation, with the private sector to map the strategy for the development of manufacturing processes and tech-

nologies needed to support technology development in the area identified under paragraph (1).

''(b) COMMENCEMENT OF ROADMAPPING.—The Under Secretary shall commence any roadmapping identified pursuant to subsection (a)(1) not later than January 2007.

''SEC. 244. REPORT.

''(a) IN GENERAL.—Not later than December 31, 2007, the Under Secretary of the Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions undertaken by the Under Secretary under this subtitle during fiscal year 2006.

''(b) ELEMENTS.—The report under subsection (a) shall include—

''(1) a comprehensive description of the actions undertaken under this subtitle during fiscal year 2006;

''(2) an assessment of effectiveness of such actions in enhancing research and development on manufacturing technologies and processes, and the implementation of such within the defense manufacturing base; and

''(3) such recommendations as the Under Secretary considers appropriate for additional actions to be undertaken in order to increase the effectiveness of the actions undertaken under this subtitle in enhancing manufacturing activities within the defense manufacturing base.

''SEC. 245. DEFINITIONS.

''In this subtitle:

''(1) DEFENSE MANUFACTURING BASE.—The term 'defense manufacturing base' includes any supplier of the Department of Defense, including a supplier of raw materials.

''(2) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.—The term 'Manufacturing Extension Partnership Program' means the Manufacturing Extension Partnership Program of the Department of Commerce.

''(3) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term 'Small Business Innovation Research Program' has the meaning given that term in section 2500(11) of title 10, United States Code.''

TECHNICAL ASSISTANCE RELATING TO MACHINE TOOLS

Pub. L. 108–136, div. A, title VIII, §823, Nov. 24, 2003, 117 Stat. 1547, provided that:

''(a) TECHNICAL ASSISTANCE.—The Secretary of Defense shall publish in the Federal Register information on Government contracting for purposes of assisting machine tool companies in the United States and entities that use machine tools. The information shall contain, at a minimum, the following:

''(1) An identification of resources with respect to Government contracting regulations, including compliance procedures and information on the availability of counseling.

''(2) An identification of resources for locating opportunities for contracting with the Department of Defense, including information about defense contracts that are expected to be carried out that may require the use of machine tools.

''(b) SCIENCE AND TECHNOLOGY INITIATIVES.—The Secretary of Defense shall incorporate into the Department of Defense science and technology initiatives on manufacturing technology an objective of developing advanced machine tool capabilities. Such technologies shall be used to improve the technological capabilities of the United States domestic machine tool industrial base in meeting national security objectives.''

PARTICIPATION IN MANUFACTURING EXTENSION PROGRAM

Pub. L. 108–87, title VIII, §8062, Sept. 30, 2003, 117 Stat. 1086, provided that: ''Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act or hereafter in any other Act.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–248, title VIII, §8063, Oct. 23, 2002, 116 Stat. 1550.

Pub. L. 107–117, div. A, title VIII, §8068, Jan. 10, 2002, 115 Stat. 2262.

Pub. L. 106–259, title VIII, §8067, Aug. 9, 2000, 114 Stat. 689.

Pub. L. 106–79, title VIII, §8070, Oct. 25, 1999, 113 Stat. 1245.

Pub. L. 105–262, title VIII, §8070, Oct. 17, 1998, 112 Stat. 2312.

Pub. L. 105–56, title VIII, §8076, Oct. 8, 1997, 111 Stat. 1236.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8085], Sept. 30, 1996, 110 Stat. 3009–71, 3009–105.

Pub. L. 104–61, title VIII, §8064, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, §8071, Sept. 30, 1994, 108 Stat. 2635.

Pub. L. 103–139, title VIII, §8083A, Nov. 11, 1993, 107 Stat. 1459.

Pub. L. 102–396, title IX, §9112, Oct. 6, 1992, 106 Stat. 1929.

§ 2522. Armament retooling and manufacturing

The Secretary of the Army is authorized by chapter 434 of this title to carry out programs for the support of armaments retooling and manufacturing in the national defense industrial and technology base.

(Added Pub. L. 106–398, §1 [[div. A], title III, §344(c)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.)

PRIOR PROVISIONS

A prior section 2522, added Pub. L. 102–190, div. A, title VIII, §823(a)(1), Dec. 5, 1991, 105 Stat. 1435, §2518; renumbered §2522 and amended Pub. L. 102–484, div. D, title XLII, §4232(a), (b), Oct. 23, 1992, 106 Stat. 2687, related to defense advanced manufacturing technology partnerships, prior to repeal by Pub. L. 104–106, div. A, title X, §1081(f), Feb. 10, 1996, 110 Stat. 454.

Another prior section 2522, added Pub. L. 101–189, div. A, title VIII, §841(b)(1), Nov. 29, 1989, 103 Stat. 1512, §2508; amended Pub. L. 101–510, div. A, title VIII, §821(a), Nov. 5, 1990, 104 Stat. 1597; Pub. L. 102–25, title VII, §701(g)(3), Apr. 6, 1991, 105 Stat. 115; renumbered §2522, Pub. L. 102–190, div. A, title VIII, §821(b)(1), Dec. 5, 1991, 105 Stat. 1431, required an annual defense critical technologies plan, prior to repeal by Pub. L. 102–484, §4202(a).

[§§ 2523, 2524. Repealed. Pub. L. 104–106, div. A, title X, §1081(f), Feb. 10, 1996, 110 Stat. 454]

Section 2523, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, §2517; amended Pub. L. 102–190, div. A, title VIII, §824(a), Dec. 5, 1991, 105 Stat. 1436; renumbered §2523 and amended Pub. L. 102–484, div. D, title XLII, §4233(a), (b), Oct. 23, 1992, 106 Stat. 2687; Pub. L. 103–160, div. A, title IX, §904(d)(1), title XI, §1182(b)(2), title XIII, §1315(d), Nov. 30, 1993, 107 Stat. 1728, 1772, 1787, related to manufacturing extension programs.

A prior section 2523, added Pub. L. 102–190, div. A, title VIII, §821(a), Dec. 5, 1991, 105 Stat. 1427, related to defense dual-use critical technology partnerships, prior to repeal and restatement in section 2511 of this title by Pub. L. 102–484, §§4202(a), 4221(a).

Section 2524, added Pub. L. 102–484, div. D, title XLII, §4234(a), Oct. 23, 1992, 106 Stat. 2687; amended Pub. L. 103–35, title II, §201(g)(9), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, §§1314, 1315(e), Nov. 30,

1993, 107 Stat. 1786, 1788; Pub. L. 103–337, div. A, title X, § 1070(b)(10), title XI, §§ 1114(b), (c), 1115(d), Oct. 5, 1994, 108 Stat. 2857, 2867–2869; Pub. L. 104–106, div. A, title XV, § 1503(a)(27), Feb. 10, 1996, 110 Stat. 512, related to defense dual-use assistance extension program.

A prior section 2524 was renumbered section 2513 of this title.

[§ 2525. Renumbered § 2521]

PRIOR PROVISIONS

A prior section 2525 was renumbered section 2517 of this title.

A prior section 2526 was renumbered section 2518 of this title.

SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS

Sec.
2531. Defense memoranda of understanding and related agreements.
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2533a. Requirement to buy certain articles from American sources; exceptions.
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2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.
2539. Industrial mobilization: plants; lists.
2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness.
2539b. Availability of samples, drawings, information, equipment, materials, and certain services.

AMENDMENTS

2011—Pub. L. 111–350, § 5(b)(36), Jan. 4, 2011, 124 Stat. 3845, substituted ''chapter 83 of title 41'' for ''the Buy American Act'' in item 2533.

2008—Pub. L. 110–181, div. A, title X, § 1063(c)(8), Jan. 28, 2008, 122 Stat. 323, amended directory language of Pub. L. 109–364, § 842(a)(2). See 2006 Amendment note below.

2006—Pub. L. 109–364, div. A, title VIII, § 842(a)(2), Oct. 17, 2006, 120 Stat. 2337, as amended by Pub. L. 110–181, div. A, title X, § 1063(c)(8), Jan. 28, 2008, 122 Stat. 323, added item 2533b.

2001—Pub. L. 107–107, div. A, title VIII, § 832(a)(2), Dec. 28, 2001, 115 Stat. 1190, added item 2533a.

1994—Pub. L. 103–337, div. A, title VIII, § 812(b)(2), title X, § 1070(a)(13)(B), Oct. 5, 1994, 108 Stat. 2816, 2856, substituted ''Determinations of public interest under the Buy American Act'' for ''Limitation on use of funds: procurement of goods which are other than American goods'' in item 2533 and renumbered items 2540 and 2541 as 2539a and 2539b, respectively.

1993—Pub. L. 103–160, div. A, title VIII, §§ 828(c)(5), 842(c)(2), Nov. 30, 1993, 107 Stat. 1714, 1719, substituted ''Award of certain contracts to entities controlled by a foreign government: prohibition'' for ''Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government'' in item 2536 and added items 2538 to 2541.

1992—Pub. L. 102–484, div. A, title VIII, §§ 836(a)(2), 838(b), Oct. 23, 1992, 106 Stat. 2463, 2466, added items 2536 and 2537.

§ 2531. Defense memoranda of understanding and related agreements

(a) CONSIDERATIONS IN MAKING AND IMPLEMENTING MOUS AND RELATED AGREEMENTS.—In the negotiation, renegotiation, and implementation of any existing or proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding, between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, or to the reciprocal procurement of defense items, the Secretary of Defense shall—

(1) consider the effects of such existing or proposed memorandum of understanding or related agreement on the defense technology and industrial base of the United States; and

(2) regularly solicit and consider comments and recommendations from the Secretary of Commerce with respect to the commercial implications of such memorandum of understanding or related agreement and the potential effects of such memorandum of understanding or related agreement on the international competitive position of United States industry.

(b) INTER-AGENCY REVIEW OF EFFECTS ON UNITED STATES INDUSTRY.—Whenever the Secretary of Commerce has reason to believe that an existing or proposed memorandum of understanding or related agreement has, or threatens to have, a significant adverse effect on the international competitive position of United States industry, the Secretary may request an interagency review of the memorandum of understanding or related agreement. If, as a result of the review, the Secretary determines that the commercial interests of the United States are not being served or would not be served by adhering to the terms of such existing memorandum or related agreement or agreeing to such proposed memorandum or related agreement, as the case may be, the Secretary shall recommend to the President the renegotiation of the existing memorandum or related agreement or any modification to the proposed memorandum of understanding or related agreement that he considers necessary to ensure an appropriate balance of interests.

(c) LIMITATION ON ENTERING INTO MOUS AND RELATED AGREEMENTS.—A memorandum of understanding or related agreement referred to in subsection (a) may not be entered into or implemented if the President, taking into consideration the results of the inter-agency review, determines that such memorandum of understanding or related agreement has or is likely to have a significant adverse effect on United States industry that outweighs the benefits of entering into or implementing such memorandum or agreement.

(Added Pub. L. 100–456, div. A, title VIII, § 824, Sept. 29, 1988, 102 Stat. 2019, § 2504; amended Pub. L. 101–189, div. A, title VIII, § 815(a), Nov. 29, 1989,

103 Stat. 1500; Pub. L. 101–510, div. A, title XIV, § 1453, Nov. 5, 1990, 104 Stat. 1694; renumbered § 2531 and amended Pub. L. 102–484, div. D, title XLII, §§ 4202(a), 4271(c), Oct. 23, 1992, 106 Stat. 2659, 2696.)

AMENDMENTS

1992—Pub. L. 102–484, § 4202(a), renumbered section 2504 of this title as this section.

Subsec. (a)(1). Pub. L. 102–484, § 4271(c), substituted ''defense technology and industrial base'' for ''defense industrial base''.

1990—Subsec. (a). Pub. L. 101–510 inserted ''or to the reciprocal procurement of defense items,'' after ''defense equipment,'' in introductory provisions.

1989—Pub. L. 101–189 inserted ''and related agreements'' after ''understanding'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''In the negotiation and renegotiation of each memorandum of understanding between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, the Secretary of Defense shall—

''(1) consider the effect of such proposed memorandum of understanding on the defense industrial base of the United States; and

''(2) regularly solicit and consider information or recommendations from the Secretary of Commerce with respect to the effect on the United States industrial base of such memorandum of understanding.''

DEFENSE TRADE RECIPROCITY

Pub. L. 108–375, div. A, title VIII, § 831, Oct. 28, 2004, 118 Stat. 2017, provided that:

''(a) POLICY.—It is the policy of Congress that procurement regulations used in the conduct of trade in defense articles and defense services should be based on the principle of fair trade and reciprocity consistent with United States national security, including the need to ensure comprehensive manufacturing capability in the United States defense industrial base.

''(b) REQUIREMENT.—The Secretary of Defense shall make every effort to ensure that the policies and practices of the Department of Defense reflect the goal of establishing an equitable trading relationship between the United States and its foreign defense trade partners, including ensuring that United States firms and United States employment in the defense sector are not disadvantaged by unilateral procurement practices by foreign governments, such as the imposition of offset agreements in a manner that undermines the United States defense industrial base. In pursuing this goal, the Secretary shall—

''(1) develop a comprehensive defense acquisition trade policy that provides the necessary guidance and incentives for the elimination of any adverse effects of offset agreements in defense trade; and

''(2) review and make necessary modifications to existing acquisition policies and strategies, and review and seek to make necessary modifications to existing memoranda of understanding, cooperative project agreements, or related agreements with foreign defense trade partners, to reflect this goal.

''(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section in the Department of Defense supplement to the Federal Acquisition Regulation.

''(d) DEFINITIONS.—In this section:

''(1) The term 'foreign defense trade partner' means a foreign country with respect to which there is—

''(A) a memorandum of understanding or related agreement described in section 2531(a) of title 10, United States Code; or

''(B) a cooperative project agreement described in section 27 of the Arms Export Control Act (22 U.S.C. 2767).

''(2) The term 'offset agreement' has the meaning provided that term by section 36(e) of the Arms Export Control Act (22 U.S.C. 2776(e)).

''(3) The terms 'defense article' and 'defense service' have the meanings provided those terms by section 47(7) of the Arms Export Control Act (22 U.S.C. 2794(7)).''

§ 2532. Offset policy; notification

(a) ESTABLISHMENT OF OFFSET POLICY.—The President shall establish, consistent with the requirements of this section, a comprehensive policy with respect to contractual offset arrangements in connection with the purchase of defense equipment or supplies which addresses the following:

(1) Transfer of technology in connection with offset arrangements.

(2) Application of offset arrangements, including cases in which United States funds are used to finance the purchase by a foreign government.

(3) Effects of offset arrangements on specific subsectors of the industrial base of the United States and for preventing or ameliorating any serious adverse effects on such subsectors.

(b) TECHNOLOGY TRANSFER.—(1) No official of the United States may enter into a memorandum of understanding or other agreement with a foreign government that would require the transfer of United States defense technology to a foreign country or a foreign firm in connection with a contract that is subject to an offset arrangement if the implementation of such memorandum or agreement would significantly and adversely affect the defense industrial base of the United States and would result in a substantial financial loss to a United States firm.

(2) Paragraph (1) shall not apply in the case of a memorandum of understanding or agreement described in paragraph (1) if the Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, determines that a transfer of United States defense technology pursuant to such understanding or agreement will result in strengthening the national security of the United States and so certifies to Congress.

(3) If a United States firm is required under the terms of a memorandum of understanding, or other agreement entered into by the United States with a foreign country, to transfer defense technology to a foreign country, the United States firm may protest the determination to the Secretary of Defense on the grounds that the transfer of such technology would adversely affect the defense industrial base of the United States and would result in substantial financial loss to the protesting firm. The Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, shall make the final determination of the validity of the protesting firm's claim.

(c) NOTIFICATION REGARDING OFFSETS.—If at any time a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset arrangement exceeding $50,000,000 in value, such firm shall notify the Secretary of Defense of the proposed sale. Notification shall be made under this subsection in accordance with regulations prescribed by the Secretary of Defense in consultation with the Secretary of Commerce.

(d) DEFINITIONS.—In this section:

(1) The term ''United States firm'' means a business entity that performs substantially all of its manufacturing, production, and research and development activities in the United States.

(2) The term ''foreign firm'' means a business entity other than a United States firm.

(Added Pub. L. 100–456, div. A, title VIII, § 825(b), Sept. 29, 1988, 102 Stat. 2020, § 2505; renumbered § 2532, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659.)

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2505 of this title as this section.

REVIEW OF OFFSET ARRANGEMENTS BY SECRETARY OF DEFENSE

Pub. L. 108–87, title VIII, § 8138, Sept. 30, 2003, 117 Stat. 1106, directed the Secretary of Defense to review contractual offset arrangements to which the policy established under this section applied, memoranda of understanding and related agreements to which the limitation in section 2531(c) of this title applied that had been entered into with a country with respect to which such contractual offset arrangements had been entered into, and waivers granted with respect to a foreign country under section 2534(d)(3) of this title; determine the effects of the use of such arrangements, memoranda of understanding, agreements, and waivers on the national technology and industrial base; and submit a report on the results of the review to Congress not later than Mar. 1, 2005.

CONTRACTUAL OFFSET ARRANGEMENTS; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 100–456, div. A, title VIII, § 825(a), Sept. 29, 1988, 102 Stat. 2019, provided that: ''Congress makes the following findings:

''(1) Many contracts entered into by United States firms for the supply of weapon systems or defense-related items to foreign countries and foreign firms are subject to contractual arrangements under which United States firms must agree—

''(A) to have a specified percentage of work under, or monetary amount of, the contract performed by one or more foreign firms;

''(B) to purchase a specified amount or quantity of unrelated goods or services from domestic sources of such foreign countries; or

''(C) to invest a specified amount in domestic businesses of such foreign countries.

Such contractual arrangements, known as 'offsets', are a component of international trade and could have an impact on United States defense industry opportunities in domestic and foreign markets.

''(2) Some United States contractors and subcontractors may be adversely affected by such contractual arrangements.

''(3) Many contracts which provide for or are subject to offset arrangements require, in connection with such arrangements, the transfer of United States technology to foreign firms.

''(4) The use of such transferred technology by foreign firms in conjunction with foreign trade practices permitted under the trade policies of the countries of such firms can give foreign firms a competitive advantage against United States firms in world markets for products using such technology.

''(5) A purchase of defense equipment pursuant to an offset arrangement may increase the cost of the defense equipment to the purchasing country and may reduce the amount of defense equipment that a country may purchase.

''(6) The exporting of defense equipment produced in the United States is important to maintain the defense industrial base of the United States, lower the unit cost of such equipment to the Department of Defense, and encourage the standardized utilization of United States equipment by the allies of the United States.''

NEGOTIATIONS WITH COUNTRIES REQUIRING OFFSET ARRANGEMENTS

Section 825(c) of Pub. L. 100–456, as amended by Pub. L. 101–189, div. A, title VIII, § 816, Nov. 29, 1989, 103 Stat. 1501, provided that:

''(1) The President shall enter into negotiations with foreign countries that have a policy of requiring an offset arrangement in connection with the purchase of defense equipment or supplies from the United States. The negotiations should be conducted with a view to achieving an agreement with the countries concerned that would limit the adverse effects that such arrangements have on the defense industrial base of each such country. Every effort shall be made to achieve such agreements within two years after September 29, 1988.

''(2) In the negotiation or renegotiation of any memorandum of understanding between the United States and one or more foreign countries relating to the reciprocal procurement of defense equipment and supplies or research and development, the President shall make every effort to achieve an agreement with the country or countries concerned that would limit the adverse effects that offset arrangements have on the defense industrial base of the United States.''

[For delegation of functions of President under section 825(c) of Pub. L. 100–456 to Secretary of Defense and United States Trade Representative, see section 5–201 of Ex. Ord. No. 12661, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

REPORT TO CONGRESS ON OFFSET ARRANGEMENTS REQUIRED BY FOREIGN COUNTRIES AND FIRMS; DISCUSSION OF POLICY OPTIONS

Pub. L. 100–456, div. A, title VIII, § 825(d), Sept. 29, 1988, 102 Stat. 2021, provided that, not later than Nov. 15, 1988, the President was to submit to Congress a comprehensive report on contractual offset arrangements required of United States firms for the supply of weapon systems or defense-related items to foreign countries or foreign firms, and, not later than Mar. 15, 1990, the President was to transmit to Congress a report containing a discussion of appropriate actions to be taken by the United States with respect to purchases from United States firms by a foreign country (or a firm of that country) when that country or firm required an offset arrangement in connection with the purchase of defense equipment or supplies in favor of such country.

§ 2533. Determinations of public interest under chapter 83 of title 41

(a) In determining under section 8302 of title 41 whether application of chapter 83 of such title is inconsistent with the public interest, the Secretary of Defense shall consider the following:

(1) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

(2) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

(3) The United States balance of payments.

(4) The cost of shipping goods which are other than American goods.

(5) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

(6) A need to ensure that the Department of Defense has access to advanced, state-of-the-art commercial technology.

(7) The need to protect the national technology and industrial base, to preserve and en-

hance the national technology employment base, and to provide for a defense mobilization base.

(8) A need to ensure that application of different rules of origin for United States end items and foreign end items does not result in an award to a firm other than a firm providing a product produced in the United States.

(9) Any need—

(A) to maintain the same source of supply for spare and replacement parts for an end item that qualifies as an American good; or

(B) to maintain the same source of supply for spare and replacement parts in order not to impair integration of the military and commercial industrial base.

(10) The national security interests of the United States.

(b) In this section, the term ''goods which are other than American goods'' means—

(1) an end product that is not mined, produced, or manufactured in the United States; or

(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured outside the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.

(Added Pub. L. 100–370, § 3(a)(1), July 19, 1988, 102 Stat. 855, § 2501; renumbered § 2506, Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; renumbered § 2533, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659; amended Pub. L. 103–337, div. A, title VIII, § 812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(20), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title X, § 1073(a)(54), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 111–350, § 5(b)(37), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 113–291, div. A, title X, § 1071(a)(9), Dec. 19, 2014, 128 Stat. 3505.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 93–365, title VII, § 707, Aug. 5, 1974, 88 Stat. 406.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–291 substituted ''chapter 83 of such title'' for ''such Act'' in introductory provisions.

2011—Pub. L. 111–350, § 5(b)(37)(A), substituted ''chapter 83 of title 41'' for ''the Buy American Act'' in section catchline.

Subsec. (a). Pub. L. 111–350, § 5(b)(37)(B), substituted ''section 8302 of title 41'' for ''section 2 of the Buy American Act (41 U.S.C. 10a)'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–85 substituted ''(41 U.S.C. 10a)'' for ''(41 U.S.C. 10a))''.

1996—Subsec. (a). Pub. L. 104–106 substituted ''the Buy American Act (41 U.S.C. 10a)) whether application of such Act'' for ''title III of the Act of March 3, 1993 (41 U.S.C. 10a), popularly known as the 'Buy American Act', whether application of title III of such Act''.

1994—Pub. L. 103–337, § 812(b)(1), substituted ''Determinations of public interest under the Buy American Act'' for ''Limitation on use of funds: procurement of goods which are other than American goods'' as section catchline.

Subsec. (a). Pub. L. 103–337, § 812(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Funds appropriated to the Department of Defense may not be obligated under a contract for procurement of goods which are other than American goods (as defined in subsection (c)) unless adequate consideration is given to the following:

''(1) The bids or proposals of firms located in labor surplus areas in the United States (as designated by the Department of Labor) which have offered to furnish American goods.

''(2) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

''(3) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

''(4) The United States balance of payments.

''(5) The cost of shipping goods which are other than American goods.

''(6) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.''

Subsecs. (b), (c). Pub. L. 103–337, § 812(a), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Consideration of the matters referred to in paragraphs (1) through (6) of subsection (a) shall be given under regulations of the Secretary of Defense and subject to the determinations and exceptions contained in title III of the Act of March 3, 1933 (41 U.S.C. 10a, 10b), popularly known as the 'Buy American Act'.''

1992—Pub. L. 102–484 renumbered section 2506 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

§ 2533a. Requirement to buy certain articles from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(C) tents (and the structural components thereof), tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Hand or measuring tools.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary

of Defense or the Secretary of the military department concerned determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations or procurements of any item listed in subsection (b)(1)(A) or (b)(2) in support of contingency operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by, or for, an establishment located outside the United States for the personnel attached to such establishment.

(4) Procurements of any item listed in subsection (b)(1)(A) or (b)(2) for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

(e) EXCEPTION FOR CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(f) EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS.—Subsection (a) does not preclude the procurement of the following:

(1) Foods manufactured or processed in the United States.

(2) Waste and byproducts of cotton and wool fiber for use in the production of propellants and explosives.

(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, or nonappropriated fund instrumentalities operated by the Department of Defense.

(h) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.

(i) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 1906 of title 41.

(j) GEOGRAPHIC COVERAGE.—In this section, the term ''United States'' includes the possessions of the United States.

(k) NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.—In the case of any contract for the procurement of an item described in subparagraph (B), (C), (D), or (E) of subsection (b)(1), if the Secretary of Defense or of the military department concerned applies an exception set forth in subsection (c) or (e) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract, post a notification that the exception has been applied on the Internet site maintained by the General Services Administration known as FedBizOpps.gov (or any successor site).

(Added Pub. L. 107–107, div. A, title VIII, § 832(a)(1), Dec. 28, 2001, 115 Stat. 1189; amended Pub. L. 108–136, div. A, title VIII, §§ 826, 827, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 109–163, div. A, title VIII, §§ 831, 833, Jan. 6, 2006, 119 Stat. 3388; Pub. L. 109–364, div. A, title VIII, § 842(a)(3), Oct. 17, 2006, 120 Stat. 2337; Pub. L. 111–350, § 5(b)(38), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 111–383, div. A, title VIII, § 847, title X, § 1075(b)(38), Jan. 7, 2011, 124 Stat. 4286, 4371; Pub. L. 112–81, div. A, title VIII, § 821, Dec. 31, 2011, 125 Stat. 1502; Pub. L. 112–239, div. A, title X, § 1076(f)(29), Jan. 2, 2013, 126 Stat. 1953.)

AMENDMENTS

2013—Subsec. (k). Pub. L. 112–239 substituted ''FedBizOpps.gov'' for ''FedBizOps.gov''.

2011—Subsec. (b)(1)(C). Pub. L. 112–81 inserted ''(and the structural components thereof)'' after ''tents''.

Subsec. (c). Pub. L. 111–383, § 847, substituted ''subsection (b)'' for ''subsection (b)(1)''.

Subsec. (d)(1), (4). Pub. L. 111–383, § 1075(b)(38), substituted ''(b)(1)(A) or (b)(2)'' for ''(b)(1)(A), (b)(2), or (b)(3)''.

Subsec. (i). Pub. L. 111–350 substituted ''section 1906 of title 41'' for ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)''.

2006—Subsec. (b)(1)(B). Pub. L. 109–163, § 833(b), inserted before semicolon ''and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof)''.

Subsec. (b)(2), (3). Pub. L. 109–364, § 842(a)(3)(A), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Specialty metals, including stainless steel flatware.''

Subsec. (c). Pub. L. 109–364, § 842(a)(3)(B), struck out ''or specialty metals (including stainless steel flatware)'' after ''subsection (b)(1)''.

Subsec. (d)(3). Pub. L. 109–163, § 831, inserted '', or for,'' after ''perishable foods by''.

Subsec. (e). Pub. L. 109–364, § 842(a)(3)(C), struck out ''Specialty Metals and'' after ''Exception for'' in heading and ''specialty metals or'' after ''procurement of'' in introductory provisions.

Subsec. (k). Pub. L. 109–163, § 833(a), added subsec. (k).

2003—Subsec. (d). Pub. L. 108–136, § 826(1), struck out ''Outside the United States'' after ''Procurements'' in heading.

Subsec. (d)(1). Pub. L. 108–136, § 826(2), inserted ''or procurements of any item listed in subsection (b)(1)(A), (b)(2), or (b)(3) in support of contingency operations'' after ''combat operations''.

Subsec. (d)(4). Pub. L. 108–136, § 826(3), added par. (4).

Subsec. (f). Pub. L. 108–136, § 827, substituted ''EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS.—Subsection (a) does not preclude the procurement of the following:

''(1) Foods''

for ''EXCEPTION FOR CERTAIN FOODS.—Subsection (a) does not preclude the procurement of foods'', and added par. (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VIII, § 842(a)(4)(B), Oct. 17, 2006, 120 Stat. 2337, provided that: ''The amendments made by paragraph (3) [amending this section] shall take effect on the date occurring 30 days after the date of the enactment of this Act [Oct. 17, 2006].''

SHORT TITLE

This section is popularly known as the ''Berry Amendment''.

PERIODIC AUDITS OF CONTRACTING COMPLIANCE BY INSPECTOR GENERAL OF DEPARTMENT OF DEFENSE

Pub. L. 113–66, div. A, title XVI, § 1601, Dec. 26, 2013, 127 Stat. 941, provided that:

''(a) REQUIREMENT FOR PERIODIC AUDITS OF CONTRACTING COMPLIANCE.—The Inspector General of the Department of Defense shall conduct periodic audits of contracting practices and policies related to procurement under section 2533a of title 10, United States Code.

''(b) REQUIREMENT FOR ADDITIONAL INFORMATION IN SEMIANNUAL REPORTS.—The Inspector General of the Department of Defense shall ensure that findings and other information resulting from audits conducted pursuant to subsection (a) are included in the semiannual report transmitted to congressional committees under section 8(f)(1) of the Inspector General Act of 1978 (5 U.S.C. App.).''

FIRE RESISTANT RAYON FIBER

Pub. L. 111–383, div. A, title VIII, § 821(b), Jan. 7, 2011, 124 Stat. 4268, provided that: ''No solicitation issued before January 1, 2015, by the Department of Defense may include a requirement that proposals submitted pursuant to such solicitation must include the use of fire resistant rayon fiber.''

Pub. L. 110–181, div. A, title VIII, § 829, Jan. 28, 2008, 122 Stat. 229, as amended by Pub. L. 111–383, div. A, title VIII, § 821(a), Jan. 7, 2011, 124 Stat. 4267; Pub. L. 112–81, div. A, title VIII, § 822, Dec. 31, 2011, 125 Stat. 1502, provided that:

''(a) AUTHORITY TO PROCURE.—The Secretary of Defense may procure fire resistant rayon fiber for the production of uniforms that is manufactured in a foreign country referred to in subsection (d) if the Secretary determines either of the following:

''(1) That fire resistant rayon fiber for the production of uniforms is not available from sources within the national technology and industrial base.

''(2) That—

''(A) procuring fire resistant rayon fiber manufactured from suppliers within the national technology and industrial base would result in sole-source contracts or subcontracts for the supply of fire resistant rayon fiber; and

''(B) such sole-source contracts or subcontracts would not be in the best interests of the Government or consistent with the objectives of section 2304 of title 10, United States Code.

''(b) SUBMISSION TO CONGRESS.—Not later than 30 days after making a determination under subsection (a), the Secretary shall submit to Congress a copy of the determination.

''(c) APPLICABILITY TO SUBCONTRACTS.—The authority under subsection (a) applies with respect to subcontracts under Department of Defense contracts as well as to such contracts.

''(d) FOREIGN COUNTRIES COVERED.—The authority under subsection (a) applies with respect to a foreign country that—

''(1) is a party to a defense memorandum of understanding entered into under section 2531 of title 10, United States Code; and

''(2) does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

''(e) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE DEFINED.—In this section, the term 'national technology and industrial base' has the meaning given that term in section 2500 of title 10, United States Code.''

TRAINING FOR DEFENSE ACQUISITION WORKFORCE ON THE REQUIREMENTS OF THE BERRY AMENDMENT

Pub. L. 109–163, div. A, title VIII, § 832, Jan. 6, 2006, 119 Stat. 3388, provided that:

''(a) TRAINING DURING FISCAL YEAR 2006.—The Secretary of Defense shall ensure that each member of the defense acquisition workforce who participates personally and substantially in the acquisition of textiles on a regular basis receives training during fiscal year 2006 on the requirements of section 2533a of title 10, United States Code (commonly referred to as the 'Berry Amendment'), and the regulations implementing that section.

''(b) INCLUSION OF INFORMATION IN NEW TRAINING PROGRAMS.—The Secretary shall ensure that any training program developed or implemented after the date of the enactment of this Act [Jan. 6, 2006] for members of the defense acquisition workforce who participate personally and substantially in the acquisition of textiles on a regular basis includes comprehensive information on the requirements described in subsection (a).''

APPLICATION OF EXCEPTION TO SEAFOOD PRODUCTS

Pub. L. 108–287, title VIII, § 8118, Aug. 5, 2004, 118 Stat. 998, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(4), Dec. 19, 2014, 128 Stat. 3506, provided that: ''Notwithstanding any other provision of law, section 2533a(f) of title 10, United States Code, shall hereafter not apply to any fish, shellfish, or seafood product. This section applies to contracts and subcontracts for the procurement of commercial items notwithstanding section 1906 of title 41, United States Code.''

§ 2533b. Requirement to buy strategic materials critical to national security from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (b) through (m), the acquisition by the Department of Defense of the following items is prohibited:

(1) The following types of end items, or components thereof, containing a specialty metal not melted or produced in the United States: aircraft, missile and space systems, ships, tank and automotive items, weapon systems, or ammunition.

(2) A specialty metal that is not melted or produced in the United States and that is to be purchased directly by the Department of Defense or a prime contractor of the Department.

(b) AVAILABILITY EXCEPTION.—(1) Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed. For purposes of the preceding sentence, the term ''compliant specialty metal'' means specialty metal melted or produced in the United States.

(2) This subsection applies to prime contracts and subcontracts at any tier under such contracts.

(c) EXCEPTION FOR CERTAIN ACQUISITIONS.—Subsection (a) does not apply to the following:

(1) Acquisitions outside the United States in support of combat operations or in support of contingency operations.

(2) Acquisitions for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

(d) EXCEPTION RELATING TO AGREEMENTS WITH FOREIGN GOVERNMENTS.—Subsection (a)(1) does not preclude the acquisition of a specialty metal if—

(1) the acquisition is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(e) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, and nonappropriated fund instrumentalities operated by the Department of Defense.

(f) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to acquisitions in amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.

(g) EXCEPTION FOR PURCHASES OF ELECTRONIC COMPONENTS.—Subsection (a) does not apply to acquisitions of electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic component is critical to national security.

(h) APPLICABILITY TO ACQUISITIONS OF COMMERCIAL ITEMS.—(1) Except as provided in paragraphs (2) and (3), this section applies to acquisitions of commercial items, notwithstanding sections 1906 and 1907 of title 41.

(2) This section does not apply to contracts or subcontracts for the acquisition of commercially available off-the-shelf items, as defined in section 104 of title 41, other than—

(A) contracts or subcontracts for the acquisition of specialty metals, including mill products, such as bar, billet, slab, wire, plate and sheet, that have not been incorporated into end items, subsystems, assemblies, or components;

(B) contracts or subcontracts for the acquisition of forgings or castings of specialty metals, unless such forgings or castings are incorporated into commercially available off-the-shelf end items, subsystems, or assemblies;

(C) contracts or subcontracts for commercially available high performance magnets unless such high performance magnets are incorporated into commercially available off-the-shelf-end items or subsystems; and

(D) contracts or subcontracts for commercially available off-the-shelf fasteners, unless such fasteners are—

(i) incorporated into commercially available off-the-shelf end items, subsystems, assemblies, or components; or

(ii) purchased as provided in paragraph (3).

(3) This section does not apply to fasteners that are commercial items that are purchased under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of such fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners.

(i) EXCEPTIONS FOR PURCHASES OF SPECIALTY METALS BELOW MINIMUM THRESHOLD.—(1) Notwithstanding subsection (a), the Secretary of Defense or the Secretary of a military department may accept delivery of an item containing specialty metals that were not melted in the United States if the total amount of noncompliant specialty metals in the item does not exceed 2 percent of the total weight of specialty metals in the item.

(2) This subsection does not apply to high performance magnets.

(j) STREAMLINED COMPLIANCE FOR COMMERCIAL DERIVATIVE MILITARY ARTICLES.—(1) Subsection (a) shall not apply to an item acquired under a prime contract if the Secretary of Defense or the Secretary of a military department determines that—

(A) the item is a commercial derivative military article; and

(B) the contractor certifies that the contractor and its subcontractors have entered into a contractual agreement, or agreements, to purchase an amount of domestically melted specialty metal in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, that is not less than the greater of—

(i) an amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(ii) an amount equivalent to 50 percent of the amount of specialty metal that is purchased by the contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(2) For the purposes of this subsection, the amount of specialty metal that is required to

carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military article.

(k) NATIONAL SECURITY WAIVER.—(1) Notwithstanding subsection (a), the Secretary of Defense may accept the delivery of an end item containing noncompliant materials if the Secretary determines in writing that acceptance of such end item is necessary to the national security interests of the United States.

(2) A written determination under paragraph (1)—

(A) may not be delegated below the level of the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(B) shall specify the quantity of end items to which the waiver applies and the time period over which the waiver applies; and

(C) shall be provided to the congressional defense committees prior to making such a determination (except that in the case of an urgent national security requirement, such certification may be provided to the defense committees up to 7 days after it is made).

(3)(A) In any case in which the Secretary makes a determination under paragraph (1), the Secretary shall determine whether or not the noncompliance was knowing and willful.

(B) If the Secretary determines that the noncompliance was not knowing or willful, the Secretary shall ensure that the contractor or subcontractor responsible for the noncompliance develops and implements an effective plan to ensure future compliance.

(C) If the Secretary determines that the noncompliance was knowing or willful, the Secretary shall—

(i) require the development and implementation of a plan to ensure future compliance; and

(ii) consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that lead to such noncompliance.

(*l*) SPECIALTY METAL DEFINED.—In this section, the term ''specialty metal'' means any of the following:

(1) Steel—

(A) with a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.

(2) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.

(3) Titanium and titanium alloys.

(4) Zirconium and zirconium base alloys.

(m) ADDITIONAL DEFINITIONS.—In this section:

(1) The term ''United States'' includes possessions of the United States.

(2) The term ''component'' has the meaning provided in section 105 of title 41.

(3) The term ''acquisition'' has the meaning provided in section 131 of title 41.

(4) The term ''required form'' shall not apply to end items or to their components at any tier. The term ''required form'' means in the form of mill product, such as bar, billet, wire, slab, plate or sheet, and in the grade appropriate for the production of—

(A) a finished end item delivered to the Department of Defense; or

(B) a finished component assembled into an end item delivered to the Department of Defense.

(5) The term ''commercially available off-the-shelf'', has the meaning provided in section 104 of title 41.

(6) The term ''assemblies'' means items forming a portion of a system or subsystem that can be provisioned and replaced as an entity and which incorporates multiple, replaceable parts.

(7) The term ''commercial derivative military article'' means an item procured by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

(8) The term ''subsystem'' means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(9) The term ''end item'' means the final production product when assembled or completed, and ready for issue, delivery, or deployment.

(10) The term ''subcontract'' includes a subcontract at any tier.

(Added Pub. L. 109–364, div. A, title VIII, §842(a)(1), Oct. 17, 2006, 120 Stat. 2335; amended Pub. L. 110–181, div. A, title VIII, §804(a)–(f), Jan. 28, 2008, 122 Stat. 208–211; Pub. L. 111–350, §5(b)(39), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 111–383, div. A, title X, §1075(f)(2), Jan. 7, 2011, 124 Stat. 4376; Pub. L. 113–291, div. A, title X, §1071(a)(10), Dec. 19, 2014, 128 Stat. 3505.)

AMENDMENTS

2014—Subsec. (h)(1). Pub. L. 113–291, §1071(a)(10)(A)(i), substituted ''sections 1906 and 1907 of title 41'' for ''sections 34 and 35 of the Office of Federal Procurement Policy Act (41 U.S.C. 430 and 431)''.

Subsec. (h)(2). Pub. L. 113–291, §1071(a)(10)(A)(ii), substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))'' in introductory provisions.

Subsec. (m)(2). Pub. L. 113–291, §1071(a)(10)(B)(i), substituted ''section 105 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

Subsec. (m)(3). Pub. L. 113–291, §1071(a)(10)(B)(ii), substituted ''section 131 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

Subsec. (m)(5). Pub. L. 113–291, §1071(a)(10)(B)(iii), substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))''.

2011—Subsec. (a)(2). Pub. L. 111–383, §1075(f)(2)(A), made technical amendment to directory language of Pub. L. 110–181, §804(a)(3). See 2008 Amendment note below.

Subsec. (h). Pub. L. 111–350, §5(b)(39)(A), which directed substitution of ''section 1906 of title 41'' for ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)'', could not be executed because the words ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)'' did not appear in text.

Subsec. (j). Pub. L. 111–350, §5(b)(39)(B), which directed substitution of ''section 105 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' in subsec. (j), could not be executed because the words ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' did not appear in subsec. (j) after the amendment by Pub. L. 110–181, §804(d).

Subsec. (m)(3) to (10). Pub. L. 111–383, §1075(f)(2)(B), made technical amendment to directory language of Pub. L. 110–181, §804(e). See 2008 Amendment note below.

2008—Subsec. (a). Pub. L. 110–181, §804(a)(1), substituted ''Except as provided in subsections (b) through (m), the acquisition by the Department of Defense of the following items is prohibited:'' for ''Except as provided in subsections (b) through (j), funds appropriated or otherwise available to the Department of Defense may not be used for procurement of—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 110–181, §804(a)(2), substituted ''The following'' for ''the following'' and substituted period for ''; or'' at end.

Subsec. (a)(2). Pub. L. 110–181, §804(a)(3), as amended by Pub. L. 111–383, §1075(f)(2)(A), substituted ''A specialty'' for ''a specialty''.

Subsec. (c). Pub. L. 110–181, §804(f)(1), substituted ''Acquisitions'' for ''Procurements'' in heading and pars. (1) and (2).

Subsec. (d). Pub. L. 110–181, §804(f)(2), substituted ''acquisition'' for ''procurement'' in introductory provisions and par. (1).

Subsec. (f). Pub. L. 110–181, §804(f)(3), substituted ''acquisitions'' for ''procurements''.

Subsec. (g). Pub. L. 110–181, §804(c), (f)(3), substituted ''acquisitions'' for ''procurements'' and ''electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic component is critical to national security.'' for ''commercially available electronic components whose specialty metal content is de minimis in value compared to the overall value of the lowest level electronic component produced that contains such specialty metal.''

Subsec. (h). Pub. L. 110–181, §804(b), amended heading and text generally. Prior to amendment, text read as follows: ''This section applies to procurements of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).''

Subsecs. (i) to (m). Pub. L. 110–181, §804(d), added subsecs. (i) to (k) and redesignated former subsecs. (i) and (j) as (*l*) and (m), respectively.

Subsec. (m)(3) to (10). Pub. L. 110–181, §804(e), as amended by Pub. L. 111—383, §1075(f)(2)(B), added pars. (3) to (10).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, §1075(f)(2), Jan. 7, 2011, 124 Stat. 4376, provided that amendment by section 1075(f)(2) is effective as of January 28, 2008, and as if included in Public Law 110–181 as enacted.''

EFFECTIVE DATE

Pub. L. 109–364, div. A, title VIII, §842(a)(4)(A), Oct. 17, 2006, 120 Stat. 2337, provided that: ''Section 2533b of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts entered into after the date occurring 30 days after the date of the enactment of this Act [Oct. 17, 2006].''

REGULATIONS

Pub. L. 110–181, div. A, title VIII, §804(g), Jan. 28, 2008, 122 Stat. 211, provided that: ''Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall prescribe regulations on the implementation of this section [amending this section and enacting provisions set out as a note under this section] and the amendments made by this section, including specific guidance on how thresholds established in subsections (h)(3), (i) and (j) of section 2533b of title 10, United States Code, as amended by this section, should be implemented.''

REVIEW OF REGULATORY DEFINITION RELATING TO PRODUCTION OF SPECIALTY METALS

Pub. L. 111–383, div. A, title VIII, §823, Jan. 7, 2011, 124 Stat. 4269, provided that:

''(a) REVIEW REQUIRED.—The Secretary of Defense shall review the regulations specified in subsection (b) to ensure that the definition of the term 'produce' in such regulations complies with the requirements of section 2533b of title 10, United States Code. In carrying out the review, the Secretary shall seek public comment, consider congressional intent, and revise the regulations as the Secretary considers necessary and appropriate.

''(b) REGULATIONS SPECIFIED.—The regulations referred to in subsection (a) are any portion of subpart 252.2 of the defense supplement to the Federal Acquisition Regulation that includes a definition of the term 'produce' for purposes of implementing section 2533b of title 10, United States Code.

''(c) COMPLETION OF REVIEW.—The Secretary shall complete the review required by subsection (a) and any necessary and appropriate revisions to the defense supplement to the Federal Acquisition Regulation not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011].''

REVISION OF DOMESTIC NONAVAILABILITY DETERMINATIONS AND RULES

Pub. L. 110–181, div. A, title VIII, §804(h), Jan. 28, 2008, 122 Stat. 211, provided that: ''No later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], any domestic nonavailability determination under section 2533b of title 10, United States Code, including a class deviation, or rules made by the Department of Defense between December 6, 2006, and the date of the enactment of this Act, shall be reviewed and amended, as necessary, to comply with the amendments made by this section [amending this section and enacting provisions set out as a note under this section]. This requirement shall not apply to a domestic nonavailability determination that applies to—

''(1) an individual contract that was entered into before the date of the enactment of this Act; or

''(2) an individual Department of Defense program, except to the extent that such domestic nonavailability determination applies to contracts entered into after the date of the enactment of this Act.''

REQUIREMENTS RELATING TO WAIVERS OF CERTAIN DOMESTIC SOURCE LIMITATIONS RELATING TO SPECIALTY METALS

Pub. L. 110–181, div. A, title VIII, §884, Jan. 28, 2008, 122 Stat. 264, provided that:

''(a) NOTICE REQUIREMENT.—At least 30 days prior to making a domestic nonavailability determination pursuant to section 2533b(b) of title 10, United States Code, that would apply to more than one contract of the Department of Defense, the Secretary of Defense shall, to the maximum extent practicable and in a manner consistent with the protection of national security information and confidential business information—

''(1) publish a notice on the website maintained by the General Services Administration known as

FedBizOpps.gov (or any successor site) of the Secretary's intent to make the domestic nonavailability determination; and

''(2) solicit information relevant to such notice from interested parties, including producers of specialty metal mill products.

''(b) DETERMINATION.—(1) The Secretary shall take into consideration all information submitted pursuant to subsection (a) in making a domestic nonavailability determination pursuant to section 2533b(b) of title 10, United States Code, that would apply to more than one contract of the Department of Defense, and may also consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information.

''(2) The Secretary shall ensure that any such determination and the rationale for such determination is made publicly available to the maximum extent consistent with the protection of national security information and confidential business information.''

ONE-TIME WAIVER OF SPECIALTY METALS DOMESTIC SOURCE REQUIREMENT

Pub. L. 109–364, div. A, title VIII, §842(b), Oct. 17, 2006, 120 Stat. 2337, provided that:

''(1) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may accept specialty metals if such metals were incorporated into items produced, manufactured, or assembled in the United States before the date of the enactment of this Act [Oct. 17, 2006] with respect to which the contracting officer for the contract determines that the contractor is not in compliance with section 2533b of title 10, United States Code (as added by subsection (a)(1)), if—

''(A) the contracting officer for the contract determines in writing that—

''(i) it would not be practical or economical to remove or replace the specialty metals incorporated in such items or to substitute items containing compliant materials;

''(ii) the prime contractor and subcontractor responsible for providing items containing non-compliant materials have in place an effective plan to ensure compliance with section 2533b of title 10, United States Code (as so added), with regard to items containing specialty metals if such metals were incorporated into items produced, manufactured, or assembled in the United States after the date of the enactment of this Act [Oct. 17, 2006]; and

''(iii) the non-compliance is not knowing or willful; and

''(B) the Under Secretary of Defense for Acquisition, Technology, and Logistics or the service acquisition executive of the military department concerned approves the determination.

''(2) NOTICE.—Not later than 15 days after a contracting officer makes a determination under paragraph (1)(A) with respect to a contract, the contracting officer shall post a notice on FedBizOpps.gov that a waiver has been granted for the contract under this subsection.

''(3) DEFINITION.—In this subsection, the term 'FedBizOpps.gov' means the website maintained by the General Services Administration known as FedBizOpps.gov (or any successor site).

''(4) TERMINATION OF AUTHORITY.—A contracting officer may exercise the authority under this subsection only with respect to the delivery of items the final acceptance of which takes place after the date of the enactment of this Act [Oct. 17, 2006] and before September 30, 2010.''

§ 2534. Miscellaneous limitations on the procurement of goods other than United States goods

(a) LIMITATION ON CERTAIN PROCUREMENTS.—The Secretary of Defense may procure any of the following items only if the manufacturer of the item satisfies the requirements of subsection (b):

(1) BUSES.—Multipassenger motor vehicles (buses).

(2) CHEMICAL WEAPONS ANTIDOTE.—Chemical weapons antidote contained in automatic injectors (and components for such injectors).

(3) COMPONENTS FOR NAVAL VESSELS.—(A) The following components:

(i) Air circuit breakers.

(ii) Welded shipboard anchor and mooring chain with a diameter of four inches or less.

(iii) Vessel propellers with a diameter of six feet or more.

(B) The following components of vessels, to the extent they are unique to marine applications: gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, and totally enclosed lifeboats.

(4) VALVES AND MACHINE TOOLS.—Items in the following categories:

(A) Powered and non-powered valves in Federal Supply Classes 4810 and 4820 used in piping for naval surface ships and submarines.

(B) Machine tools in the Federal Supply Classes for metal-working machinery numbered 3405, 3408, 3410 through 3419, 3426, 3433, 3438, 3441 through 3443, 3445, 3446, 3448, 3449, 3460, and 3461.

(5) BALL BEARINGS AND ROLLER BEARINGS.—Ball bearings and roller bearings, in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992, except ball bearings and roller bearings being procured for use in an end product manufactured by a manufacturer that does not satisfy the requirements of subsection (b) or in a component part manufactured by such a manufacturer.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—

(1) GENERAL REQUIREMENT.—A manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(2) MANUFACTURERS OF CHEMICAL WEAPONS ANTIDOTE.—In the case of a procurement of chemical weapons antidote referred to in subsection (a)(2), a manufacturer meets the requirements of this subsection only if the manufacturer—

(A) meets the requirement set forth in paragraph (1);

(B) is an existing producer under the industrial preparedness program at the time the contract is awarded;

(C) has received all required regulatory approvals; and

(D) when the contract for the procurement is awarded, has in existence in the national technology and industrial base the plant, equipment, and personnel necessary to perform the contract.

(3) MANUFACTURER OF VESSEL PROPELLERS.—In the case of a procurement of vessel propel-

lers referred to in subsection (a)(3)(A)(iii), the manufacturer of the propellers meets the requirements of this subsection only if—

(A) the manufacturer meets the requirements set forth in paragraph (1); and

(B) all castings incorporated into such propellers are poured and finished in the United States.

(c) APPLICABILITY TO CERTAIN ITEMS.—

(1) COMPONENTS FOR NAVAL VESSELS.—Subsection (a) does not apply to a procurement of spare or repair parts needed to support components for naval vessels produced or manufactured outside the United States.

(2) VALVES AND MACHINE TOOLS.—(A) Contracts to which subsection (a) applies include the following contracts for the procurement of items described in paragraph (4) of such subsection:

(i) A contract for procurement of such an item for use in property under the control of the Department of Defense, including any Government-owned, contractor-operated facility.

(ii) A contract that is entered into by a contractor on behalf of the Department of Defense for the purpose of providing such an item to another contractor as Government-furnished equipment.

(B) In any case in which a contract for items described in subsection (a)(4) includes the procurement of more than one Federal Supply Class of machine tools or machine tools and accessories, each supply class shall be evaluated separately for purposes of determining whether the limitation in subsection (a) applies.

(C) Subsection (a)(4) and this paragraph shall cease to be effective on October 1, 1996.

(3) BALL BEARINGS AND ROLLER BEARINGS.—Subsection (a)(5) and this paragraph shall cease to be effective on October 1, 2005.

(4) VESSEL PROPELLERS.—Subsection (a)(3)(A)(iii) and this paragraph shall cease to be effective on February 10, 1998.

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) SONOBUOYS.—

(1) LIMITATION.—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

(2) WAIVER AUTHORITY.—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

(3) DEFINITION.—In this subsection, the term ''United States firm'' has the meaning given such term in section 2532(d)(1) of this title.

(f) PRINCIPLE OF CONSTRUCTION WITH FUTURE LAWS.—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

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

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

(g) INAPPLICABILITY TO CONTRACTS UNDER SIMPLIFIED ACQUISITION THRESHOLD.—(1) This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(2) Paragraph (1) does not apply to contracts for items described in subsection (a)(5) (relating to ball bearings and roller bearings), notwithstanding section 1905 of title 41.

(h) IMPLEMENTATION OF NAVAL VESSEL COMPONENT LIMITATION.—In implementing subsection (a)(3)(B), the Secretary of Defense—

(1) may not use contract clauses or certifications; and

(2) shall use management and oversight techniques that achieve the objective of the subsection without imposing a significant management burden on the Government or the contractor involved.

(i) IMPLEMENTATION OF CERTAIN WAIVER AUTHORITY.—(1) The Secretary of Defense may exercise the waiver authority described in paragraph (2) only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country.

(2) This subsection applies to the waiver authority provided by subsection (d) on the basis of the applicability of paragraph (2) or (3) of that subsection.

(3) The waiver authority described in paragraph (2) may not be delegated below the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(4) At least 15 days before the effective date of any waiver made under the waiver authority described in paragraph (2), the Secretary shall publish in the Federal Register and submit to the congressional defense committees a notice of the determination to exercise the waiver authority.

(5) Any waiver made by the Secretary under the waiver authority described in paragraph (2) shall be in effect for a period not greater than one year, as determined by the Secretary.

(j) INAPPLICABILITY TO CERTAIN CONTRACTS TO PURCHASE BALL BEARINGS OR ROLLER BEARINGS.—(1) This section does not apply with respect to a contract or subcontract to purchase items described in subsection (a)(5) (relating to ball bearings and roller bearings) for which—

(A) the amount of the purchase does not exceed $2,500;

(B) the precision level of the ball or roller bearings to be procured under the contract or subcontract is rated lower than the rating known as Annual Bearing Engineering Committee (ABEC) 5 or Roller Bearing Engineering Committee (RBEC) 5, or an equivalent of such rating;

(C) at least two manufacturers in the national technology and industrial base that are capable of producing the ball or roller bearings have not responded to a request for quotation issued by the contracting activity for that contract or subcontract; and

(D) no bearing to be procured under the contract or subcontract has a basic outside diameter (exclusive of flange diameters) in excess of 30 millimeters.

(2) Paragraph (1) does not apply to a purchase if such purchase would result in the total amount of purchases of ball bearings and roller bearings to satisfy requirements under Department of Defense contracts, using the authority provided in such paragraph, to exceed $200,000 during the fiscal year of such purchase.

(Added Pub. L. 97–295, §1(29)(A), Oct. 12, 1982, 96 Stat. 1294, §2400; amended Pub. L. 100–180, div. A, title I, §124(a), (b)(1), title VIII, §824(a), Dec. 4, 1987, 101 Stat. 1042, 1043, 1134; renumbered §2502 and amended Pub. L. 100–370, §3(b)(1), July 19, 1988, 102 Stat. 855; renumbered §2507 and amended Pub. L. 100–456, div. A, title VIII, §§821(b)(1)(A), 822, Sept. 29, 1988, 102 Stat. 2014, 2017; Pub. L. 101–510, div. A, title VIII, §835(a), title XIV, §1421, Nov. 5, 1990, 104 Stat. 1614, 1682; Pub. L. 102–190, div. A, title VIII, §§834, 835, Dec. 5, 1991, 105 Stat. 1447, 1448; renumbered §2534 and amended Pub. L. 102–484, div. A, title VIII, §§831, 833(a), title X, §1052(33), div. D, title XLII, §§4202(a), 4271(b)(4), Oct. 23, 1992, 106 Stat. 2460, 2461, 2501, 2659, 2696; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title VIII, §814, Oct. 5, 1994, 108 Stat. 2817; Pub. L. 103–355, title IV, §4102(i), Oct. 13, 1994, 108 Stat. 3341; Pub. L. 104–106, div. A, title VIII, §806(a)(1)–(4), (b)–(d), title XV, §1503(a)(30), Feb. 10, 1996, 110 Stat. 390, 391, 512; Pub. L. 104–201, div. A, title VIII, §810, title X, §1074(a)(14), Sept. 23, 1996, 110 Stat. 2608, 2659; Pub. L. 105–85, div. A, title III, §371(d)(1), title VIII, §811(a), title X, §1073(a)(55), Nov. 18, 1997, 111 Stat. 1706, 1839, 1903; Pub. L. 106–398, §1 [[div. A], title VIII, §805], Oct. 30, 2000, 114 Stat. 1654, 1654A–207; Pub. L. 107–107, div. A, title VIII, §835(a), title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1191, 1225; Pub. L. 108–136, div. A, title VIII, §828, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 111–350, §5(b)(40), Jan. 4, 2011, 124 Stat. 3846.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2400	10:2303 (note).	Sept. 20, 1968, Pub. L. 90–500, §404, 82 Stat. 851.

The words ''of the United States under the provisions of this Act or the provisions of any other law'' are omitted as surplus. The word ''acquisition'' is substituted for ''purchase, lease, rental, or other acquisition'' because it is inclusive. The words ''this section'' are substituted for ''this prohibition'' because of the restatement.

AMENDMENTS

2011—Subsec. (g)(2). Pub. L. 111–350 substituted ''section 1905 of title 41'' for ''section 33 of the Office of Federal Procurement Policy Act (41 U.S.C. 429)''.

2003—Subsec. (a)(5). Pub. L. 108–136 inserted before period at end '', except ball bearings and roller bearings being procured for use in an end product manufactured by a manufacturer that does not satisfy the requirements of subsection (b) or in a component part manufactured by such a manufacturer''.

2001—Subsec. (i)(3). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (j). Pub. L. 107–107, §835(a), added subsec. (j).

2000—Subsec. (c)(3). Pub. L. 106–398 substituted ''October 1, 2005'' for ''October 1, 2000''.

1997—Subsec. (b)(3). Pub. L. 105–85, §1073(a)(55), substituted ''(a)(3)(A)(iii)'' for ''(a)(3)(A)(ii)''.

Subsec. (d)(4), (5). Pub. L. 105–85, §371(d)(1), substituted ''section 2500(1)'' for ''section 2491(1)''.

Subsec. (i). Pub. L. 105–85, §811(a), added subsec. (i).

1996—Subsec. (a)(3). Pub. L. 104–106, §806(a)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''AIR CIRCUIT BREAKERS.—Air circuit breakers for naval vessels.''

Subsec. (b)(3). Pub. L. 104–106, §806(a)(2), added par. (3).

Subsec. (c). Pub. L. 104–106, §1503(a)(30), substituted ''CERTAIN ITEMS'' for ''CERTAIN ITEMS'' in heading.

Subsec. (c)(1). Pub. L. 104–106, §806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''AIR CIRCUIT BREAKERS.—Subsection (a) does not apply to a procurement of spares or repair parts needed to support air circuit breakers produced or manufactured outside the United States.''

Subsec. (c)(3). Pub. L. 104–106, §806(b), substituted ''October 1, 2000'' for ''October 1, 1995''.

Subsec. (c)(4). Pub. L. 104–201, §1074(a)(14), substituted ''February 10, 1998'' for ''the date occurring two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106, § 806(c), added par. (4).

Subsec. (d)(3). Pub. L. 104–201, § 810, inserted ''or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title,'' after ''a foreign country,''.

Subsec. (g). Pub. L. 104–106, § 806(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 104–106, § 806(a)(4), added subsec. (h).

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to acquisition of multipassenger motor vehicles, chemical weapons antidote, valves and machine tools, carbonyl iron powders, air circuit breakers, and sonobuoys.

Subsec. (g). Pub. L. 103–355 added subsec. (g).

1993—Subsec. (b)(2). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Pub. L. 102–484, §§ 4202(a), 4271(b)(4), renumbered section 2507 of this title as this section and substituted ''Miscellaneous limitations on the procurement of goods other than United States goods'' for ''Miscellaneous procurement limitations'' in section catchline.

Subsec. (c). Pub. L. 102–484, § 831, redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''MANUAL TYPEWRITERS FROM WARSAW PACT COUNTRIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the procurement of manual typewriters which contain one or more components manufactured in a country which is a member of the Warsaw Pact unless the products of that country are accorded nondiscriminatory treatment (most-favored-nation treatment).''

Subsec. (d). Pub. L. 102–484, § 831(b), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3)(A). Pub. L. 102–484, § 1052(33), substituted ''Government-owned'' for ''government-owned''.

Subsec. (e). Pub. L. 102–484, § 831(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 102–484, § 833(a), added subsec. (f). Former subsec. (f) redesignated (e).

1991—Subsec. (d)(1). Pub. L. 102–190, § 834(a), substituted ''Effective through fiscal year 1996'' for ''During fiscal years 1989, 1990, and 1991''.

Subsec. (d)(3) to (5). Pub. L. 102–190, § 834(b), added pars. (3) and (4), redesignated former par. (3) as (5), and struck out former par. (4) which read as follows: ''The provisions of this section may be renewed with respect to any item by the Secretary of Defense at the end of fiscal year 1991 for an additional two fiscal years if the Secretary determines that a continued restriction on that item is in the national security interest.''

Subsec. (e)(1). Pub. L. 102–190, § 835(1), substituted ''Until January 1, 1993, the Secretary'' for ''The Secretary''.

Subsec. (e)(3). Pub. L. 102–190, § 835(2), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''After September 30, 1994, the Secretary may terminate the restriction required under paragraph (1) if the Secretary determines that continuing the restriction is not in the national interest.''

Subsec. (e)(3)(A). Pub. L. 102–190, § 835(3), struck out before period ''by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada''.

Subsec. (e)(4). Pub. L. 102–190, § 835(4), redesignated par. (4) as (3).

1990—Subsec. (e). Pub. L. 101–510, § 835(a), added subsec. (e).

Subsec. (f). Pub. L. 101–510, § 1421, added subsec. (f).

1988—Pub. L. 100–370, and Pub. L. 100–456, § 821(b)(1)(A), successively renumbered section 2400 of this title as section 2502 of this title and then as this section.

Subsec. (a). Pub. L. 100–370 substituted ''this subsection'' for ''this section''.

Subsec. (d). Pub. L. 100–456, § 822, added subsec. (d).

1987—Pub. L. 100–180 substituted ''Miscellaneous procurement limitations'' for ''Limitation on procurement of buses'' in section catchline, designated existing provisions as subsec. (a) and added heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VIII, § 835(b), Dec. 28, 2001, 115 Stat. 1192, provided that: ''Subsection (j) of such section 2534 (as added by subsection (a)) shall apply with respect to a contract or subcontract to purchase ball bearings or roller bearings entered into after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, § 811(b), Nov. 18, 1997, 111 Stat. 1840, provided that: ''Subsection (i) of section 2534 of such title [10 U.S.C. 2534(i)], as added by subsection (a), shall apply with respect to—

''(1) contracts and subcontracts entered into on or after the date of the enactment of this Act [Nov. 18, 1997]; and

''(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (d) of such section 2534, on the basis of the applicability of paragraph (2) or (3) of that subsection.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title VIII, § 806(a)(5), Feb. 10, 1996, 110 Stat. 391, provided that: ''Subsection (a)(3)(B) of section 2534 of title 10, United States Code, as amended by paragraph (1), shall apply only to contracts entered into after March 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, § 833(b), Oct. 23, 1992, 106 Stat. 2461, provided that: ''Subsection (f) of section 2534 of title 10, United States Code, as added by subsection (a), shall apply with respect to solicitations for contracts issued after the expiration of the 120-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VIII, § 835(b), Nov. 5, 1990, 104 Stat. 1615, provided that subsec. (e) of this section, as added by section 835(a) of Pub. L. 101–510, applied with respect to systems or items procured by or provided to Department of Defense after Nov. 5, 1990.

PROCUREMENT OF PHOTOVOLTAIC DEVICES

Pub. L. 113–291, div. A, title VIII, § 858, Dec. 19, 2014, 128 Stat. 3460, provided that:

''(a) CONTRACT REQUIREMENT.—The Secretary of Defense shall ensure that each covered contract includes a provision requiring that any photovoltaic device installed under the contract be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, unless the head of the department or independent establishment concerned determines, on a case-by-case basis, that the inclusion of such requirement is inconsistent with the public interest or involves unreasonable costs, subject to exceptions provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) or otherwise provided by law.

''(b) DEFINITIONS.—In this section:

''(1) COVERED CONTRACT.—The term 'covered contract' means a contract awarded by the Department

of Defense that provides for a photovoltaic device to be—

''(A) installed inside the United States on Department of Defense property or in a facility owned by the Department of Defense; or

''(B) reserved for the exclusive use of the Department of Defense in the United States for the full economic life of the device.

''(2) PHOTOVOLTAIC DEVICE.—The term 'photovoltaic device' means a device that converts light directly into electricity through a solid-state, semiconductor process.''

Pub. L. 111–383, div. A, title VIII, § 846, Jan. 7, 2011, 124 Stat. 4285, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(1)(A), Dec. 19, 2014, 128 Stat. 3505, provided that:

''(a) CONTRACT REQUIREMENT.—The Secretary of Defense shall ensure that each contract described in subsection (b) awarded by the Department of Defense includes a provision requiring the photovoltaic devices provided under the contract to comply with chapter 83 of title 41, United States Code, subject to the exceptions to that chapter provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) or otherwise provided by law.

''(b) CONTRACTS DESCRIBED.—The contracts described in this subsection include energy savings performance contracts, utility service contracts, land leases, and private housing contracts, to the extent that such contracts result in ownership of photovoltaic devices by the Department of Defense. For the purposes of this section, the Department of Defense is deemed to own a photovoltaic device if the device is—

''(1) installed on Department of Defense property or in a facility owned by the Department of Defense; and

''(2) reserved for the exclusive use of the Department of Defense for the full economic life of the device.

''(c) DEFINITION OF PHOTOVOLTAIC DEVICES.—In this section, the term 'photovoltaic devices' means devices that convert light directly into electricity through a solid-state, semiconductor process.''

ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS

Pub. L. 108–136, div. A, title VIII, § 821, Nov. 24, 2003, 117 Stat. 1546, provided that:

''(a) IDENTIFICATION OF CERTAIN COUNTRIES.—The Secretary of Defense, in coordination with the Secretary of State, shall identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations after the date of the enactment of this Act [Nov. 24, 2003]. The Secretary shall review and update the list as appropriate. The Secretary may remove a country from the list, if the Secretary determines that doing so would be in the interest of national defense.

''(b) PROHIBITION ON PROCUREMENT OF ITEMS FROM IDENTIFIED COUNTRIES.—The Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country identified under subsection (a).

''(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (b) if the Secretary determines in writing and notifies Congress that the Department of Defense's need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives.

''(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), subsection (b) applies to contracts in existence on the date of the enactment of this Act [Nov. 24, 2003] or entered into after such date.

''(2) With respect to contracts in existence on the date of the enactment of this Act, the Secretary of Defense shall take such action as is necessary to ensure that such contracts are in compliance with subsection (b) not later than 24 months after such date.''

§ 2535. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress—

(1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs of the armed forces in time of national emergency or in anticipation thereof;

(2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess to such requirements shall be disposed of as expeditiously as possible;

(3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and

(4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in subsection (a), the Secretary of Defense shall—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the Defense Industrial Reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding chapter 5 of title 40 and any other provision of law, authorize the transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the pur-

poses of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

(i) storage of such property;

(ii) repair and maintenance of such property; and

(iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under subparagraph (A).

(c) DEFINITIONS.—In this section:

(1) The term ''Defense Industrial Reserve'' means—

(A) a general reserve of industrial manufacturing equipment, including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use;

(B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; and

(C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(2) The term ''plant equipment package'' means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

(Added and amended Pub. L. 102–484, div. D, title XLII, § 4235, Oct. 23, 1992, 106 Stat. 2690; Pub. L. 103–35, title II, § 201(c)(8), May 31, 1993, 107 Stat. 98; Pub. L. 103–337, div. A, title III, § 379(a), Oct. 5, 1994, 108 Stat. 2737; Pub. L. 107–107, div. A, title X, § 1048(a)(23), Dec. 28, 2001, 115 Stat. 1224; Pub. L. 107–217, § 3(b)(7), Aug. 21, 2002, 116 Stat. 1295.)

CODIFICATION

The text of section 451 of Title 50, War and National Defense, which was transferred to this section, designated subsec. (a), and amended by Pub. L. 102–484, § 4235(a)(2), was based on acts July 2, 1948, ch. 811, § 2, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617.

The text of section 453 of Title 50 which was transferred to this section, designated subsec. (b), and amended by Pub. L. 102–484, § 4235(a)(3), was based on acts July 2, 1948, ch. 811, § 4, 62 Stat. 1226; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, § 1359(a), 100 Stat. 3999. For effective date of 1986 amendment, see section 1359(b) of Pub. L. 99–661.

The text of section 452 of Title 50 which was transferred to this section, designated subsec. (c), and amended by Pub. L. 102–484, § 4235(b), was based on acts July 2, 1948, ch. 811, § 3, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617.

AMENDMENTS

2002—Subsec. (b)(1)(G). Pub. L. 107–217 substituted ''chapter 5 of title 40'' for ''title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

2001—Subsec. (a). Pub. L. 107–107, § 1048(a)(23)(A)(i), substituted ''intent of Congress—'' for ''intent of Congress'' in introductory provisions.

Subsec. (a)(1). Pub. L. 107–107, § 1048(a)(23)(A)(ii), (iii), substituted ''armed forces'' for ''Armed Forces'' and realigned margins.

Subsec. (a)(2) to (4). Pub. L. 107–107, § 1048(a)(23)(A)(ii), realigned margins.

Subsec. (b)(1). Pub. L. 107–107, § 1048(a)(23)(B)(i), substituted ''in subsection (a), the Secretary of Defense shall—'' for ''in this section, the Secretary is authorized and directed to—'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 107–107, § 1048(a)(23)(B)(ii), substituted ''Defense Industrial Reserve'' for ''defense industrial reserve''.

Subsec. (c). Pub. L. 107–107, § 1048(a)(23)(C), redesignated par. (2) as (1), substituted ''means—'' for ''means'' in introductory provisions, realigned margins of subpars. (A) to (C) of par. (1) and inserted ''and'' after semicolon in subpar. (B), redesignated par. (3) as (2), and struck out former par. (1) which read as follows: ''The term 'Secretary' means Secretary of Defense.''

1994—Subsec. (b)(1)(G). Pub. L. 103–337 amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''authorize and regulate the lending of any such property to any nonprofit educational institution or training school whenever (i) the program proposed by such institution or school for the use of such property will contribute materially to national defense, and (ii) such institution or school shall by agreement make such provision as the Secretary shall deem satisfactory for the proper maintenance and care of such property and for its return, without expense to the Government, upon request of the Secretary.''

1993—Subsec. (b)(2)(B). Pub. L. 103–35 substituted ''subparagraph (A)'' for ''paragraph (1)''.

1992—Pub. L. 102–484, § 4235(a), added section number and catchline.

Subsec. (a). Pub. L. 102–484, § 4235(a)(2), transferred the text of section 451 of Title 50, War and National Defense, to this section, designated it subsec. (a), inserted heading, and substituted ''It'' for ''In enacting this chapter it'' in introductory provisions. See Codification note above.

Subsec. (b). Pub. L. 102–484, § 4235(a)(3), transferred the text of section 453 of Title 50, War and National Defense, to the end of this section and designated it subsec. (b), inserted heading, redesignated former subsec. (a) of section 453 as par. (1), substituted ''in this section'' for ''in this chapter'' in introductory provisions, redesignated former pars. (1) to (7) as subpars. (A) to (G), respectively, in subpar. (G) redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated former subsec. (b) of section 453 as par. (2), and in par. (2) redesignated former par. (1) as subpar. (A), former subpars. (A) to (C) as cls. (i) to (iii), and former par. (2) as subpar. (B). See Codification note above.

Subsec. (c). Pub. L. 102–484, § 4235(b), transferred the text of section 452 of Title 50, War and National Defense, to the end of this section, designated it subsec. (c), inserted heading, and substituted ''In this section:'' for ''As used in this chapter—'' in introductory provisions. See Codification note above.

TREATMENT OF PROPERTY LOANED BEFORE DECEMBER 31, 1993 TO EDUCATIONAL INSTITUTIONS OR TRAINING SCHOOLS

Pub. L. 103–337, div. A, title III, § 379(b), Oct. 5, 1994, 108 Stat. 2737, provided that: ''Except for property determined by the Secretary of Defense to be needed by the Department of Defense, property loaned before December 31, 1993, to an educational institution or train-

ing school under section 2535(b) of title 10, United States Code, or section 4(a)(7) of the Defense Industrial Reserve Act (as in effect before October 23, 1992 [former section 453(a)(7) of Title 50, War and National Defense, see Codification and 1992 Amendment notes above]) shall be regarded as surplus property. Upon certification by the Secretary to the Administrator of General Services that the property is being used by the borrowing educational institution or training school for a purpose consistent with that for which the property was loaned, the Administrator may authorize the conveyance of all right, title, and interest of the United States in such property to the borrower if the borrower agrees to accept the property. The Administrator may require any additional terms and conditions in connection with a conveyance so authorized that the Administrator considers appropriate to protect the interests of the United States.''

§ 2536. Award of certain contracts to entities controlled by a foreign government: prohibition

(a) IN GENERAL.—A Department of Defense contract or Department of Energy contract under a national security program may not be awarded to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract.

(b) WAIVER AUTHORITY.—(1) The Secretary concerned may waive the application of subsection (a) to a contract award if—

(A) the Secretary concerned determines that the waiver is essential to the national security interests of the United States; or

(B) in the case of a contract awarded for environmental restoration, remediation, or waste management at a Department of Defense or Department of Energy facility—

(i) the Secretary concerned determines that the waiver will advance the environmental restoration, remediation, or waste management objectives of the department concerned and will not harm the national security interests of the United States; and

(ii) the entity to which the contract is awarded is controlled by a foreign government with which the Secretary concerned is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

(2) The Secretary concerned shall notify Congress of any decision to grant a waiver under paragraph (1)(B) with respect to a contract. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the committees.

(c) DEFINITIONS.—In this section:

(1) The term ''entity controlled by a foreign government'' includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the Secretary concerned. Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(2) The term ''proscribed category of information'' means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

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

(A) the Secretary of Defense, with respect to Department of Defense contracts; and

(B) the Secretary of Energy, with respect to Department of Energy contracts.

(Added Pub. L. 102–484, div. A, title VIII, § 836(a)(1), Oct. 23, 1992, 106 Stat. 2462; amended Pub. L. 103–35, title II, § 201(d)(4), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title VIII, § 842(a)–(c)(1), Nov. 30, 1993, 107 Stat. 1719; Pub. L. 104–201, div. A, title VIII, § 828, Sept. 23, 1996, 110 Stat. 2611.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–201 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''WAIVER AUTHORITY.—The Secretary concerned may waive the application of subsection (a) to a contract award if the Secretary concerned determines that the waiver is essential to the national security interests of the United States.''

1993—Pub. L. 103–160, § 842(c)(1), substituted ''Award of certain contracts to entities controlled by a foreign government: prohibition'' for ''Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government.'' as section catchline.

Pub. L. 103–35 struck out period at end of section catchline.

Subsec. (a). Pub. L. 103–160, § 842(a), struck out ''a company owned by'' after ''awarded to'' and substituted ''that entity'' for ''that company''.

Subsec. (c)(1). Pub. L. 103–160, § 842(b), inserted at end ''Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, § 836(b), Oct. 23, 1992, 106 Stat. 2463, provided that: ''Section 2536 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

§ 2537. Improved national defense control of technology diversions overseas

(a) COLLECTION OF INFORMATION ON FOREIGN-CONTROLLED CONTRACTORS.—The Secretary of

Defense and the Secretary of Energy shall each collect and maintain a data base containing a list of, and other pertinent information on, all contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base shall contain information on such contractors for 1988 and thereafter in all cases where they are awarded contracts exceeding $10,000,000 in any single year by the Department of Defense or the Department of Energy.

(b) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce shall submit to the Congress, by March 31 of each year, beginning in 1994, a report containing a summary and analysis of the information collected under subsection (a) for the year covered by the report. The report shall include an analysis of accumulated foreign ownership of United States firms engaged in the development of defense critical technologies.

(c) TECHNOLOGY RISK ASSESSMENT REQUIREMENT.—(1) If the Secretary of Defense is acting as a designee of the President under section 721(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(a))[1] and if the Secretary determines that a proposed or pending merger, acquisition, or takeover may involve a firm engaged in the development of a defense critical technology or is otherwise important to the defense industrial and technology base, then the Secretary shall require the appropriate entity or entities from the list set forth in paragraph (2) to conduct an assessment of the risk of diversion of defense critical technology posed by such proposed or pending action.

(2) The entities referred to in paragraph (1) are the following:

(A) The Defense Intelligence Agency.

(B) The Army Foreign Technology Science Center.

(C) The Naval Maritime Intelligence Center.

(D) The Air Force Foreign Aerospace Science and Technology Center.

(Added Pub. L. 102–484, div. A, title VIII, § 838(a), Oct. 23, 1992, 106 Stat. 2465; amended Pub. L. 103–35, title II, § 201(d)(5), (h)(2), May 31, 1993, 107 Stat. 99, 100; Pub. L. 107–314, div. A, title X, § 1041(a)(16), Dec. 2, 2002, 116 Stat. 2645.)

REFERENCES IN TEXT

Section 721(a) of the Defense Production Act of 1950, referred to in subsec. (c)(1), was classified to section 2170(a) of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as section 4565(a) of Title 50.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted ''$10,000,000'' for ''$100,000''.

1993—Subsec. (a). Pub. L. 103–35, § 201(d)(5), substituted ''respectively, that'' for ''respectively, which''.

Subsec. (d). Pub. L. 103–35, § 201(h)(2), struck out subsec. (d) which read as follows: ''In this section, the term 'defense critical technology' has the meaning provided that term by section 2491(8) of this title.''

[1] See References in Text note below.

§ 2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations

(a) ORDERING AUTHORITY.—In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.

(b) COMPLIANCE WITH ORDER REQUIRED.—A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.

(c) SEIZURE OF MANUFACTURING PLANTS UPON NONCOMPLIANCE.—In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the head of that department is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces if the person or industry owning or operating the plant, or the responsible head thereof, refuses—

(1) to give precedence to the order as prescribed in subsection (b);

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the head of such department; or

(3) to furnish them at a reasonable price as determined by the head of such department.

(d) USE OF SEIZED PLANT.—The President, through the head of any department, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).

(e) COMPENSATION REQUIRED.—Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.

(f) CRIMINAL PENALTY.—Whoever fails to comply with this section shall be imprisoned for not more than three years and fined under title 18.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1704; amended Pub. L. 103–337, div. A, title VIII, § 811, Oct. 5, 1994, 108 Stat. 2815.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4501 and 9501 of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 811(1), substituted ''head of any department'' for ''Secretary of Defense''.

Subsec. (c). Pub. L. 103–337, § 811, substituted ''through the head of any department'' for ''through the Secretary of Defense'' and ''opinion of the head of that department'' for ''opinion of the Secretary of Defense'' in introductory provisions and ''head of such department'' for ''Secretary'' in pars. (2) and (3).

Subsec. (d). Pub. L. 103–337, § 811(1), substituted ''head of any department'' for ''Secretary of Defense''.

§ 2539. Industrial mobilization: plants; lists

(a) LIST OF PLANTS EQUIPPED TO MANUFACTURE ARMS OR AMMUNITION.—The Secretary of Defense may maintain a list of all privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are equipped to manufacture for the armed forces arms or ammunition, or parts thereof, and may obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

(b) LIST OF PLANTS CONVERTIBLE INTO AMMUNITION FACTORIES.—The Secretary of Defense may maintain a list of privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are capable of being readily transformed into factories for the manufacture of ammunition for the armed forces and that have a capacity sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and may obtain complete information as to the equipment of each of those plants.

(c) CONVERSION PLANS.—The Secretary of Defense may prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4502(a)–(c) and 9502(a)–(c) of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

§ 2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness

The President may appoint a nonpartisan Board on Mobilization of Industries Essential for Military Preparedness, and may provide necessary clerical assistance, to organize and coordinate operations under sections 2538 and 2539 of this title.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705, § 2540; renumbered § 2539a, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4502(d) and 9502(d) of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2540 of this title as this section.

§ 2539b. Availability of samples, drawings, information, equipment, materials, and certain services

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each—

(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

(2) sell, rent, or lend government equipment or materials to any person or entity—

(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

(B) for use in demonstrations to a friendly foreign government;

(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and

(4) make available to any person or entity, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any government laboratory, research center, or range, if the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.

(b) CONFIDENTIALITY OF TEST RESULTS.—The results of tests performed with services made available under subsection (a)(3) are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.

(c) FEES.—Fees made available under subsections (a)(3) and (a)(4) shall be established in the regulations prescribed pursuant to subsection (a). Such fees may not exceed the amount necessary to recoup the direct and indirect costs involved, such as direct costs of utilities, contractor support, and salaries of personnel that are incurred by the United States to provide for the testing.

(d) USE OF FEES.—Fees received under subsections (a)(3) and (a)(4) may be credited to the appropriations or other funds of the activity making such services available.

(Added Pub. L. 103–160, div. A, title VIII, § 822(b)(1), Nov. 30, 1993, 107 Stat. 1705, § 2541; renumbered § 2539b, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; amended Pub. L. 103–355, title III, § 3022, Oct. 13, 1994, 108 Stat. 3333; Pub. L. 104–106, div. A, title VIII, § 804, div. D, title XLIII, § 4321(a)(8), Feb. 10, 1996, 110 Stat. 390, 671; Pub. L. 106–65, div. A, title X, § 1066(a)(23), Oct. 5, 1999, 113 Stat. 771; Pub. L. 110–181, div. A, title II, § 232, Jan. 28, 2008, 122 Stat. 46.)

AMENDMENTS

2008—Subsec. (a)(4). Pub. L. 110–181, § 232(1), added par. (4).

Subsec. (c). Pub. L. 110–181, § 232(2), struck out ''for services'' before ''made available'' and substituted ''subsections (a)(3) and (a)(4)'' for ''subsection (a)(3)''.

Subsec. (d). Pub. L. 110–181, § 232(3), struck out ''for services made available'' after ''Fees received'' and substituted ''subsections (a)(3) and (a)(4)'' for ''subsection (a)(3)''.

1999—Subsec. (a). Pub. L. 106–65 substituted ''Secretaries of the military departments'' for ''secretaries of the military departments''.

1996—Subsec. (a). Pub. L. 104–106, § 4321(a)(8), made technical correction to Pub. L. 103–355, § 3022. See 1994 Amendment note below.

Subsec. (c). Pub. L. 104–106, § 804, inserted ''and indirect'' after ''recoup the direct''.

1994—Pub. L. 103–337 renumbered section 2541 of this title as this section.

Subsec. (a). Pub. L. 103–355, § 3022, as amended by Pub. L. 104–106, § 4321(a)(8), inserted ''rent,'' after ''sell,'' in par. (1) and '', rent,'' after ''sell'' in par. (2).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIII, § 4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

SUBCHAPTER VI—DEFENSE EXPORT LOAN GUARANTEES

Sec.
2540. Establishment of loan guarantee program.
2540a. Transferability.
2540b. Limitations.
2540c. Fees charged and collected.
2540d. Definitions.

§ 2540. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) COVERED COUNTRIES.—The authority under subsection (a) applies with respect to the following countries:

(1) A member nation of the North Atlantic Treaty Organization (NATO).

(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title, as in effect on that date.

(3) A country in Central Europe that, as determined by the Secretary of State—

(A) has changed its form of national government from a nondemocratic form of government to a democratic form of government since October 1, 1989; or

(B) is in the process of changing its form of national government from a nondemocratic form of government to a democratic form of government.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

(c) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 475; amended Pub. L. 108–375, div. A, title X, § 1084(d)(21), Oct. 28, 2004, 118 Stat. 2062.)

PRIOR PROVISIONS

A prior section 2540, acts Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2511; renumbered § 2521, Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, § 823(a)(2), 104 Stat. 1600; renumbered § 2540, Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, § 821(e)(3), 105 Stat. 1432, related to availability or issuance to reserve components of supplies, services, and facilities of armed forces, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1664(c)(2), 1691, Oct. 5, 1994, 108 Stat. 3012, 3026, effective Dec. 1, 1994. See section 18502 of this title.

Another prior section 2540 was renumbered section 2539a of this title.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–375 inserted '', as in effect on that date'' before period at end.

AUTHORITY TO ISSUE LOAN GUARANTEES

Pub. L. 108–287, title VIII, § 8065, Aug. 5, 2004, 118 Stat. 985, provided that: ''To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, for the current fiscal year and hereafter the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed $15,000,000,000: *Provided further*, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations [now Committee on Foreign Affairs] in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, § 8066, Sept. 30, 2003, 117 Stat. 1087.

Pub. L. 107–248, title VIII, § 8067, Oct. 23, 2002, 116 Stat. 1551.

Pub. L. 107–117, div. A, title VIII, § 8073, Jan. 10, 2002, 115 Stat. 2264.

Pub. L. 106–259, title VIII, § 8071, Aug. 9, 2000, 114 Stat. 690.

Pub. L. 106–79, title VIII, § 8075, Oct. 25, 1999, 113 Stat. 1246.

Pub. L. 105–262, title VIII, § 8075, Oct. 17, 1998, 112 Stat. 2314.

Pub. L. 105–56, title VIII, § 8081, Oct. 8, 1997, 111 Stat. 1237.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8093], Sept. 30, 1996, 110 Stat. 3009–71, 3009–107.

Pub. L. 104–61, title VIII, § 8075, Dec. 1, 1995, 109 Stat. 665.

REPORT ON DEFENSE EXPORT LOAN GUARANTEE PROGRAM

Pub. L. 104–106, div. A, title XIII, § 1321(b), Feb. 10, 1996, 110 Stat. 477, provided that, not later than two years after Feb. 10, 1996, the President was to submit to Congress a report on the loan guarantee program established pursuant to this section.

§ 2540a. Transferability

A guarantee issued under this subchapter shall be fully and freely transferable.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

§ 2540b. Limitations

(a) TERMS AND CONDITIONS OF LOAN GUARANTEES.—In issuing a guarantee under this sub-

chapter for a medium-term or long-term loan, the Secretary may not offer terms and conditions more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services.

(b) LOSSES ARISING FROM FRAUD OR MISREPRESENTATION.—No payment may be made under a guarantee issued under this subchapter for a loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(c) NO RIGHT OF ACCELERATION.—The Secretary of Defense may not accelerate any guaranteed loan or increment, and may not pay any amount, in respect of a guarantee issued under this subchapter, other than in accordance with the original payment terms of the loan.

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

§ 2540c. Fees charged and collected

(a) EXPOSURE FEES.—The Secretary of Defense shall charge a fee (known as ''exposure fee'') for each guarantee issued under this subchapter.

(b) AMOUNT OF EXPOSURE FEE.—To the extent that the cost of the loan guarantees under this subchapter is not otherwise provided for in appropriations Acts, the fee imposed under subsection (a) with respect to a loan guarantee shall be fixed in an amount that is sufficient to meet potential liabilities of the United States under the loan guarantee.

(c) PAYMENT TERMS.—The fee under subsection (a) for each guarantee shall become due as the guarantee is issued. In the case of a guarantee for a loan which is disbursed incrementally, and for which the guarantee is correspondingly issued incrementally as portions of the loan are disbursed, the fee shall be paid incrementally in proportion to the amount of the guarantee that is issued.

(d) ADMINISTRATIVE FEES.—(1) The Secretary of Defense shall charge a fee for each guarantee issued under this subchapter to reflect the additional administrative costs of the Department of Defense that are directly attributable to the administration of the program under this subchapter. Such fees shall be credited to a special account in the Treasury. Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(2)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A) as soon as the Secretary determines practicable.

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476; amended Pub. L. 106–398, §1 [[div. A], title X, §1081(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–398 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1081(b), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284, provided that:

''(b) EFFECTIVE DATE.—Paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2000.

''(c) LIMITATION PENDING SUBMISSION OF REPORT.—The Secretary of Defense may not exercise the authority provided by paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), until the Secretary submits to Congress a report on the operation of the Defense Export Loan Guarantee Program under subchapter V of chapter 148 of title 10, United States Code. The report shall include the following:

''(1) A discussion of the effectiveness of the loan guarantee program in furthering the sale of United States defense articles, defense services, and design and construction services to nations that are specified in section 2540(b) of such title, to include a comparison of the loan guarantee program with other United States Government programs that are intended to contribute to the sale of United States defense articles, defense services, and design and construction services and other comparisons the Secretary determines to be appropriate.

''(2) A discussion of the requirements and resources (including personnel and funds) for continued administration of the loan guarantee program by the Defense Department, to include—

''(A) an itemization of the requirements necessary and resources available (or that could be made available) to administer the loan guarantee program for each of the following entities: the Defense Security Cooperation Agency, the Department of Defense International Cooperation Office, and other Defense Department agencies, offices, or activities as the Secretary may specify; and

''(B) for each such activity, agency, or office, a comparison of the use of Defense Department personnel exclusively to administer, manage, and oversee the program with the use of contracted commercial entities to administer and manage the program.

''(3) Any legislative recommendations that the Secretary believes could improve the effectiveness of the program.

''(4) A determination made by the Secretary of Defense indicating which Defense Department agency, office, or other activity should administer, manage, and oversee the loan guarantee program to increase sales of United States defense articles, defense services, and design and construction services, such determination to be made based on the information and analysis provided in the report.''

§ 2540d. Definitions

In this subchapter:

(1) The terms ''defense article'', ''defense services'', and ''design and construction services'' have the meanings given those terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

(2) The term ''cost'', with respect to a loan guarantee, has the meaning given that term in section 502 of the Congressional Budget and

Impoundment Control Act of 1974 (2 U.S.C. 661a).

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 477.)

SUBCHAPTER VII—CRITICAL INFRASTRUCTURE PROTECTION LOAN GUARANTEES

Sec.
2541. Establishment of loan guarantee program.
2541a. Fees charged and collected.
2541b. Administration.
2541c. Transferability, additional limitations, and definition.
2541d. Reports.

§ 2541. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring lenders against losses of principal or interest, or both principal and interest, for loans made to qualified commercial firms to fund, in whole or in part, any of the following activities:

(1) The improvement of the protection of the critical infrastructure of the commercial firms.

(2) The refinancing of improvements previously made to the protection of the critical infrastructure of the commercial firms.

(b) QUALIFIED COMMERCIAL FIRMS.—For purposes of this section, a qualified commercial firm is a company or other business entity (including a consortium of such companies or other business entities, as determined by the Secretary) that the Secretary determines—

(1) conducts a significant level of its research, development, engineering, and manufacturing activities in the United States;

(2) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(A) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(B) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States;

(3) provides technology products or services critical to the operations of the Department of Defense;

(4) meets standards of prevention of cyberterrorism applicable to the Department of Defense; and

(5) agrees to submit the report required under section 2541d of this title.

(c) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed $10,000,000, with respect to all borrowers.

(d) GOALS AND STANDARDS.—The Secretary shall prescribe regulations setting forth goals for the use of the loan guarantees provided under this section and standards for evaluating whether those goals are met by each entity receiving such loan guarantees.

(e) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–258.)

PRIOR PROVISIONS

A prior section 2541 was renumbered section 2551 of this title.

Another prior section 2541 was renumbered section 2539b of this title.

§ 2541a. Fees charged and collected

(a) FEE REQUIRED.—The Secretary of Defense shall assess a fee for providing a loan guarantee under this subchapter.

(b) AMOUNT OF FEE.—The amount of the fee shall be not less than 75 percent of the amount incurred by the Secretary to provide the loan guarantee.

(c) SPECIAL ACCOUNT.—(1) Such fees shall be credited to a special account in the Treasury.

(2) Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(3)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A).

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

§ 2541b. Administration

(a) AGREEMENTS REQUIRED.—The Secretary of Defense may enter into one or more agreements, each with an appropriate Federal or private entity, under which such entity may, under this subchapter—

(1) process applications for loan guarantees;

(2) administer repayment of loans; and

(3) provide any other services to the Secretary to administer this subchapter.

(b) TREATMENT OF COSTS.—The costs of such agreements shall be considered, for purposes of the special account established under section 2541a(c), to be costs of administrative expenses of the Department of Defense that are attrib-

utable to the loan guarantee program under this subchapter.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

§ 2541c. Transferability, additional limitations, and definition

The following provisions of subchapter VI of this chapter apply to guarantees issued under this subchapter:

(1) Section 2540a, relating to transferability of guarantees.

(2) Subsections (b) and (c) of section 2540b, providing limitations.

(3) Section 2540d(2), providing a definition of the term ''cost''.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; amended Pub. L. 107–107, div. A, title X, §1048(a)(24), Dec. 28, 2001, 115 Stat. 1224.)

AMENDMENTS

2001—Pub. L. 107–107 substituted ''subchapter'' for ''subtitle'' in two places in introductory provisions.

§ 2541d. Reports

The Secretary of Defense shall require each qualified commercial firm for which a loan is guaranteed under this subchapter to submit to the Secretary a report on the improvements financed or refinanced with the loan. The report shall include an assessment of the value of the improvements for the protection of the critical infrastructure of that commercial firm. The Secretary shall prescribe the time for submitting the report.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; amended Pub. L. 108–136, div. A, title X, §1031(a)(25), Nov. 24, 2003, 117 Stat. 1598.)

PRIOR PROVISIONS

Prior sections 2542 to 2550 were renumbered sections 2552 to 2560 of this title, respectively.

AMENDMENTS

2003—Pub. L. 108–136 struck out subsec. (a) designation and heading and struck out subsec. (b) which directed that the Secretary of Defense annually submit to Congress a report on the loan guarantee program under this subchapter.

CHAPTER 149—DEFENSE ACQUISITION SYSTEM

Sec.
2545. Definitions.
2546. Civilian management of the defense acquisition system.
2546a. Customer-oriented acquisition system.
2547. Acquisition-related functions of chiefs of the armed forces.
2548. Performance assessments of the defense acquisition system.

PRIOR PROVISIONS

A prior chapter 149, comprised of sections 2511 to 2518, relating to manufacturing technology, was repealed, except for sections 2517 and 2518, by Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2517 and 2518 of that chapter were renumbered sections 2523 and 2522, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§4232(a), 4233(a), Oct. 23, 1992, 106 Stat. 2687, and were subsequently repealed.

Another prior chapter 149, comprised of section 2511, was successively renumbered chapter 150 of this title, comprised of section 2521, then chapter 152 of this title, comprised of section 2540 et seq.

A prior chapter 150, comprised of sections 2521 to 2526, relating to development of dual-use critical technologies, was repealed, except for sections 2524 to 2526, by Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2524, 2525, and 2526 of that chapter were renumbered sections 2513, 2517, and 2518, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§4223(a), 4227(a), 4228, Oct. 23, 1992, 106 Stat. 2681, 2685. Section 2513 of this chapter was subsequently repealed.

Another prior chapter 150, comprised of section 2521, was renumbered chapter 152 of this title, comprised of section 2540 et seq.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title VIII, §802(a)(2), Nov. 25, 2015, 129 Stat. 879, added item 2546a.

§ 2545. Definitions

In this chapter:

(1) The term ''acquisition'' has the meaning provided in section 131 of title 41.

(2) The term ''defense acquisition system'' means the workforce engaged in carrying out the acquisition of property and services for the Department of Defense; the management structure responsible for directing and overseeing the acquisition of property and services for the Department of Defense; and the statutory, regulatory, and policy framework that guides the acquisition of property and services for the Department of Defense.

(3) The term ''element of the defense acquisition system'' means an organization that employs members of the acquisition workforce, carries out acquisition functions, and focuses primarily on acquisition.

(4) The term ''acquisition workforce'' has the meaning provided in section 101(a)(18) of this title.

(Added Pub. L. 111–383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4288; amended Pub. L. 113–291, div. A, title X, §1071(a)(11), Dec. 19, 2014, 128 Stat. 3505.)

PRIOR PROVISIONS

A prior section 2545 was renumbered section 2555 of this title.

AMENDMENTS

2014—Par. (1). Pub. L. 113–291 substituted ''section 131 of title 41'' for ''section 4(16) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(16))''.

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VIII, §860, Jan. 7, 2011, 124 Stat. 4287, provided that: ''This subtitle [subtitle F (§§860–896) of title VIII of div. A of Pub. L. 111–383, enacting this chapter and sections 139e, 1701a, 1722b, 1748, 1762, and 2508 of this title, amending sections 101, 1723, 1746, 2302, 2500, 2501, 2505, and 2506 of this title, enacting provisions set out as notes under sections 1723, 1748, 2222, 2302, 2306a, 2330, and 2501 of this title, amending provisions set out as notes under section 2371 of this title and section 637 of Title 15, Commerce and Trade, and repealing provisions set out as notes under sections 1701 and 1723 of this title] may be cited as the 'Improve Acquisition Act of 2010'.''

REVIEW OF TIME-BASED REQUIREMENTS PROCESS AND BUDGETING AND ACQUISITION SYSTEMS

Pub. L. 114–92, div. A, title VIII, § 810, Nov. 25, 2015, 129 Stat. 890, provided that:

''(a) TIME-BASED REQUIREMENTS PROCESS.—The Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall review the requirements process with the goal of establishing an agile and streamlined system that develops requirements that provide stability and foundational direction for acquisition programs and shall determine the advisability of providing a time-based or phased distinction between capabilities needed to be deployed urgently, within 2 years, within 5 years, and longer than 5 years.

''(b) BUDGETING AND ACQUISITION SYSTEMS.—The Secretary of Defense shall review and ensure that the acquisition and budgeting systems are structured to meet time-based or phased requirements in a manner that is predictable, cost effective, and efficient and takes advantage of emerging technological developments.''

§ 2546. Civilian management of the defense acquisition system

(a) RESPONSIBILITY OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Subject to the authority, direction and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for the management of the defense acquisition system and shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of the defense acquisition system, including the duties enumerated and assigned to the Under Secretary elsewhere in this title.

(b) RESPONSIBILITY OF THE SERVICE ACQUISITION EXECUTIVES.—Subject to the direction of the Under Secretary of Defense for Acquisition, Technology, and Logistics on matters pertaining to acquisition, and subject to the authority, direction, and control of the Secretary of the military department concerned, a service acquisition executive of a military department shall be responsible for the management of elements of the defense acquisition system in that military department and shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of such elements of the defense acquisition system.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4288.)

PRIOR PROVISIONS

A prior section 2546 was renumbered section 2556 of this title.

§ 2546a. Customer-oriented acquisition system

(a) OBJECTIVE.—It shall be the objective of the defense acquisition system to meet the needs of its customers in the most cost-effective manner practicable. The acquisition policies, directives, and regulations of the Department of Defense shall be modified as necessary to ensure the development and implementation of a customer-oriented acquisition system.

(b) CUSTOMER.—The customer of the defense acquisition system is the armed force that will have primary responsibility for fielding the system or systems acquired. The customer is represented with regard to a major defense acquisition program by the Secretary of the military department concerned and the Chief of the armed force concerned.

(c) ROLE OF CUSTOMER.—The customer of a major defense acquisition program shall be responsible for balancing resources against priorities on the acquisition program and ensuring that appropriate trade-offs are made among cost, schedule, technical feasibility, and performance on a continuing basis throughout the life of the acquisition program.

(Added Pub. L. 114–92, div. A, title VIII, § 802(a)(1), Nov. 25, 2015, 129 Stat. 878.)

§ 2547. Acquisition-related functions of chiefs of the armed forces

(a) PERFORMANCE OF CERTAIN ACQUISITION-RELATED FUNCTIONS.—The Secretary of Defense shall ensure that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps assist the Secretary of the military department concerned in the performance of the following acquisition-related functions of such department:

(1) The development of requirements for equipping the armed force concerned (subject, where appropriate, to validation by the Joint Requirements Oversight Council pursuant to section 181 of this title).

(2) Decisions regarding the balancing of resources and priorities, and associated trade-offs among cost, schedule, technical feasibility, and performance on major defense acquisition programs.

(3) The coordination of measures to control requirements creep in the defense acquisition system.

(4) The recommendation of trade-offs among life-cycle cost, schedule, and performance objectives, and procurement quantity objectives, to ensure acquisition programs deliver best value in meeting the approved military requirements.

(5) Termination of development or procurement programs for which life-cycle cost, schedule, and performance expectations are no longer consistent with approved military requirements and levels of priority, or which no longer have approved military requirements.

(6) The development and management of career paths in acquisition for military personnel (as required by section 1722a of this title).

(7) The assignment and training of contracting officer representatives when such representatives are required to be members of the armed forces because of the nature of the contract concerned.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the assignment of functions under section 3014(c)(1)(A), section 5014(c)(1)(A), or section 8014(c)(1)(A) of this title, except as explicitly provided in this section.

(c) DEFINITIONS.—In this section:

(1) The term ''requirements creep'' means the addition of new technical or operational specifications after a requirements document is approved by the appropriate validation authority for the requirements document.

(2) The term ''requirements document'' means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—

(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

(C) identifies production attributes required for a single increment of a program.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112–239, div. A, title IX, § 951(c), Jan. 2, 2013, 126 Stat. 1891; Pub. L. 114–92, div. A, title VIII, § 802(b), Nov. 25, 2015, 129 Stat. 879.)

PRIOR PROVISIONS

A prior section 2547 was renumbered section 2557 of this title.

AMENDMENTS

2015—Subsec. (a)(2) to (5). Pub. L. 114–92, § 802(b)(1), (2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 114–92, § 802(b)(1), (3), redesignated par. (5) as (6) and substituted ''The development and management'' for ''The development''. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 114–92, § 802(b)(1), redesignated par. (6) as (7).

2013—Subsec. (a)(1). Pub. L. 112–239, § 951(c)(1), substituted ''of requirements for equipping the armed force concerned'' for ''of requirements relating to the defense acquisition system''.

Subsec. (a)(3) to (6). Pub. L. 112–239, § 951(c)(2), (3), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

§ 2548. Performance assessments of the defense acquisition system

(a) PERFORMANCE ASSESSMENTS REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Director of Procurement and Acquisition Policy, and the Director of the Office of Performance Assessment and Root Cause Analysis, shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent performance assessments of elements of the defense acquisition system for the purpose of—

(1) determining the extent to which such elements of the defense acquisition system deliver value to the Department of Defense, taking into consideration the performance elements identified in subsection (b);

(2) assisting senior officials of the Department of Defense in identifying and developing lessons learned from best practices and shortcomings in the performance of such elements of the defense acquisition system; and

(3) assisting senior officials of the Department of Defense in developing acquisition workforce excellence under section 1701a of this title.

(b) AREAS CONSIDERED IN PERFORMANCE ASSESSMENTS.—(1) Each performance assessment conducted pursuant to subsection (a) shall consider, at a minimum—

(A) the extent to which acquisitions conducted by the element of the defense acquisition system under review meet applicable cost, schedule, and performance objectives; and

(B) the staffing and quality of the acquisition workforce and the effectiveness of the management of the acquisition workforce, including workforce incentives and career paths.

(2) The Secretary of Defense shall ensure that the performance assessments required by this section are appropriately tailored to reflect the diverse nature of the work performed by each element of the defense acquisition system. In addition to the mandatory areas under paragraph (1), a performance assessment may consider, as appropriate, specific areas of acquisition concern, such as—

(A) the selection of contractors, including—

(i) the extent of competition and the use of exceptions to competition requirements;

(ii) compliance with Department of Defense policies regarding the participation of small business concerns and various categories of small business concerns, including the use of contract bundling and the availability of non-bundled contract vehicles;

(iii) the quality of market research;

(iv) the effective consideration of contractor past performance; and

(v) the number of bid protests, the extent to which such bid protests have been successful, and the reasons for such success;

(B) the negotiation of contracts, including—

(i) the appropriate application of section 2306a of this title (relating to truth in negotiations);

(ii) the appropriate use of contract types appropriate to specific procurements;

(iii) the appropriate use of performance requirements;

(iv) the appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment and follow-on procurement; and

(v) the timely definitization of any undefinitized contract actions; and

(C) the management of contractor performance, including—

(i) the assignment of appropriately qualified contracting officer representatives and other contract management personnel;

(ii) the extent of contract disputes, the reasons for such disputes, and the extent to which they have been successfully addressed;

(iii) the appropriate consideration of long-term sustainment and energy efficiency objectives; and

(iv) the appropriate use of integrated testing.

(c) CONTENTS OF GUIDANCE.—The guidance issued pursuant to subsection (a) shall ensure that each element of the defense acquisition system

is subject to a performance assessment under this section not less often than once every four years, and shall address, at a minimum—

(1) the designation of elements of the defense acquisition system that are subject to performance assessment at an organizational level that ensures such assessments can be performed in an efficient and integrated manner;

(2) the frequency with which such performance assessments should be conducted;

(3) goals, standards, tools, and metrics for use in conducting performance assessments;

(4) the composition of the teams designated to perform performance assessments;

(5) any phase-in requirements needed to ensure that qualified staff are available to perform performance assessments;

(6) procedures for tracking the implementation of recommendations made pursuant to performance assessments;

(7) procedures for developing and disseminating lessons learned from performance assessments; and

(8) procedures for ensuring that information from performance assessments are retained electronically and are provided in a timely manner to the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director of the Office of Performance Assessment and Root Cause Analysis as needed to assist them in performing their responsibilities under this section.

(d) PERFORMANCE GOALS UNDER GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The annual performance plan prepared by the Department of Defense pursuant to section 1115 of title 31 shall include appropriate performance goals for elements of the defense acquisition system.

(e) REPORTING REQUIREMENTS.—Beginning with fiscal year 2012—

(1) the annual report prepared by the Secretary of Defense pursuant to section 1116 of title 31 shall address the Department's success in achieving performance goals established pursuant to such section for elements of the defense acquisition system; and

(2) the annual report prepared by the Director of the Office of Performance Assessment and Root Cause Analysis pursuant to section 2438(f)[1] of this title shall include information on the activities undertaken by the Department pursuant to such section, including a summary of significant findings or recommendations arising out of performance assessments.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112–239, div. A, title X, § 1076(d)(5), (f)(30), Jan. 2, 2013, 126 Stat. 1951, 1953.)

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (d), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

Section 2438(f) of this title, referred to in subsec. (e)(2), was repealed by Pub. L. 114–92, div. A, title X, § 1077(b), Nov. 25, 2015, 129 Stat. 998.

PRIOR PROVISIONS

A prior section 2548 was renumbered section 2558 of this title.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–239, § 1076(f)(30)(A)(i), substituted ''The Secretary'' for ''Not later than 180 days after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, the Secretary'' in introductory provisions.

Subsec. (a)(3). Pub. L. 112–239, § 1076(f)(30)(A)(ii), inserted period at end.

Subsec. (d). Pub. L. 112–239, § 1076(f)(30)(B), inserted ''and'' after ''Government Performance'' in heading and substituted ''The'' for ''Beginning with fiscal year 2012, the'' in text.

Subsec. (e)(1). Pub. L. 112–239, § 1076(f)(30)(C), struck out '', United States Code,'' after ''title 31''.

Subsec. (e)(2). Pub. L. 112–239, § 1076(d)(5), substituted ''section 2438(f) of this title'' for ''section 103(f) of the Weapon Systems Acquisition Reform Act of 2009 (10 U.S.C. 2430 note),''.

CHAPTER 152—ISSUE OF SUPPLIES, SERVICES, AND FACILITIES

Sec.
2551. Equipment and barracks: national veterans' organizations.
2552. Equipment for instruction and practice: American National Red Cross.
2553. Equipment and services: Presidential inaugural ceremonies.
2554. Equipment and other services: Boy Scout Jamborees.
2555. Transportation services: international Girl Scout events.
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2558. National military associations: assistance at national conventions.
2559. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services.
2560. Aircraft and vehicles: limitation on leasing to non-Federal agencies.
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2564. Provision of support for certain sporting events.
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2565. Nuclear test monitoring equipment: furnishing to foreign governments.
2566. Space and services: provision to military welfare societies.
[2567. Repealed.]
2568. Retention of combat uniforms by members deployed in support of contingency operations.

PRIOR PROVISIONS

Chapter was comprised of subchapter I, former section 2540, and subchapter II, sections 2541 to 2553, prior

[1] See References in Text note below.

to amendment by Pub. L. 104–106, div. A, title XV, §1503(a)(29), Feb. 10, 1996, 110 Stat. 512, which struck out headings for subchapters I and II.

AMENDMENTS

2013—Pub. L. 112–239, div. A, title X, §1076(a)(4), Jan. 2, 2013, 126 Stat. 1948, made technical amendment to directory language of Pub. L. 112–81, §589(b). See 2011 Amendment note below.

2011—Pub. L. 112–81, div. A, title V, §589(b), Dec. 31, 2011, 125 Stat. 1438, as amended by Pub. L. 112–239, div. A, title X, §1076(a)(4), Jan. 2, 2013, 126 Stat. 1948, added item 2564a.

Pub. L. 111–383, div. A, title X, §1074(b)(2), Jan. 7, 2011, 124 Stat. 4368, substituted ''Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance'' for ''Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief'' in item 2557.

2008—Pub. L. 110–181, div. A, title III, §376(b), title X, §§1063(a)(12), 1068(b)(2), Jan. 28, 2008, 122 Stat. 84, 322, 326, inserted period at end of item 2567 and then struck out item 2567 ''Supplies, services, and equipment: provision in major public emergencies'' and added item 2568.

2006—Pub. L. 109–364, div. A, title X, §1076(b)(2), Oct. 17, 2006, 120 Stat. 2406, added item 2567.

2002—Pub. L. 107–314, div. A, title X, §1066(b), Dec. 2, 2002, 116 Stat. 2656, added item 2566.

2001—Pub. L. 107–107, div. A, title III, §361(b)(2), title XII, §1201(a)(2), Dec. 28, 2001, 115 Stat. 1065, 1245, substituted ''Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief'' for ''Excess nonlethal supplies: humanitarian relief'' in item 2557 and substituted ''2565.'' for ''2555.'' in item 2565.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(2), title XII, §1203(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260, 1654A–325, renumbered items 2541 to 2554 as 2551 to 2564, respectively, and added item 2555 ''Nuclear test monitoring equipment: furnishing to foreign governments'' at end.

1997—Pub. L. 105–85, div. A, title X, §1073(c)(2)(B), Nov. 18, 1997, 111 Stat. 1904, amended directory language of Pub. L. 104–201, §367(b). See 1996 Amendment note below.

1996—Pub. L. 104–201, div. A, title III, §367(b), Sept. 23, 1996, 110 Stat. 2497, as amended by Pub. L. 105–85, div. A, title X, §1073(c)(2)(B), Nov. 18, 1997, 111 Stat. 1904, added item 2554.

Pub. L. 104–201, div. A, title III, §366(b), Sept. 23, 1996, 110 Stat. 2496, substituted ''Equipment and services: Presidential inaugural ceremonies'' for ''Equipment: Inaugural Committee'' in item 2543.

Pub. L. 104–106, div. A, title XV, §1503(a)(29), Feb. 10, 1996, 110 Stat. 512, struck out subchapter analysis consisting of items for subchapters I ''Issue to the Armed Forces'' and II ''Issue of Serviceable Material Other Than to the Armed Forces'' and struck out headings for subchapters I ''ISSUE TO THE ARMED FORCES'' and II ''ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO THE ARMED FORCES''.

1994—Pub. L. 103–337, div. A, title III, §339(a)(2), title XVI, §1671(b)(14), Oct. 5, 1994, 108 Stat. 2720, 3014, struck out item 2540 ''Reserve components: supplies, services, and facilities'' and added item 2553.

1992—Pub. L. 102–484, div. A, title III, §304(c)(2), div. D, title XLIII, §4304(b), Oct. 23, 1992, 106 Stat. 2362, 2700, added items 2551 and 2552.

1991—Pub. L. 102–190, div. A, title VIII, §821(e)(1), (2), Dec. 5, 1991, 105 Stat. 1431, substituted ''152'' for ''150'' as chapter number, ''ISSUE OF SUPPLIES, SERVICES, AND FACILITIES'' for ''ISSUE TO ARMED FORCES'' as chapter heading, added subchapter analysis and subchapter I heading, renumbered item 2521 as 2540, and substituted subchapter II heading for former chapter 151 heading ''ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES''.

1990—Pub. L. 101–510, div. A, title VIII, §823(a)(1), (b)(2), title XIV, §1481(f)(2), (g)(2), Nov. 5, 1990, 104 Stat. 1600, 1602, 1707, substituted ''150'' for ''149'' as chapter number, renumbered item 2511 as 2521, and added items 2549 and 2550.

1989—Pub. L. 101–189, div. A, title III, §329(a)(2), Nov. 29, 1989, 103 Stat. 1417, added item 2548.

1985—Pub. L. 99–145, title XIV, §1454(b), Nov. 8, 1985, 99 Stat. 761, added item 2547.

1983—Pub. L. 98–94, title III, §305(a)(2), Sept. 24, 1983, 97 Stat. 629, added item 2546.

1978—Pub. L. 95–492, §2, Oct. 20, 1978, 92 Stat. 1642, added item 2545.

1972—Pub. L. 92–249, Mar. 10, 1972, 86 Stat. 62, added item 2544.

1958—Pub. L. 85–861, §1(48)(B), Sept. 2, 1958, 72 Stat. 1459, added item 2543.

§ 2551. Equipment and barracks: national veterans' organizations

(a) The Secretary of a military department, under conditions prescribed by him, may lend cots, blankets, pillows, mattresses, bed sacks, and other supplies under the jurisdiction of that department to any recognized national veterans' organization for use at its national or state convention or national youth athletic or recreation tournament. He may, under conditions prescribed by him, also permit the organization to use unoccupied barracks under the jurisdiction of that department for such an occasion.

(b) Property lent under subsection (a) may be delivered on terms and at times agreed upon by the Secretary of the military department concerned and representatives of the veterans' organization. However, the veterans' organization must defray any expense incurred by the United States in the delivery, return, rehabilitation, or replacement of that property, as determined by the Secretary.

(c) The Secretary of the military department concerned shall require a good and sufficient bond for the return in good condition of property lent or used under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 142, §2541; renumbered §2551, Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2541(a)	5:150m.	Aug. 1, 1949, ch. 372, 63 Stat. 483.
2541(b)	5:150n.	
2541(c)	5:150*o*.	

In subsection (a), the word ''may'' is substituted for the words ''are authorized to * * * at their discretion''. The word ''supplies'' is substituted for the words ''articles or equipment''. The words ''available'' and ''as may be needed'' are omitted as surplusage. The words ''under the jurisdiction of that department'' are substituted for the words ''of the Army, Navy, or Air Force'' and ''under their respective jurisdictions''.

In subsection (b), the words ''prior to any such conventions or national youth athletic or recreation tournaments'' are omitted as surplusage.

In subsection (c), the words ''require of'' are substituted for the words ''take from''.

PRIOR PROVISIONS

A prior section 2551 was renumbered section 2561 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2541 of this title as this section.

§ 2552. Equipment for instruction and practice: American National Red Cross

The Secretary of a military department, under regulations to be prescribed by him, may lend equipment under the jurisdiction of that department that is on hand, and that can be temporarily spared, to any organization formed by the American National Red Cross that needs it for instruction and practice for the purpose of aiding the Army, Navy, or Air Force in time of war. The Secretary shall by regulation require the immediate return, upon request, of equipment lent under this section. The Secretary shall require a bond, in double the value of the property issued under this section, for the care and safekeeping of that property and for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 142, § 2542; renumbered § 2552, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2542	10:1255. 10:1256. 34:549. 34:550.	May 8, 1914, J. Res. 15, 38 Stat. 771.

The word ''may'' is substituted for the words ''is authorized * * * at his discretion'', in 10:1255 and 34:549. The word ''lend'' is substituted for the word ''issue'', in 10:1255 and 34:549. The words ''proper'', ''to be'', ''out of equipment for medical or other establishments'', and ''belonging to the Government'', in 10:1255 and 34:549, are omitted as surplusage. The words ''that needs it'' are substituted for the words ''as may appear to be required''. The words ''under the jurisdiction of that department'' are inserted for clarity. The words ''upon request'' are substituted for the words ''when called for by the authority which issued them''.

PRIOR PROVISIONS

A prior section 2552 was renumbered section 2562 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2542 of this title as this section.

§ 2553. Equipment and services: Presidential inaugural ceremonies

(a) ASSISTANCE AUTHORIZED.—The Secretary of Defense may, with respect to the ceremonies relating to the inauguration of a President, provide the assistance referred to in subsection (b) to—

(1) the Presidential Inaugural Committee; and

(2) the congressional Joint Inaugural Committee.

(b) ASSISTANCE.—Assistance that may be provided under subsection (a) is the following:

(1) Planning and carrying out activities relating to security and safety.

(2) Planning and carrying out ceremonial activities.

(3) Loan of property.

(4) Any other assistance that the Secretary considers appropriate.

(c) REIMBURSEMENT.—(1) The Presidential Inaugural Committee shall reimburse the Secretary for any costs incurred in connection with the provision to the committee of assistance referred to in subsection (b)(4).

(2) Costs reimbursed under paragraph (1) shall be credited to the appropriations from which the costs were paid. The amount credited to an appropriation shall be proportionate to the amount of the costs charged to that appropriation.

(d) LOANED PROPERTY.—With respect to property loaned for a presidential inauguration under subsection (b)(3), the Presidential Inaugural Committee shall—

(1) return that property within nine days after the date of the ceremony inaugurating the President;

(2) give good and sufficient bond for the return in good order and condition of that property;

(3) indemnify the United States for any loss of, or damage to, that property; and

(4) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property.

(e) DEFINITIONS.—In this section:

(1) The term ''Presidential Inaugural Committee'' means the committee referred to in section 501 of title 36 that is appointed with respect to the inauguration of a President-elect and Vice President-elect.

(2) The term ''congressional Joint Inaugural Committee'' means the joint committee of the Senate and House of Representatives referred to in section 507 of title 36 that is appointed with respect to the inauguration of a President-elect and Vice President-elect.

(Added Pub. L. 85–861, § 1(48)(A), Sept. 2, 1958, 72 Stat. 1458, § 2543; amended Pub. L. 96–513, title V, § 511(81), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 104–201, div. A, title III, § 366(a), Sept. 23, 1996, 110 Stat. 2495; Pub. L. 105–225, § 4(a)(2), Aug. 12, 1998, 112 Stat. 1498; renumbered § 2553, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2543(a) ..... 2543(b) ..... 2543(c)	36:726 (1st sentence). 36:726 (less 1st and 2d sentences). 36:721(b)(1) (as applicable to 36:726). 36:726 (2d sentence).	Aug. 6, 1956, ch. 974, §§ 1(b)(1) (as applicable to § 6), 6, 70 Stat. 1049, 1050.

In subsection (a), the words ''under section 721 of title 36'' are inserted for clarity. The words ''ensigns'' and ''Red Cross flags'' are omitted as covered by the word ''flags''.

In subsection (b), the words ''and the whole without expense to the United States'' are omitted as surplusage.

In subsection (c), the words ''nine days after the date of the ceremony inaugurating the President'' are substituted for the words ''five days after the end of the inaugural period'', in 36:726 (2d sentence), and 36:721(b)(1).

PRIOR PROVISIONS

A prior section 2553 was renumbered section 2563 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2543 of this title as this section.

1998—Subsec. (e)(1). Pub. L. 105–225, § 4(a)(2)(A), substituted ''section 501 of title 36'' for ''subsection (b)(2) of the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721)''.

Subsec. (e)(2). Pub. L. 105–225, § 4(a)(2)(B), substituted ''section 507 of title 36'' for ''the proviso in section 9 of the Presidential Inaugural Ceremonies Act (36 U.S.C. 729)''.

1996—Pub. L. 104–201 substituted ''Equipment and services: Presidential inaugural ceremonies'' for ''Equipment: Inaugural Committee'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary of Defense, under such conditions as he may prescribe, may lend, to an Inaugural Committee established under the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721), hospital tents, smaller tents, camp appliances, hospital furniture, flags other than battle flags, flagpoles, litters, and ambulances and the services of their drivers, that can be spared without detriment to the public service.

''(b) The Inaugural Committee must give a good and sufficient bond for the return in good order and condition of property lent under subsection (a).

''(c) Property lent under subsection (a) shall be returned within nine days after the date of the ceremony inaugurating the President. The Inaugural Committee shall—

''(1) indemnify the United States for any loss of, or damage to, property lent under subsection (a); and

''(2) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property.''

1980—Subsec. (a). Pub. L. 96–513 substituted ''the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721)'' for ''section 721 of title 36''.

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.

§ 2554. Equipment and other services: Boy Scout Jamborees

(a) The Secretary of Defense is hereby authorized, under such regulations as he may prescribe, to lend to the Boy Scouts of America, for the use and accommodation of Scouts, Scouters, and officials who attend any national or world Boy Scout Jamboree, such cots, blankets, commissary equipment, flags, refrigerators, and other equipment and without reimbursement, furnish services and expendable medical supplies, as may be necessary or useful to the extent that items are in stock and items or services are available.

(b) Such equipment is authorized to be delivered at such time prior to the holding of any national or world Boy Scout Jamboree, and to be returned at such time after the close of any such jamboree, as may be agreed upon by the Secretary of Defense and the Boy Scouts of America. No expense shall be incurred by the United States Government for the delivery, return, rehabilitation, or replacement of such equipment.

(c) The Secretary of Defense, before delivering such property, shall take from the Boy Scouts of America, good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States.

(d) The Secretary of Defense is hereby authorized under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for (1) those Boy Scouts, Scouters, and officials certified by the Boy Scouts of America, as representing the Boy Scouts of America at any national or world Boy Scout Jamboree, and (2) the equipment and property of such Boy Scouts, Scouters, and officials and the property loaned to the Boy Scouts of America, by the Secretary of Defense pursuant to this section to the extent that such transportation will not interfere with the requirements of military operations.

(e) Before furnishing any transportation under subsection (d), the Secretary of Defense shall take from the Boy Scouts of America, a good and sufficient bond for the reimbursement to the United States by the Boy Scouts of America, of the actual costs of transportation furnished under this section.

(f) Amounts paid to the United States to reimburse it for expenses incurred under subsection (b) and for the actual costs of transportation furnished under subsection (d) shall be credited to the current applicable appropriations or funds to which such expenses and costs were charged and shall be available for the same purposes as such appropriations or funds.

(g) In the case of a Boy Scout Jamboree held on a military installation, the Secretary of Defense may provide personnel services and logistical support at the military installation in addition to the support authorized under subsections (a) and (d).

(h) Other departments of the Federal Government are authorized, under such regulations as may be prescribed by the Secretary thereof, to provide to the Boy Scouts of America, equipment and other services, under the same conditions and restrictions prescribed in the preceding subsections for the Secretary of Defense.

(i)(1) The Secretary of Defense shall provide at least the same level of support under this section for a national or world Boy Scout Jamboree as was provided under this section for the preceding national or world Boy Scout Jamboree.

(2) The Secretary of Defense may waive paragraph (1), if the Secretary—

(A) determines that providing the support subject to paragraph (1) would be detrimental to the national security of the United States; and

(B) submits to Congress a report containing such determination in a timely manner, and before the waiver takes effect.

(Added Pub. L. 92–249, Mar. 10, 1972, 86 Stat. 62, § 2544; amended Pub. L. 104–106, div. A, title III, § 376, Feb. 10, 1996, 110 Stat. 283; renumbered § 2554, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–2601; Pub. L. 107–107, div. A, title IX, § 931(a), Dec. 28, 2001, 115 Stat. 1200; Pub. L. 109–148, div. A, title VIII, § 8126(c)(2), Dec. 30, 2005, 119 Stat. 2729; Pub. L. 109–163, div. A, title X, § 1058(c), Jan. 6, 2006, 119 Stat. 3443.)

CODIFICATION

Pub. L. 109–148, § 8126(c)(2), and Pub. L. 109–163, § 1058(c), amended this section by adding substantially identical subsecs. (i). The subsec. (i) added by Pub. L.

109–148, § 8126(c)(2), was subsequently omitted on authority of Pub. L. 109–364, § 1071(f)(1), (3), which repealed Pub. L. 109–148, § 8126(c)(2), and provided that the amendments by Pub. L. 109–148, § 8126(c)(2), and Pub. L. 109–163, § 1058(c), to this section be executed so as to appear only once in the law as amended. See Reconciliation of Duplicate Enactments note and 2005 and 2006 Amendment notes below.

PRIOR PROVISIONS

A prior section 2554 was renumbered section 2564 of this title.

AMENDMENTS

2006—Subsec. (i). Pub. L. 109–163 added subsec. (i). See Codification note above.

2005—Subsec. (i). Pub. L. 109–148 added subsec. (i) which read as follows:

''(i)(1) The Secretary of Defense shall provide at least the same level of support under this section for a national or world Boy Scout Jamboree as was provided under this section for the preceding national or world Boy Scout Jamboree.

''(2) The Secretary of Defense may waive paragraph (1), if the Secretary—

''(A) determines that providing the support subject to paragraph (1) would be detrimental to the national security of the United States; and

''(B) reports such a determination to the Congress in a timely manner, and before such support is not provided.''

See Codification note above.

2001—Subsec. (d). Pub. L. 107–107 substituted ''Air Mobility Command'' for ''Military Airlift Command''.

2000—Pub. L. 106–398 renumbered section 2544 of this title as this section.

1996—Subsecs. (g), (h). Pub. L. 104–106 added subsec. (g) and redesignated former subsec. (g) as (h).

RECONCILIATION OF DUPLICATE ENACTMENTS

Pub. L. 109–364, div. A, title X, § 1071(f)(1), Oct. 17, 2006, 120 Stat. 2402, as amended by Pub. L. 110–181, div. A, title X, § 1063(c)(10), Jan. 28, 2008, 122 Stat. 323, provided that: ''In executing to section 2554 of title 10, United States Code, the amendments made by section 8126(c)(2) of Public Law 109–148 [adding subsec. (i) to this section] (119 Stat. 2729) and section 1058(c) of Public Law 109–163 [adding subsec. (i) to this section] (119 Stat. 3443), such amendments shall be executed so as to appear only once in the law as amended.''

SUPPORT FOR SCOUT JAMBOREES

Pub. L. 109–148, div. A, title VIII, § 8126(c)(1), Dec. 30, 2005, 119 Stat. 2729, which set forth congressional findings in support of youth organization events, such as the Boy Scouts of America's National Scout Jamboree, was repealed by Pub. L. 109–364, div. A, title X, § 1071(f)(3), Oct. 17, 2006, 120 Stat. 2402.

§ 2555. Transportation services: international Girl Scout events

(a) The Secretary of Defense is authorized, under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for (1) those Girl Scouts and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States, (2) United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and (3) the equipment and property of such Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations.

(b) Before furnishing any transportation under subsection (a), the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished under subsection (a).

(c) Amounts paid to the United States to reimburse it for the actual costs of transportation furnished under subsection (a) shall be credited to the current applicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.

(Added Pub. L. 95–492, § 1, Oct. 20, 1978, 92 Stat. 1642, § 2545; renumbered § 2555, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title IX, § 931(a), Dec. 28, 2001, 115 Stat. 1200.)

CODIFICATION

Another section 2555 was renumbered section 2565 of this title.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''Air Mobility Command'' for ''Military Airlift Command''.

2000—Pub. L. 106–398 renumbered section 2545 of this title as this section.

§ 2556. Shelter for homeless; incidental services

(a)(1) The Secretary of a military department may make military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter. The Secretary may, incidental to the furnishing of such shelter, provide services as described in subsection (b). Shelter and incidental services provided under this section may be provided without reimbursement.

(2) The Secretary concerned shall carry out this section in cooperation with appropriate State and local governmental entities and charitable organizations. The Secretary shall, to the maximum extent practicable, use the services and personnel of such entities and organizations in determining to whom and the circumstances under which shelter is furnished under this section.

(b) Services that may be provided incident to the furnishing of shelter under this section are the following:

(1) Utilities.

(2) Bedding.

(3) Security.

(4) Transportation.

(5) Renovation of facilities.

(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this section.

(7) Property liability insurance.

(c) Shelter and incidental services may only be provided under this section to the extent that the Secretary concerned determines will not interfere with military preparedness or ongoing military functions.

(d) The Secretary concerned may provide bedding for support of shelters for the homeless that are operated by entities other than the Department of Defense. Bedding may be provided under this subsection without reimbursement, but may only be provided to the extent that the Secretary determines that the provision of such bedding will not interfere with military requirements.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 98–94, title III, §305(a)(1), Sept. 24, 1983, 97 Stat. 628, §2546; amended Pub. L. 99–167, title VIII, §825, Dec. 3, 1985, 99 Stat. 992; renumbered §2556, Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2546 of this title as this section.

1985—Subsecs. (d), (e). Pub. L. 99–167 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Pub. L. 98–94, title III, §305(b), Sept. 24, 1983, 97 Stat. 629, provided that: ''Section 2546 [now 2556] of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

§ 2557. Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance

(a)(1) The Secretary of Defense may make available for humanitarian relief purposes any nonlethal excess supplies of the Department of Defense. In addition, the Secretary may make nonlethal excess supplies of the Department available to support domestic emergency assistance activities.

(2) The Secretary of Defense may make excess clothing, shoes, sleeping bags, and related nonlethal excess supplies available to the Secretary of Veterans Affairs for distribution to homeless veterans and programs assisting homeless veterans. The transfer of nonlethal excess supplies to the Secretary of Veterans Affairs under this paragraph shall be without reimbursement.

(b)(1) Excess supplies made available for humanitarian relief purposes under this section shall be transferred to the Secretary of State, who shall be responsible for the distribution of such supplies.

(2) Excess supplies made available under this section to support domestic emergency assistance activities shall be transferred to the Secretary of Homeland Security. The Secretary of Defense may provide assistance in the distribution of such supplies at the request of the Secretary of Homeland Security.

(c) This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the intelligence committees under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.).

(d) In this section:

(1) The term ''nonlethal excess supplies'' means property, other than real property, of the Department of Defense—

(A) that is excess property, as defined in regulations of the Department of Defense; and

(B) that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death.

(2) The term ''intelligence committees'' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(Added Pub. L. 99–145, title XIV, §1454(a), Nov. 8, 1985, 99 Stat. 761, §2547; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, §1322(a)(10), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–88, title VI, §602(c)(3), Aug. 14, 1991, 105 Stat. 444; renumbered §2557, Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title III, §361(a), (b)(1), Dec. 28, 2001, 115 Stat. 1064, 1065; Pub. L. 111–383, div. A, title X, §1074(a), (b)(1), Jan. 7, 2011, 124 Stat. 4368; Pub. L. 113–291, div. A, title X, §1071(c)(3), Dec. 19, 2014, 128 Stat. 3508.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (c), is act July 26, 1947, ch. 343, 61 Stat. 495. Title V of the Act is classified generally to subchapter III (§3091 et seq.) of chapter 44 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–291 substituted ''(50 U.S.C. 3091 et seq.)'' for ''(50 U.S.C. 413 et seq.)''.

2011—Pub. L. 111–383, §1074(b)(1), substituted ''Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance'' for ''Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief'' in section catchline.

Subsec. (a)(1). Pub. L. 111–383, §1074(a)(1), inserted at end ''In addition, the Secretary may make nonlethal excess supplies of the Department available to support domestic emergency assistance activities.''

Subsec. (b). Pub. L. 111–383, §1074(a)(2), designated existing provisions as par. (1) and added par. (2).

2001—Pub. L. 107–107, §361(b)(1), inserted ''availability for homeless veteran initiatives and'' before ''humanitarian relief'' in section catchline.

Subsec. (a). Pub. L. 107–107, §361(a), designated existing provisions as par. (1) and added par. (2).

2000—Pub. L. 106–398 renumbered section 2547 of this title as this section.

1991—Subsec. (c). Pub. L. 102–88 struck out par. (1) which read as follows: ''a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or'', struck out par. (2) designation, and substituted ''title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.)'' for ''section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413)''.

1990—Subsecs. (d), (e). Pub. L. 101–510 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

''(1) The Secretary of State shall submit an annual report on the disposition of all excess supplies transferred by the Secretary of Defense to the Secretary of State under this section during the preceding year.

''(2) Such reports shall be submitted to the Committees on Armed Services and on Foreign Relations of the

Senate and the Committees on Armed Services and on Foreign Affairs of the House of Representatives.

''(3) Such reports shall be submitted not later than June 1 of each year.''

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

§ 2558. National military associations: assistance at national conventions

(a) AUTHORITY TO PROVIDE SERVICES.—The Secretary of a military department may provide services described in subsection (c) in connection with an annual conference or convention of a national military association.

(b) CONDITIONS FOR PROVIDING SERVICES.—Services may be provided under this section only if—

(1) the provision of the services in any case is approved in advance by the Secretary concerned;

(2) the services can be provided in conjunction with training in appropriate military skills; and

(3) the services can be provided within existing funds otherwise available to the Secretary concerned.

(c) COVERED SERVICES.—Services that may be provided under this section are—

(1) limited air and ground transportation;

(2) communications;

(3) medical assistance;

(4) administrative support; and

(5) security support.

(d) NATIONAL MILITARY ASSOCIATIONS.—The Secretary of Defense shall designate those organizations which are national military associations for purposes of this section.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 101–189, div. A, title III, § 329(a)(1), Nov. 29, 1989, 103 Stat. 1417, § 2548; renumbered § 2558, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2548 of this title as this section.

EFFECTIVE DATE

Pub. L. 101–189, div. A, title III, § 329(b), Nov. 29, 1989, 103 Stat. 1417, provided that: ''Section 2548 [now 2558] of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 29, 1989].''

§ 2559. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services

(a) REIMBURSEMENT REQUIRED.—Except as provided in subsection (b), whenever the Secretary of Defense provides medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents, the Secretary shall require that the United States be reimbursed for the costs of providing such care. Payments received as reimbursement for the provision of such care shall be credited to the appropriations against which charges were made for the provision of such care.

(b) WAIVER WHEN RECIPROCAL SERVICES PROVIDED UNITED STATES MILITARY PERSONNEL.—Notwithstanding subsection (a), the Secretary of Defense may provide inpatient medical care in the United States without cost to military personnel and their dependents from a foreign country if comparable care is made available to a comparable number of United States military personnel and their dependents in that foreign country.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(f)(1), Nov. 5, 1990, 104 Stat. 1707, § 2549; renumbered § 2559, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9020, Nov. 21, 1989, 103 Stat. 1133, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(f)(3).

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2549 of this title as this section.

§ 2560. Aircraft and vehicles: limitation on leasing to non-Federal agencies

The Secretary of Defense (or Secretary of a military department) may not lease to a non-Federal agency in the United States any aircraft or vehicle owned or operated by the Department of Defense if suitable aircraft or vehicles are commercially available in the private sector. However, nothing in the preceding sentence shall affect authorized and established procedures for the sale of surplus aircraft or vehicles.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(g)(1), Nov. 5, 1990, 104 Stat. 1707, § 2550; renumbered § 2560, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9025, Nov. 21, 1989, 103 Stat. 1134, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(g)(4).

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2550 of this title as this section.

§ 2561. Humanitarian assistance

(a) AUTHORIZED ASSISTANCE.—(1) To the extent provided in defense authorization Acts, funds authorized to be appropriated to the Department of Defense for a fiscal year for humanitarian assistance shall be used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide.

(2) The Secretary of Defense may use the authority provided by paragraph (1) to transport supplies intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to

the environment, but only if other sources to provide such transportation are not readily available. The Secretary may require reimbursement for costs incurred by the Department of Defense to transport supplies under this paragraph.

(b) AVAILABILITY OF FUNDS.—To the extent provided in appropriation Acts, funds appropriated for humanitarian assistance for the purposes of this section shall remain available until expended.

(c) STATUS REPORTS.—(1) The Secretary of Defense shall submit to the congressional committees specified in subsection (f) an annual report on the provision of humanitarian assistance pursuant to this section for the prior fiscal year. The report shall be submitted each year at the time of the budget submission by the President for the next fiscal year.

(2) Each report required by paragraph (1) shall cover all provisions of law that authorize appropriations for humanitarian assistance to be available from the Department of Defense for the purposes of this section.

(3) Each report under this subsection shall set forth the following information regarding activities during the previous fiscal year:

(A) The total amount of funds obligated for humanitarian relief under this section.

(B) The number of scheduled and completed transportation missions for purposes of providing humanitarian assistance under this section.

(C) A description of any transfer of excess nonlethal supplies of the Department of Defense made available for humanitarian relief purposes under section 2557 of this title. The description shall include the date of the transfer, the entity to whom the transfer is made, and the quantity of items transferred.

(d) REPORT REGARDING RELIEF FOR UNAUTHORIZED COUNTRIES.—In any case in which the Secretary of Defense provides for the transportation of humanitarian relief to a country to which the transportation of humanitarian relief has not been specifically authorized by law, the Secretary shall notify the congressional committees specified in subsection (f) and the Committees on Appropriations of the Senate and House of Representatives of the Secretary's intention to provide such transportation. The notification shall be submitted not less than 15 days before the commencement of such transportation.

(e) DEFINITION.—In this section, the term ''defense authorization Act'' means an Act that authorizes appropriations for one or more fiscal years for military activities of the Department of Defense, including authorizations of appropriations for the activities described in paragraph (7) of section 114(a) of this title.

(f) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsections (c)(1) and (d) are the following:

(1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(2) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

(Added Pub. L. 102–484, div. A, title III, §304(c)(1), Oct. 23, 1992, 106 Stat. 2361, §2551; amended Pub. L. 104–106, div. A, title XIII, §1312, Feb. 10, 1996, 110 Stat. 474; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; renumbered §2561 and amended Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1), (c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 108–136, div. A, title III, §312(d), Nov. 24, 2003, 117 Stat. 1430; Pub. L. 112–239, div. A, title X, §1076(f)(31), Jan. 2, 2013, 126 Stat. 1953.)

AMENDMENTS

2013—Subsec. (f)(2). Pub. L. 112–239 substituted ''Committee on Foreign Affairs'' for ''Committee on International Relations''.

2003—Subsec. (a). Pub. L. 108–136 designated existing provisions as par. (1) and added par. (2).

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], renumbered section 2551 of this title as this section.

Subsec. (c)(3)(C). Pub. L. 106–398, §1 [[div. A], title X, §1033(c)(1)], substituted ''section 2557'' for ''section 2547''.

1999—Subsec. (f)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106, §1312(1), (2), redesignated subsec. (d) as (b) and struck out former subsec. (b) which read as follows: ''AUTHORITY TO TRANSFER FUNDS.—To the extent provided in defense authorization Acts for a fiscal year, the Secretary of Defense may transfer to the Secretary of State funds appropriated for the purposes of this section to provide for—

''(1) the payment of administrative costs incurred in providing the transportation described in subsection (a); and

''(2) the purchase or other acquisition of transportation assets for the distribution of humanitarian relief supplies in the country of destination.''

Subsec. (c). Pub. L. 104–106, §1312(1), (3), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(c) TRANSPORTATION OF HUMANITARIAN RELIEF.—(1) Transportation of humanitarian relief provided with funds appropriated for the purposes of this section shall be provided under the direction of the Secretary of State.

''(2) Such transportation shall be provided by the most economical commercial or military means available, unless the Secretary of State determines that it is in the national interest of the United States to provide such transportation other than by the most economical means available. The means used to provide such transportation may include the use of aircraft and personnel of the reserve components of the Armed Forces.

''(3) Nothing in this subsection shall be construed as waiving the requirements of section 2631 of this title and sections 901(b) and 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) and 1241f).''

Subsec. (d). Pub. L. 104–106, §1312(4), redesignated subsec. (f) as (d) and substituted ''the congressional committees specified in subsection (f) and the Committees on Appropriations of the Senate and House of Representatives of the'' for ''the Committees on Appropriations and on Armed Services of the Senate and House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives of the''. Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 104–106, §1312(3), (5), redesignated subsec. (g) as (e) and struck out former subsec. (e) which required status reports and specified time for submission, coverage, and contents.

Subsec. (f). Pub. L. 104–106, §1312(6), added subsec. (f). Former subsec. (f) redesignated (d).

Subsec. (g). Pub. L. 104–106, §1312(5), redesignated subsec. (g) as (e).

NOTIFICATIONS REGARDING HUMANITARIAN RELIEF

Notification provided to appropriate congressional committees with respect to assistance under this sec-

tion to include detailed description of items for which transportation is provided that are excess nonlethal supplies of Department of Defense, including quantity, acquisition value, and value at time of transportation of such items, see section 1504(c) of Pub. L. 103–160, set out in a Humanitarian and Civic Assistance note under section 401 of this title.

LAWS COVERED BY INITIAL REPORTS

Pub. L. 102–484, div. A, title III, §304(d), Oct. 28, 1992, 106 Stat. 2362, provided that for purposes of subsec. (e) of this section, section 304 of Pub. L. 102–190 (105 Stat. 1333) and the humanitarian relief laws referred to in section 304(f)(4) of Pub. L. 102–190 (as in effect on the day before Oct. 23, 1992) were to be considered as provisions of law that authorized appropriations for humanitarian assistance to be available for the purposes of this section.

§ 2562. Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs

(a) LIMITATION.—Excess construction or fire equipment from the stocks of the Department of Defense may be transferred to any foreign country or international organization pursuant to part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2301 et seq.) or section 21 of the Arms Export Control Act (22 U.S.C. 2761) only if—

(1) no department or agency of the Federal Government (other than the Department of Defense), no State, and no other person or entity eligible to receive excess or surplus property under subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 submits to the Defense Reutilization and Marketing Service a request for such equipment during the period for which the Defense Reutilization and Marketing Service accepts such a request; or

(2) the President determines that the transfer is necessary in order to respond to an emergency for which the equipment is especially suited.

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to limit the authority to transfer construction or fire equipment under section 2557 of this title.

(c) DEFINITION.—In this section, the term ''construction or fire equipment'' includes tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators, pumpers, fuel and water tankers, crash trucks, utility vans, rescue trucks, ambulances, hook and ladder units, compressors, and miscellaneous fire fighting equipment.

(Added Pub. L. 102–484, div. D, title XLIII, §4304(a), Oct. 23, 1992, 106 Stat. 2699, §2552; renumbered §2562 and amended Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1), (c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–217, §3(b)(8), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 107–314, div. A, title X, §1062(e)(1), Dec. 2, 2002, 116 Stat. 2651; Pub. L. 111–350, §5(b)(41), Jan. 4, 2011, 124 Stat. 3846.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Part II of the Act is classified generally to subchapter II (§2301 et seq.) of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–350 substituted ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)''.

2002—Subsec. (a)(1). Pub. L. 107–217, §3(b)(8)(A), as amended by Pub. L. 107–314, inserted ''subtitle I of title 40 and title III of'' before ''the Federal'' the second place it appeared.

Pub. L. 107–217, §3(b)(8)(B), substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 472 et seq.)''.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], renumbered section 2552 of this title as this section.

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title X, §1033(c)(2)], substituted ''section 2557'' for ''section 2547''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title X, §1062(e), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(e)(1) is effective as if included in Pub. L. 107–217 as originally enacted.

§ 2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 4543 of this title.

(b) DESIGNATION OF PARTICIPATING INDUSTRIAL FACILITIES.—The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) CONDITIONS FOR SALES.—(1) A sale of articles or services may be made under this section only if—

(A) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(B) the purchaser agrees to hold harmless and indemnify the United States, except as provided in paragraph (3), from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the Department of Defense.

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(3) Paragraph (1)(B) does not apply in any case of willful misconduct or gross negligence or in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to provide the articles or services.

(d) METHODS OF SALE.—(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the articles or services sold.

(e) DEPOSIT OF PROCEEDS.—Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(g) DEFINITIONS.—In this section:

(1) The term ''advance incremental funding'', with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the manufacture of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(2) The term ''not available'', with respect to an article or service proposed to be sold under this section, means that the article or service is unavailable from a commercial source in the required quantity and quality or within the time required.

(3) The term ''variable costs'', with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103–337, div. A, title III, §339(a)(1), Oct. 5, 1994, 108 Stat. 2718, §2553; amended Pub. L. 106–65, div. A, title III, §331(a)(2), (b), Oct. 5, 1999, 113 Stat. 566, 567; renumbered §2563, Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title III, §343(a), Dec. 28, 2001, 115 Stat. 1061.)

AMENDMENTS

2001—Subsec. (c)(1)(B). Pub. L. 107–107, §343(a)(1), substituted ''as provided in paragraph (3)'' for ''in any case of willful misconduct or gross negligence''.

Subsec. (c)(3). Pub. L. 107–107, §343(a)(2), added par. (3).

2000—Pub. L. 106–398 renumbered section 2553 of this title as this section.

1999—Subsec. (c). Pub. L. 106–65, §331(a)(2), designated existing provisions as par. (1), redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), and added par. (2).

Subsec. (g)(2), (3). Pub. L. 106–65, §331(b), added par. (2) and redesignated former par. (2) as (3).

EFFECTIVE DATE

Pub. L. 103–337, div. A, title III, §339(b), Oct. 5, 1994, 108 Stat. 2720, provided that: ''Section 2553 [now 2563] of title 10, United States Code, as added by subsection (a), shall take effect on April 1, 1995.''

§ 2564. Provision of support for certain sporting events

(a) SECURITY AND SAFETY ASSISTANCE.—At the request of a Federal, State, or local government agency responsible for providing law enforcement services, security services, or safety services, the Secretary of Defense may authorize the commander of a military installation or other facility of the Department of Defense or the commander of a specified or unified combatant command to provide assistance for the World Cup Soccer Games, the Goodwill Games, the Olympics, and any other civilian sporting event in support of essential security and safety at such event, but only if the Attorney General certifies that such assistance is necessary to meet essential security and safety needs.

(b) OTHER ASSISTANCE.—The Secretary of Defense may authorize a commander referred to in subsection (a) to provide assistance for a sporting event referred to in that subsection in support of other needs relating to such event, but only—

(1) to the extent that such needs cannot reasonably be met by a source other than the Department;

(2) to the extent that the provision of such assistance does not adversely affect the military preparedness of the armed forces; and

(3) if the organization requesting such assistance agrees to reimburse the Department for amounts expended by the Department in providing the assistance in accordance with the provisions of section 377 of this title and other applicable provisions of law.

(c) INAPPLICABILITY TO CERTAIN EVENTS.—Subsections (a) and (b) do not apply to the following sporting events:

(1) Sporting events for which funds have been appropriated before September 23, 1996.

(2) The Special Olympics.

(3) The Paralympics.

(4) A sporting event sanctioned by the United States Olympic Committee through the Paralympic Military Program.

(5) Any national or international paralympic sporting event (other than a sporting event described in paragraphs (1) through (4))—

(A) that—

(i) is held in the United States or any of its territories or commonwealths;

(ii) is governed by the International Paralympic Committee; and

(iii) is sanctioned by the United States Olympic Committee;

(B) for which participation exceeds 100 amateur athletes; and

(C) in which at least 10 percent of the athletes participating in the sporting event are members or former members of the armed forces who are participating in the sporting event based upon an injury or wound incurred in the line of duty in the armed force and veterans who are participating in the sporting event based upon a service-connected disability.

(d) TERMS AND CONDITIONS.—The Secretary of Defense may require such terms and conditions in connection with the provision of assistance under this section as the Secretary considers necessary and appropriate to protect the interests of the United States.

(e) REPORT ON ASSISTANCE.—Not later than January 30 of each year following a year in which the Secretary of Defense provides assistance under this section, the Secretary shall submit to Congress a report on the assistance provided. The report shall set forth—

(1) a description of the assistance provided;

(2) the amount expended by the Department in providing the assistance;

(3) if the assistance was provided under subsection (a), the certification of the Attorney General with respect to the assistance under that subsection; and

(4) if the assistance was provided under subsection (b)—

(A) an explanation why the assistance could not reasonably be met by a source other than the Department; and

(B) the amount the Department was reimbursed under that subsection.

(f) RELATIONSHIP TO OTHER LAWS.—Assistance provided under this section shall be subject to the provisions of sections 375 and 376 of this title.

(g) FUNDING FOR SUPPORT OF CERTAIN EVENTS.—(1) Amounts for the provision of support for a sporting event described in paragraph (4) or (5) of subsection (c) may be derived from the Support for International Sporting Competitions, Defense account established by section 5802 of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104–208; 10 U.S.C. 2564 note), notwithstanding any limitation under that section relating to the availability of funds in such account for the provision of support for international sporting competitions.

(2) The total amount expended for any fiscal year to provide support for sporting events described in subsection (c)(5) may not exceed $1,000,000.

(Added Pub. L. 104–201, div. A, title III, § 367(a), Sept. 23, 1996, 110 Stat. 2496, § 2554; amended Pub. L. 105–85, div. A, title X, § 1073(a)(56), (c)(2)(A), Nov. 18, 1997, 111 Stat. 1903, 1904; renumbered § 2564, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 110–181, div. A, title III, § 372(a), Jan. 28, 2008, 122 Stat. 81.)

AMENDMENTS

2008—Subsec. (c)(4), (5). Pub. L. 110–181, § 372(a)(1), added pars. (4) and (5).

Subsec. (g). Pub. L. 110–181, § 372(a)(2), added subsec. (g).

2000—Pub. L. 106–398 renumbered section 2554 of this title as this section.

1997—Pub. L. 105–85, § 1073(c)(2)(A), made technical amendment to directory language of Pub. L. 104–201, § 367(a), which enacted this section.

Subsec. (c)(1). Pub. L. 105–85, § 1073(a)(56), substituted ''September 23, 1996'' for ''the date of the enactment of this Act''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title X, § 1073(c), Nov. 18, 1997, 111 Stat. 1904, provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

SUPPORT FOR INTERNATIONAL SPORTING COMPETITIONS, DEFENSE, ACCOUNT

Pub. L. 104–208, div. A, title V, § 5802, Sept. 30, 1996, 110 Stat. 3009–522, as amended by Pub. L. 110–181, div. A, title III, § 372(b), Jan. 28, 2008, 122 Stat. 82, provided that: ''There is hereby established on the books of the Treasury an account, 'Support for International Sporting Competitions, Defense' (hereinafter referred to in this section as the 'Account') to be available until expended for logistical and security support for international sporting competitions and for support of sporting competitions authorized under section 2564(c)(4) and (5), of title 10, United States Code, (other than pay and non-travel-related allowances of members of the Armed Forces of the United States, except for members of the reserve components thereof called or ordered to active duty in connection with providing such support): *Provided*, That there shall be credited to the Account: (a) unobligated balances of the funds appropriated in Public Laws 103–335 [108 Stat. 2605] and 104–61 [109 Stat. 642] under the headings 'Summer Olympics'; (b) any reimbursements received by the Department of Defense in connection with support to the 1993 World University Games; the 1994 World Cup Games; and the 1996 Games of the XXVI Olympiad held in Atlanta, Georgia; (c) any reimbursements received by the Department of Defense after the date of enactment of this Act [Sept. 30, 1996] for logistical and security support provided to international sporting competitions; and (d) amounts specifically appropriated to the Account, all to remain available until expended: *Provided further*, That none of the funds made available to the

Account may be obligated until 15 days after the congressional defense committees have been notified in writing by the Secretary of Defense as to the purpose for which these funds will be obligated.''

§ 2564a. Provision of assistance for adaptive sports programs for members of the armed forces

(a) PROGRAM AUTHORIZED.—(1) The Secretary of Defense may establish a military adaptive sports program to support the provision of adaptive sports programming for members of the armed forces who are eligible to participate in adaptive sports because of an injury or wound incurred in the line of duty in the armed forces.

(2) In establishing the military adaptive sports program, the Secretary of Defense shall—

(A) consult with the Secretary of Veterans Affairs; and

(B) avoid duplicating programs conducted by the Secretary of Veterans Affairs under section 521A of title 38.

(b) PROVISION OF ASSISTANCE; PURPOSE.—(1) Under such criteria as the Secretary of Defense may establish under the military adaptive sports program, the Secretary may award grants to, or enter into contracts and cooperative agreements with, entities for the purpose of planning, developing, managing, and implementing adaptive sports programming for members described in subsection (a).

(2) The Secretary of Defense shall use competitive procedures to award any grant or to enter into any contract or cooperative agreement under this subsection.

(c) USE OF ASSISTANCE.—Assistance provided under the military adaptive sports program shall be used—

(1) for the purposes specified in subsection (b); and

(2) for such related activities and expenses as the Secretary of Defense may authorize.

(Added Pub. L. 112–81, div. A, title V, § 589(a), Dec. 31, 2011, 125 Stat. 1437.)

§ 2565. Nuclear test monitoring equipment: furnishing to foreign governments

(a) AUTHORITY TO TRANSFER TITLE TO OR OTHERWISE PROVIDE NUCLEAR TEST MONITORING EQUIPMENT.—Subject to subsection (b), the Secretary of Defense may—

(1) transfer title or otherwise provide to a foreign government (A) equipment for the monitoring of nuclear test explosions, and (B) associated equipment;

(2) as part of any such conveyance or provision of equipment, install such equipment on foreign territory or in international waters; and

(3) inspect, test, maintain, repair, or replace any such equipment.

(b) AGREEMENT REQUIRED.—Nuclear test explosion monitoring equipment may be provided to a foreign government under subsection (a) only pursuant to the terms of an agreement between the United States and the foreign government receiving the equipment in which the recipient foreign government agrees—

(1) to provide the United States with timely access to the data produced, collected, or generated by the equipment; and

(2) to permit the Secretary of Defense to take such measures as the Secretary considers necessary to inspect, test, maintain, repair, or replace that equipment, including access for purposes of such measures.

(c) REPORT.—Promptly after entering into any agreement under subsection (b), the Secretary of Defense shall submit to Congress a report on the agreement. The report shall identify the country with which the agreement was made, the anticipated costs to the United States to be incurred under the agreement, and the national interest of the United States that is furthered by the agreement.

(d) LIMITATION ON DELEGATION.—The Secretary of Defense may delegate the authority of the Secretary to carry out this section only to the Secretary of the Air Force. Such a delegation may be redelegated.

(Added Pub. L. 106–398, § 1 [[div. A], title XII, § 1203(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–324, § 2555; renumbered § 2565 and amended Pub. L. 107–107, div. A, title XII, § 1201(a)(1), (b), Dec. 28, 2001, 115 Stat. 1245.)

AMENDMENTS

2001—Pub. L. 107–107, § 1201(a)(1), renumbered section 2555 of this title as this section.

Subsec. (a). Pub. L. 107–107, § 1201(b)(1)(A), substituted ''Transfer Title to or Otherwise'' for ''Convey or'' in heading.

Subsec. (a)(1). Pub. L. 107–107, § 1201(b)(1)(B), substituted ''transfer title'' for ''convey'' and struck out ''and'' after semicolon at end.

Subsec. (a)(3). Pub. L. 107–107, § 1201(b)(1)(C), (D), added par. (3).

Subsec. (b). Pub. L. 107–107, § 1201(b)(2)(A), substituted ''provided to a foreign government'' for ''conveyed or otherwise provided'' in introductory provisions.

Subsec. (b)(1). Pub. L. 107–107, § 1201(b)(2)(B), inserted ''and'' after semicolon at end.

Subsec. (b)(2). Pub. L. 107–107, § 1201(b)(2)(C), substituted a period for ''; and'' at end.

Subsec. (b)(3). Pub. L. 107–107, § 1201(b)(2)(D), struck out par. (3) which read as follows: ''to return such equipment to the United States (or allow the United States to recover such equipment) if either party determines that the agreement no longer serves its interests.''

§ 2566. Space and services: provision to military welfare societies

(a) AUTHORITY TO PROVIDE SPACE AND SERVICES.—The Secretary of a military department may provide, without charge, space and services under the jurisdiction of that Secretary to a military welfare society.

(b) DEFINITIONS.—In this section:

(1) The term ''military welfare society'' means the following:

(A) The Army Emergency Relief Society.

(B) The Navy-Marine Corps Relief Society.

(C) The Air Force Aid Society, Inc.

(2) The term ''services'' includes lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone and other information technology services (including installation of lines and equipment, connectivity, and other associated services), and security systems (including installation and other associated expenses).

(Added Pub. L. 107–314, div. A, title X, § 1066(a), Dec. 2, 2002, 116 Stat. 2656.)

[§ 2567. Repealed. Pub. L. 110–181, div. A, title X, § 1068(b)(1), Jan. 28, 2008, 122 Stat. 326]

Section, added Pub. L. 109–364, div. A, title X, § 1076(b)(1), Oct. 17, 2006, 120 Stat. 2405, related to supplies, services, and equipment: provision in major public emergencies.

§ 2568. Retention of combat uniforms by members deployed in support of contingency operations

The Secretary of a military department may authorize a member of the armed forces under the jurisdiction of the Secretary who has been deployed in support of a contingency operation for at least 30 days to retain, after that member is no longer so deployed, the combat uniform issued to that member as organizational clothing and individual equipment.

(Added Pub. L. 110–181, div. A, title III, § 376(a), Jan. 28, 2008, 122 Stat. 84.)

CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

Sec.
2571. Interchange of supplies and services.
2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange.
[2573. Repealed.]
2574. Armament: sale of individual pieces.
2575. Disposition of unclaimed property.
2576. Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies.
2576a. Excess personal property: sale or donation for law enforcement activities.
2576b. Excess personal property: sale or donation to assist firefighting agencies.
2577. Disposal of recyclable materials.
2578. Vessels: transfer between departments.
2579. War booty: procedures for handling and retaining battlefield objects.
2580. Donation of excess chapel property.
2581. Excess UH–1 Huey and AH–1 Cobra helicopters: requirements for transfer to foreign countries.
[2582. Repealed.]
2583. Military animals: transfer and adoption.

AMENDMENTS

2011—Pub. L. 112–81, div. A, title X, § 1061(19)(B), Dec. 31, 2011, 125 Stat. 1584, struck out item 2582 ''Military equipment identified on United States munitions list: annual report of public sales''.

Pub. L. 111–383, div. A, title X, § 1072(c)(2), Jan. 7, 2011, 124 Stat. 4366, substituted ''Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies'' for ''Surplus military equipment: sale to State and local law enforcement and firefighting agencies'' in item 2576.

2006—Pub. L. 109–364, div. A, title III, § 352(b), div. B, title XXVIII, § 2825(d)(1)(B), Oct. 17, 2006, 120 Stat. 2161, 2477, substituted ''supplies'' for ''property'' in item 2571 and ''animals'' for ''working dogs'' in item 2583.

Pub. L. 109–163, div. A, title V, § 599(d), Jan. 6, 2006, 119 Stat. 3284, struck out ''at end of useful working life'' after ''adoption'' in item 2583.

2001—Pub. L. 107–107, div. A, title X, § 1048(a)(25), Dec. 28, 2001, 115 Stat. 1224, redesignated item 2582 relating to military working dogs as item 2583.

2000—Pub. L. 106–446, § 1(b), Nov. 6, 2000, 114 Stat. 1933, added item 2582 relating to military working dogs.

Pub. L. 106–398, § 1 [[div. A], title III, § 381(b), title XVII, § 1706(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–85, 1654A–367, added items 2576b and 2582 relating to military equipment identified on United States munitions list.

1998—Pub. L. 105–261, div. A, title XII, § 1234(b), Oct. 17, 1998, 112 Stat. 2157, added item 2581.

1997—Pub. L. 105–85, div. A, title X, § 1063(b), Nov. 18, 1997, 111 Stat. 1893, added item 2580.

1996—Pub. L. 104–201, div. A, title X, § 1033(a)(2), Sept. 23, 1996, 110 Stat. 2640, added item 2576a.

1993—Pub. L. 103–160, div. A, title XI, § 1171(a)(2), Nov. 30, 1993, 107 Stat. 1766, added item 2579.

1988—Pub. L. 100–456, div. A, title III, § 324(b), Sept. 29, 1988, 102 Stat. 1954, substituted ''Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange'' for ''Condemned or obsolete material: loan or gift to certain organizations'' in item 2572.

Pub. L. 100–370, § 1(k)(2), July 19, 1988, 102 Stat. 848, added item 2578.

1982—Pub. L. 97–214, § 6(b)(2), July 12, 1982, 96 Stat. 172, added item 2577.

1980—Pub. L. 96–513, title V, § 511(83)(B), Dec. 12, 1980, 94 Stat. 2927, struck out item 2573 ''Excess property: transfers to Canal Zone Government''.

1968—Pub. L. 90–500, title IV, § 403(b), Sept. 20, 1968, 82 Stat. 851, added item 2576.

1958—Pub. L. 85–861, § 1(50), Sept. 2, 1958, 72 Stat. 1459, substituted ''property'' for ''supplies'' in item 2571.

IDENTIFICATION AND REPLACEMENT OF OBSOLETE ELECTRONIC PARTS

Pub. L. 113–66, div. A, title VIII, § 803, Dec. 26, 2013, 127 Stat. 805, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall implement a process for the expedited identification and replacement of obsolete electronic parts included in acquisition programs of the Department of Defense.

''(b) ISSUES TO BE ADDRESSED.—At a minimum, the expedited process established pursuant to subsection (a) shall—

''(1) include a mechanism pursuant to which contractors, or other sources of supply, may provide to appropriate Department of Defense officials information that identifies—

''(A) obsolete electronic parts that are included in the specifications for an acquisition program of the Department of Defense; and

''(B) suitable replacements for such electronic parts;

''(2) specify timelines for the expedited review and validation of information submitted by contractors, or other sources of supply, pursuant to paragraph (1);

''(3) specify procedures and timelines for the rapid submission and approval of engineering change proposals needed to accomplish the substitution of replacement parts that have been validated pursuant to paragraph (2);

''(4) provide for any incentives for contractor participation in the expedited process that the Secretary may determine to be appropriate; and

''(5) provide that, in addition to the responsibilities under section 2337 of title 10, United States Code, a product support manager for a major weapon system shall work to identify obsolete electronic parts that are included in the specifications for an aquisition program of the Department of Defense and approve suitable replacements for such electronic parts.

''(c) ADDITIONAL MATTERS.—For the purposes of this section—

''(1) an electronic part is obsolete if—

''(A) the part is no longer in production; and

''(B) the original manufacturer of the part and its authorized dealers do not have sufficient parts in stock to meet the requirements of such an acquisition program; and

''(2) an electronic part is a suitable replacement for an obsolete electronic part if—

''(A) the part could be substituted for an obsolete part without incurring unreasonable expense and without degrading system performance; and

''(B) the part is or will be available in sufficient quantity to meet the requirements of such an acquisition program.''

§ 2571. Interchange of supplies and services

(a) If either of the Secretaries concerned requests it and the other approves, supplies may be transferred, without compensation, from one armed force to another.

(b) If its head approves, a department or organization within the Department of Defense may, upon request, perform work and services for, or furnish supplies to, any other of those departments or organizations, without reimbursement or transfer of funds.

(c) If military or civilian personnel of a department or organization within the Department of Defense are assigned or detailed to another of those departments or organizations, and if the head of the department or organization to which they are transferred approves, their pay and allowances and the cost of transporting their dependents and household goods may be charged to an appropriation that is otherwise available for those purposes to that department or organization.

(d) No agency or official of the executive branch of the Federal Government may establish any regulation, program, or policy or take any other action which precludes, directly or indirectly, the Secretaries concerned from exercising the authority provided in this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Pub. L. 85–861, §1(49), Sept. 2, 1958, 72 Stat. 1459; Pub. L. 99–167, title VIII, §821, Dec. 3, 1985, 99 Stat. 991; Pub. L. 109–364, div. B, title XXVIII, §2825(c)(1), (d)(1)(A), Oct. 17, 2006, 120 Stat. 2477.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2571(a) [now (b)].	5:171t (less clause (2)).	Oct. 29, 1949, ch. 787, §621, 63 Stat. 1020.
2571(b) [now (c)].	5:171t (clause 2)).	

In subsection (a), the words ''After June 30, 1949'' are omitted as executed. The words ''may perform work and services for, or furnish supplies to'' are substituted for the words ''services, work, supplies, materials, and equipment may be rendered or supplied'', since the word ''supplies'', as defined in section 101(26) of this title, includes ''equipment'' and ''material''. The words ''upon request'' are inserted for clarity.

In subsection (b), the words ''on a reimbursable or other basis as authorized by law'', ''to duty'', and ''naval'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2571(a)	14:640.	June 15, 1955, ch. 142, 69 Stat. 134.

In subsection (a), the first 12 words are substituted for 14:640 (last 20 words). The words ''may be transferred'' are substituted for the words ''The interchange . . . is authorized'', since the words ''without compensation'' authorize a simple one-way transfer, while the word ''interchange'' normally means a mutual exchange. The words ''military stores . . . and equipment of every character'' are omitted as covered by the word ''supplies'' as defined in section 101(26) of this title. The words ''armed force'' are substituted for the enumeration of the armed forces.

AMENDMENTS

2006—Pub. L. 109–364, §2825(d)(1)(A), substituted ''supplies'' for ''property'' in section catchline.

Subsec. (a). Pub. L. 109–364, §2825(c)(1), struck out ''and real estate'' after ''supplies''.

1985—Subsec. (d). Pub. L. 99–167 added subsec. (d).

1958—Pub. L. 85–861, §1(49)(A), substituted ''property'' for ''supplies'' in section catchline.

Subsecs. (a) to (c). Pub. L. 85–861, §1(49)(B), (C), added subsec. (a) and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

DISTRIBUTION TO INDIAN HEALTH SERVICE FACILITIES AND CERTAIN HEALTH CENTERS; PROPERTY DISPOSAL PRIORITY

Pub. L. 110–329, div. C, title VIII, §8075, Sept. 30, 2008, 122 Stat. 3638, provided that:

''(a) During the current fiscal year and hereafter, the Secretary of Defense, in coordination with the Secretary of Health and Human Services, may carry out a program to distribute surplus dental and medical equipment of the Department of Defense, at no cost to the Department of Defense, to Indian Health Service facilities and to federally-qualified health centers (within the meaning of section 1905(*l*)(2)(B) of the Social Security Act (42 U.S.C. 1396d(*l*)(2)(B))).

''(b) In carrying out this provision, the Secretary of Defense shall give the Indian Health Service a property disposal priority equal to the priority given to the Department of Defense and its twelve special screening programs in distribution of surplus dental and medical supplies and equipment.''

§ 2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange

(a) The Secretary concerned may lend or give items described in subsection (c) that are not needed by the military department concerned (or by the Coast Guard, in the case of the Secretary of Homeland Security), to any of the following:

(1) A municipal corporation, county, or other political subdivision of a State.

(2) A servicemen's monument association.

(3) A museum, historical society, or historical institution of a State or a foreign nation or a nonprofit military aviation heritage foundation or association incorporated in a State.

(4) An incorporated museum or memorial that is operated and maintained for educational purposes only and the charter of which denies it the right to operate for profit.

(5) A post of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association.

(6) A local or national unit of any war veterans' association of a foreign nation which is recognized by the national government of that nation (or by the government of one of the principal political subdivisions of that nation).

(7) A post of the Sons of Veterans Reserve.

(b)(1) Subject to paragraph (2), the Secretary concerned may exchange items described in subsection (c) that are not needed by the armed

forces for any of the following items or services if such items or services directly benefit the historical collection of the armed forces:

(A) Similar items held by any individual, organization, institution, agency, or nation.

(B) Conservation supplies, equipment, facilities, or systems.

(C) Search, salvage, or transportation services.

(D) Restoration, conservation, or preservation services.

(E) Educational programs.

(2) The Secretary concerned may not make an exchange under paragraph (1) unless the monetary value of property transferred, or services provided, to the United States under the exchange is not less than the value of the property transferred by the United States. The Secretary concerned may waive the limitation in the preceding sentence in the case of an exchange of property for property in any case in which the Secretary determines that the item to be received by the United States in the exchange will significantly enhance the historical collection of the property administered by the Secretary.

(c) This section applies to the following types of property held by a military department or the Coast Guard: books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat materiel.

(d)(1) A loan or gift made under this section shall be subject to regulations prescribed by the Secretary concerned and to regulations under section 121 of title 40. The Secretary concerned shall ensure that an item authorized to be donated under this section is demilitarized in the interest of public safety, as determined necessary by the Secretary or the Secretary's delegee.

(2)(A) Except as provided in subparagraph (B), the United States may not incur any expense in connection with a loan or gift under subsection (a), including any expense associated with demilitarizing an item under paragraph (1), for which the recipient of the item shall be responsible.

(B) The Secretary concerned may, without cost to the recipient, demilitarize, prepare, and transport in the continental United States for donation to a recognized war veterans' association an item authorized to be donated under this section if the Secretary determines the demilitarization, preparation, and transportation can be accomplished as a training mission without additional budgetary requirements for the unit involved.

(e)(1) Except as provided in paragraph (3), and notwithstanding this section or any other provision of law, the President may not transfer a veterans memorial object to a foreign country or an entity controlled by a foreign government, or otherwise transfer or convey such an object to any person or entity for purposes of the ultimate transfer or conveyance of the object to a foreign country or entity controlled by a foreign government.

(2) In this subsection:

(A) The term ''entity controlled by a foreign government'' has the meaning given that term in section 2536(c)(1) of this title.

(B) The term ''veterans memorial object'' means any object, including a physical structure or portion thereof, that—

(i) is located at a cemetery of the National Cemetery System, war memorial, or military installation in the United States;

(ii) is dedicated to, or otherwise memorializes, the death in combat or combat-related duties of members of the armed forces; and

(iii) was brought to the United States from abroad as a memorial of combat abroad.

(3) The prohibition imposed by paragraph (1) does not apply to a transfer of a veterans memorial object if—

(A) the transfer of that veterans memorial object is specifically authorized by law; or

(B) the transfer is made after September 30, 2017.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Pub. L. 96–513, title V, § 511(82), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 100–456, div. A, title III, § 324(a), Sept. 29, 1988, 102 Stat. 1954; Pub. L. 101–510, div. A, title III, § 325, Nov. 5, 1990, 104 Stat. 1531; Pub. L. 102–484, div. A, title III, § 373, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103–337, div. A, title X, § 1071, Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title III, § 372, Feb. 10, 1996, 110 Stat. 280; Pub. L. 107–107, div. A, title X, § 1043(d), Dec. 28, 2001, 115 Stat. 1219; Pub. L. 107–217, § 3(b)(9), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title III, § 369, Dec. 2, 2002, 116 Stat. 2524; Pub. L. 110–417, [div. A], title III, § 352, Oct. 14, 2008, 122 Stat. 4425; Pub. L. 112–239, div. A, title III, § 355(a), Jan. 2, 2013, 126 Stat. 1702.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2572	5:150p.	May 22, 1896, ch. 231; restated May 26, 1928, ch. 785; restated Feb. 28, 1933, ch. 137; restated June 19, 1940, ch. 398; July 31, 1947, ch. 421; restated Feb. 27, 1948, ch. 76, § 1, 62 Stat. 37; Oct. 31, 1951, ch. 654, § 2(2), 65 Stat. 706.

The word ''may'' is substituted for the words ''are each authorized, in their discretion''. The reference to posts of the Grand Army of the Republic is omitted, since that organization disbanded in 1950. The words ''under regulations to be prescribed by him'' are substituted for the words ''subject to rules and regulations covering the same in each department''. The words ''without expense to the United States'' are substituted for the words ''and the Government shall be at no expense in connection with any such loan or gift''. The words ''local unit'' are inserted in clause (7) to conform to clauses (5), (6), and (8).

AMENDMENTS

2013—Subsec. (e). Pub. L. 112–239 added subsec. (e).

2008—Subsec. (d)(1). Pub. L. 110–417, § 352(1), inserted at end ''The Secretary concerned shall ensure that an item authorized to be donated under this section is demilitarized in the interest of public safety, as determined necessary by the Secretary or the Secretary's delegee.''

Subsec. (d)(2)(A). Pub. L. 110–417, § 352(2), inserted '', including any expense associated with demilitarizing an item under paragraph (1), for which the recipient of the item shall be responsible'' before period at end.

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

Subsec. (a)(3). Pub. L. 107–314 inserted before period at end ''or a nonprofit military aviation heritage foundation or association incorporated in a State''.

Subsec. (d)(1). Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

2001—Subsec. (a)(1). Pub. L. 107–107, § 1043(d)(1), inserted '', county, or other political subdivision of a State'' before period at end.

Subsec. (a)(2). Pub. L. 107–107, § 1043(d)(2), substituted ''servicemen's monument'' for ''soldiers' monument''.

Subsec. (a)(4). Pub. L. 107–107, § 1043(d)(3), inserted ''or memorial'' after ''An incorporated museum''.

1996—Subsec. (b)(1). Pub. L. 104–106 substituted ''not needed by the armed forces for any of the following items or services if such items or services directly benefit the historical collection of the armed forces:'' for ''not needed by the armed forces for similar items held by any individual, organization, institution, agency, or nation or for search, salvage, transportation, and restoration services which directly benefit the historical collection of the armed forces.'' and added subpars. (A) to (E).

1994—Subsec. (b)(1). Pub. L. 103–337 inserted ''transportation,'' after ''salvage,''.

1992—Subsec. (d)(2). Pub. L. 102–484 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the'' for ''The'', and added subpar. (B).

1990—Subsec. (b)(1). Pub. L. 101–510, § 325(1), inserted before period at end ''or for search, salvage, and restoration services which directly benefit the historical collection of the armed forces''.

Subsec. (b)(2). Pub. L. 101–510, § 325(2), inserted '', or services provided,'' after ''monetary value of property transferred'' in first sentence and ''in the case of an exchange of property for property'' after ''preceding sentence'' in second sentence.

1988—Pub. L. 100–456 substituted ''Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange'' for ''Condemned or obsolete material: loan or gift to certain organizations'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of a military department, or the Secretary of Transportation, under regulations to be prescribed by him, may lend or give, without expense to the United States, books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat material that are not needed by that department to—

''(1) a municipal corporation;

''(2) a soldiers' monument association;

''(3) a State museum;

''(4) an incorporated museum, operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;

''(5) a post of the Veterans of Foreign Wars of the United States;

''(6) a post of the American Legion;

''(7) a local unit of any other recognized war veterans' association; or

''(8) a post of the Sons of Veterans Reserve.''

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of a military department or the Secretary of Transportation'' for ''section 486 of title 40, the Secretary of a military department or the Secretary of the Treasury''.

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.

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.

ACQUISITION OF HISTORICAL ARTIFACTS THROUGH EXCHANGE OF OBSOLETE OR SURPLUS PROPERTY

Pub. L. 108–136, div. A, title X, § 1052, Nov. 24, 2003, 117 Stat. 1614, provided that, during fiscal years 2004 and 2005, the Secretary of a military department could use the authority provided by this section to acquire an historical artifact that directly benefitted the historical collection of the Armed Forces in exchange for any obsolete or surplus property held by that military department, without regard to whether the property was described in subsec. (c) of this section.

MORATORIUM ON THE RETURN OF VETERANS MEMORIAL OBJECTS TO FOREIGN NATIONS WITHOUT SPECIFIC AUTHORIZATION IN LAW

Pub. L. 106–65, div. A, title X, § 1051, Oct. 5, 1999, 113 Stat. 763, as amended by Pub. L. 109–163, div. A, title X, § 1061, Jan. 6, 2006, 119 Stat. 3445, established a moratorium period during which the President was prohibited from transferring a veterans memorial object to a foreign country or an entity controlled by a foreign government unless specifically authorized by law, prior to repeal by Pub. L. 112–239, div. A, title III, § 355(b), Jan. 2, 2013, 126 Stat. 1702.

[§ 2573. Repealed. Pub. L. 96–513, title V, § 511(83)(A), Dec. 12, 1980, 94 Stat. 2927]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 143, related to transfer of excess property to the Canal Zone Government.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 2574. Armament: sale of individual pieces

A piece of armament that can be advantageously replaced, and that is not needed for its historical value, may be sold by the military department having jurisdiction over it for not less than cost, if the Secretary concerned considers that there are adequate sentimental reasons for the sale.

(Aug. 10, 1956, ch. 1041, 70A Stat. 144.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2574	10:1262b. 34:545. 50:69.	Mar. 2, 1905, ch. 1307 (last 55 words of last par. under ''Ordnance Department''), 33 Stat. 841.

The words ''by the military department having jurisdiction over it'' are inserted for clarity. The words ''if the Secretary concerned considers'' are substituted for the words ''when there exist * * * in the judgment of the Secretary''.

§ 2575. Disposition of unclaimed property

(a) The Secretary of any military department, and the Secretary of Homeland Security, under such regulations as they may respectively prescribe, may each by public or private sale or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into the custody or control of the Secretary's depart-

ment, other than property subject to section 4712, 6522, or 9712 of this title or subject to subsection (c). However, property may not be disposed of until diligent effort has been made to find the owner (or the heirs, next of kin, or legal representative of the owner). The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days. If the owner (or the heirs, next of kin, or legal representative of the owner) is determined but not found, the property may not be disposed of until the expiration of 45 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at his last known address. When diligent effort to determine the owner (or heirs, next of kin, or legal representative of the owner) is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of more than $300, the Secretary may not dispose of the property until 45 days after the date it is received at a storage point designated by the Secretary.

(b)(1) In the case of lost, abandoned, or unclaimed personal property found on a military installation, the proceeds from the sale of the property under this section shall be credited to the operation and maintenance account of that installation and used—

(A) to reimburse the installation for any costs incurred by the installation to collect, transport, store, protect, or sell the property; and

(B) to the extent that the amount of the proceeds exceeds the amount necessary for reimbursing all such costs, to support morale, welfare, and recreation activities under the jurisdiction of the armed forces that are conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces at such installation.

(2) The net proceeds from the sale of other property under this section shall be covered into the Treasury as miscellaneous receipts.

(c) No property covered by this section may be delivered to the Armed Forces Retirement Home by the Secretary of a military department, except papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes.

(d)(1) The owner (or heirs, next of kin, or legal representative of the owner) of personal property the proceeds of which are credited to a military installation under subsection (b)(1) may file a claim with the Secretary of Defense for the amount equal to the proceeds (less costs referred to in subparagraph (A) of such subsection). Amounts to pay the claim shall be drawn from the morale, welfare, and recreation account for the installation that received the proceeds.

(2) The owner (or heirs, next of kin, or legal representative of the owner) may file a claim with the Secretary of Defense for proceeds covered into the Treasury under subsection (b)(2).

(3) Unless a claim is filed under this subsection within 5 years after the date of the disposal of the property to which the claim relates, the claim may not be considered by a court, the Secretary of Defense (in the case of a claim filed under paragraph (1)), or the Secretary of Defense (in the case of a claim filed under paragraph (2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Pub. L. 89–143, Aug. 28, 1965, 79 Stat. 581; Pub. L. 96–513, title V, § 511(84), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 101–189, div. A, title III, § 322(a), (b), title XVI, § 1622(f)(1), Nov. 29, 1989, 103 Stat. 1413, 1605; Pub. L. 101–510, div. A, title XV, § 1533(a)(2), Nov. 5, 1990, 104 Stat. 1733; Pub. L. 104–106, div. A, title III, § 374(a), Feb. 10, 1996, 110 Stat. 281; Pub. L. 104–316, title II, § 202(d), Oct. 19, 1996, 110 Stat. 3842; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2575(a)	5:150e. 5:150h. [Uncodified: Apr. 14, 1949, ch. 50, § 6, 63 Stat. 45].	Apr. 14, 1949, ch. 50, 63 Stat. 45.
2575(b)	5:150f. 5:150g.	
2575(c)	5:150i.	

In subsection (a), the words ''under such regulations as they may respectively prescribe'' are substituted for 5:150h. The words ''other than property * * * subject to subsection (c)'' of this section are substituted for the words ''subject to the provisions of section 150i of this title''. The words ''other than property subject to sections 4712, 4713, 6522, 9712, or 9713 of this title'' are inserted, since uncodified section 6 of the source statute provided that the source statute for this revised section did not repeal or amend the source statutes for those revised sections. The words ''that comes into'' are substituted for the words ''which is now or may hereafter come into''. The word ''possession'' is omitted as covered by the words ''custody or control''. The words ''However, property may not be disposed of until'' are inserted for clarity. The word ''find'' is substituted for the words ''determine and locate''. The words ''until the expiration'' are substituted for the words ''prior to the expiration of a period''. The words ''determined but not found'' are substituted for the words ''have or has been determined''. The words ''or owners'', ''or representatives'', and ''sold or otherwise'' are omitted as surplusage.

In subsection (b), the words ''may file * * * within five years'' are substituted for the words ''may be filed * * * at any time prior to the expiration of five years'', in 5:150g, since the claim must be disallowed if not filed within that period. The words ''If not filed within that period'' are substituted for the words ''If claims are not filed prior to the expiration of five years from the date of the disposal of the property'', in 5:150g. The words ''such a claim may not be considered'' are substituted for the words ''they shall be barred from being acted on'', in 5:150g.

In subsection (c), the words ''No property * * * may * * * except'' are substituted for the words ''Any property * * * shall be limited''. The last sentence is substituted for 5:150i (proviso).

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1996—Subsec. (b). Pub. L. 104–106, § 374(a)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The net proceeds from the sale of property under this section shall be covered into the Treasury as miscellaneous receipts. The owner (or the heirs, next of kin, or legal representative of the owner) may file a claim for those proceeds with the General Accounting Office within five years after the date of the disposal of

the property. If not filed within that period, such a claim may not be considered by a court or the General Accounting Office.''

Subsec. (d). Pub. L. 104–106, § 374(a)(2), added subsec. (d).

Subsec. (d)(2), (3). Pub. L. 104–316 substituted ''Secretary of Defense'' for ''Comptroller General of the United States''.

1990—Subsec. (a). Pub. L. 101–510, § 1533(a)(2)(A), substituted ''section 4712, 6522, or 9712'' for ''section 4712, 4713, 6522, 9712, or 9713''.

Subsec. (c). Pub. L. 101–510, § 1533(a)(2)(B), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home'' and ''Secretary of a military department'' for ''Secretary of the Army or the Secretary of the Air Force'' and struck out at end ''The Home shall deliver the property to the owner (or the heirs, next of kin, or legal representative of the owner), if that person establishes a right to it within two years after its receipt by the Home.''

1989—Subsec. (a). Pub. L. 101–189, § 1622(f)(1), struck out ''of this section'' after ''subsection (c)''.

Pub. L. 101–189, § 322(b)(2)(A), substituted ''the Secretary's department'' for ''his department''.

Pub. L. 101–189, § 322(b)(1), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative'' in two places.

Pub. L. 101–189, § 322(a)(3), inserted after second sentence: ''The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days.''

Pub. L. 101–189, § 322(a)(1), substituted ''45 days'' for ''120 days''.

Pub. L. 101–189, § 322(b)(2)(B), substituted ''owner (or heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representatives'' after ''When diligent effort to determine the''.

Pub. L. 101–189, § 322(a)(2), substituted ''more than $300, the Secretary may not dispose of the property until 45 days'' for ''$25 or more the property may not be disposed of until three months''.

Subsec. (b). Pub. L. 101–189, § 322(b)(1), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative''.

Subsec. (c). Pub. L. 101–189, § 322(b)(1), (3), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative'', and ''that person'' for ''he'' before ''establishes a right''.

1980—Subsec. (a). Pub. L. 96–513, § 511(84)(A), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

Subsec. (c). Pub. L. 96–513, § 511(84)(B), substituted ''United States Soldiers' and Airmen's Home'' for ''Soldiers' Home''.

1965—Subsec. (a). Pub. L. 89–143 provided for notice by certified mail and substituted provision for disposition of property without delay when diligent effort to determine ownership is unsuccessful and after three months following receipt at designated storage point of property with fair market value of $25 or more, for former provision for disposition of property one year after receipt at designated storage point.

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title III, § 322(c), Nov. 29, 1989, 103 Stat. 1414, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to property that comes into the custody or control of the Secretary of a military department or the Secretary of Transportation after the date of the enactment of this Act [Nov. 29, 1989].''

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.

§ 2576. Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies

(a) The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement, firefighting, homeland security, and emergency management agencies, at fair market value, pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, personal protective equipment, and other appropriate equipment which (1) are suitable for use by such agencies in carrying out law enforcement, firefighting, homeland security, and emergency management activities, and (2) have been determined to be surplus property under subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(b) Such surplus military equipment shall not be sold under the provisions of this section to a State or local law enforcement, firefighting, homeland security, or emergency management agency unless request therefor is made by such agency, in such form and manner as the Secretary of Defense shall prescribe, and such request, with respect to the type and amount of equipment so requested, is certified as being necessary and suitable for the operation of such agency by the Governor (or such State official as he may designate) of the State in which such agency is located. Equipment sold to a State or local law enforcement, firefighting, homeland security, or emergency management agency under this section shall not exceed, in quantity, the amount requested and certified for such agency and shall be for the exclusive use of such agency. Such equipment may not be sold, or otherwise transferred, by such agency to any individual or public or private organization or agency.

(Added Pub. L. 90–500, title IV, § 403(a) Sept. 20, 1968, 82 Stat. 851; amended Pub. L. 96–513, title V, § 511(85), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 107–217, § 3(b)(10), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 111–350, § 5(b)(42), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 111–383, div. A, title X, § 1072(a)–(c)(1), Jan. 7, 2011, 124 Stat. 4366.)

AMENDMENTS

2011—Pub. L. 111–383, § 1072(c)(1), substituted ''Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies'' for ''Surplus military

equipment: sale to State and local law enforcement and firefighting agencies'' in section catchline.

Subsec. (a). Pub. L. 111–383, §1072(a)(1), (b), substituted ''State and local law enforcement, firefighting, homeland security, and emergency management agencies'' for ''State and local law enforcement and firefighting agencies'', ''personal protective equipment, and other appropriate equipment'' for ''and protective body armor'', and ''in carrying out law enforcement, firefighting, homeland security, and emergency management activities'' for ''in carrying out law enforcement and firefighting activities''.

Pub. L. 111–350 substituted ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)''.

Subsec. (b). Pub. L. 111–383, §1072(a)(2), substituted ''State or local law enforcement, firefighting, homeland security, or emergency management agency'' for ''State or local law enforcement or firefighting agency'' in two places.

2002—Subsec. (a). Pub. L. 107–217 inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''under'' for ''pursuant to'', and ''(40 U.S.C. 471 et seq.)'' for ''(68 Stat. 377), as amended''.

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.

TRANSFER OF EXCESS AIRCRAFT TO OTHER DEPARTMENTS OF THE FEDERAL GOVERNMENT

Pub. L. 112–239, div. A, title X, §1091, Jan. 2, 2013, 126 Stat. 1971, provided that:

''(a) TRANSFER.—The Secretary of Defense may transfer excess aircraft specified in subsection (b) to the Secretary of Agriculture and the Secretary of Homeland Security for use by the Forest Service and the United States Coast Guard. The transfer of any excess aircraft under this subsection shall be without reimbursement.

''(b) AIRCRAFT.—The aircraft transferred under subsection (a) are aircraft of the Department of Defense that are—

''(1) identified by the Forest Service or the United States Coast Guard as a suitable platform to carry out their respective missions;

''(2) excess to the needs of the Department of Defense, as determined by the Secretary of Defense;

''(3) in the case of aircraft to be transferred to the Secretary of Agriculture, acceptable for use by the Forest Service, as determined by the Secretary of Agriculture; and

''(4) in the case of aircraft to be transferred to the Secretary of Homeland Security, acceptable for use by the United States Coast Guard, as determined by the Secretary of Homeland Security.

''(c) LIMITATION ON NUMBER.—

''(1) LIMITATION.—Except as provided in paragraph (2), the number of aircraft that may be transferred under subsection (a) to each of the Secretary of Agriculture and the Secretary of Homeland Security may not exceed seven aircraft for each agency.

''(2) TERMINATION OF LIMITATION AFTER OFFICIAL NOTICE OF INTENT TO ACCEPT OR DECLINE SEVEN AIRCRAFT.—The limitation in paragraph (1) on the number of aircraft transferrable under subsection (a) shall cease upon official notice to the Secretary of Defense, from the Secretary of Agriculture, and the Secretary of Homeland Security that the Secretary's respective department will decline or accept seven aircraft.

''(d) ORDER OF TRANSFERS.—

''(1) RIGHTS OF REFUSAL.—In implementing the transfers authorized by subsection (a), the Secretary of Defense shall afford the Secretary of Agriculture the right of first refusal and the Secretary of Homeland Security the second right of refusal in the transfer to each department by the Secretary of Defense of up to seven excess aircraft specified in subsection (b) before the transfer of such excess aircraft is offered to any other department or agency of the Federal Government.

''(2) EXPIRATION OF RIGHT OF FIRST REFUSAL.—The right of first refusal afforded the Secretary of Agriculture by paragraph (1) shall expire upon official notice of the Secretary to the Secretary of Defense under subsection (c)(2).

''(e) CONDITIONS OF CERTAIN TRANSFERS.—Excess aircraft transferred to the Secretary of Agriculture under subsection (a)—

''(1) may be used only for wildfire suppression purposes; and

''(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts or for other purposes approved by the Secretary of Agriculture in writing in advance.

''(f) ADDITIONAL LIMITATION.—Excess aircraft transferred under subsection (a) may not be sold by the Secretary of Agriculture or the Secretary of Homeland Security after transfer.

''(g) COSTS AFTER TRANSFER.—Any costs of operation, maintenance, sustainment, and disposal of excess aircraft transferred under subsection (a) after the date of transfer shall be borne by the Secretary of Agriculture and the Secretary of Homeland Security, as applicable.''

COMMERCIAL SALE OF SMALL ARMS AMMUNITION AND SMALL ARMS AMMUNITION COMPONENTS IN EXCESS OF MILITARY REQUIREMENTS, AND FIRED CARTRIDGE CASES

Pub. L. 111–383, div. A, title III, §346, Jan. 7, 2011, 124 Stat. 4191, as amended by Pub. L. 112–81, div. A, title III, §361, Dec. 31, 2011, 125 Stat. 1377, provided that:

''(a) COMMERCIAL SALE OF SMALL ARMS AMMUNITION, SMALL [ARMS] AMMUNITION COMPONENTS, AND FIRED CARTRIDGE CASES.—Small arms ammunition and small [arms] ammunition components which are in excess of military requirements, and intact fired small arms cartridge cases shall be made available for commercial sale. Such small arms ammunition, small arms ammunition components, and intact fired cartridge cases shall not be demilitarized, destroyed, or disposed of, unless in excess of commercial demands or certified by the Secretary of Defense as unserviceable or unsafe. This provision shall not apply to ammunition, ammunition components, or fired cartridge cases stored or expended outside the continental United States (OCONUS).

''(b) DEADLINE FOR GUIDANCE.—Not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 [Dec. 31, 2011], the Secretary of Defense shall issue guidance to ensure compliance with subsection (a). Not later than 15 days after issuing such guidance, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a letter of compliance providing notice of such guidance.

''(c) PREFERENCE.—No small arms ammunition or small arms ammunition components in excess of military requirements, or fired small arms cartridge cases may be made available for commercial sale under this section before such ammunition and ammunition components are offered for transfer or purchase, as authorized by law, to another Federal department or agency or for sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies pursuant to section 2576 of title 10, United States Code, as amended by this Act.

''(d) SALES CONTROLS.—All small arms ammunition and small arms ammunition components, and fired

small arms cartridge cases made available for commercial sale under this section shall be subject to all explosives safety and trade security controls in effect at the time of sale.

''(e) DEFINITIONS.—In this section:

''(1) SMALL ARMS AMMUNITION.—The term 'small arms ammunition' means ammunition or ordnance for firearms up to and including .50 caliber and for shotguns.

''(2) SMALL ARMS AMMUNITION COMPONENTS.—The term 'small arms ammunition components' means components, parts, accessories, and attachments associated with small arms ammunition.

''(3) FIRED CARTRIDGE CASES.—The term 'fired cartridge cases' means expended small arms cartridge cases (ESACC).''

AUTHORITY TO SELL AIRCRAFT AND AIRCRAFT PARTS FOR USE IN RESPONDING TO OIL SPILLS

Pub. L. 106–181, title VII, §740, Apr. 5, 2000, 114 Stat. 173, as amended by Pub. L. 107–296, title XVII, §1704(e)(6), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107–314, div. A, title X, §§1051, 1062(i), Dec. 2, 2002, 116 Stat. 2648, 2651, provided that:

''(a) AUTHORITY.—

''(1) SALE OF AIRCRAFT AND AIRCRAFT PARTS.—Notwithstanding subchapter II of chapter 5 of title 40, United States Code, and subject to subsections (b) and (c), the Secretary of Defense may sell aircraft and aircraft parts referred to in paragraph (2) to a person or entity that provides oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

''(2) AIRCRAFT AND AIRCRAFT PARTS THAT MAY BE SOLD.—The aircraft and aircraft parts that may be sold under paragraph (1) are aircraft and aircraft parts of the Department of Defense that are determined by the Secretary of Defense to be—

''(A) excess to the needs of the Department; and

''(B) acceptable for commercial sale.

''(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

''(1) shall have as their primary purpose usage for oil spill spotting, observation, and dispersant delivery and may not have any secondary purpose that would interfere with oil spill response efforts under an oil spill response plan; and

''(2) may not be flown outside of or removed from the United States except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for other purposes that are jointly approved by the Secretary of Defense and the Secretary of Homeland Security.

''(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Homeland Security certifies to the Secretary of Defense, in writing, before the sale, that the person or entity is capable of meeting the terms and conditions of a contract to deliver oil spill dispersants by air, and that the overall system to be employed by that person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of being included in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

''(d) REGULATIONS.—

''(1) ISSUANCE.—As soon as practicable after the date of the enactment of this Act [Apr. 5, 2000], the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section.

''(2) CONTENTS.—The regulations shall—

''(A) ensure that the sale of the aircraft and aircraft parts is made at a fair market value, as determined by the Secretary of Defense, and, to the extent practicable, on a competitive basis;

''(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

''(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other operators in accordance with the conditions set forth in subsection (b) or pursuant to subsection (e); and

''(D) ensure, to the maximum extent practicable, that the Secretary of Defense consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

''(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of regulations prescribed under subsection (d).

''(f) REPORT.—Not later than March 31, 2006, the Secretary of Defense shall transmit to the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on National Security and Transportation and Infrastructure of the House of Representatives a report on the Secretary's exercise of authority under this section. The report shall set forth—

''(1) the number and types of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

''(2) the persons or entities to which the aircraft were sold; and

''(3) an accounting of the current use of the aircraft sold.

''(g) STATUTORY CONSTRUCTION.—

''(1) AUTHORITY OF ADMINISTRATOR.—Nothing in this section may be construed as affecting the authority of the Administrator under any other provision of law.

''(2) CERTIFICATION REQUIREMENTS.—Nothing in this section may be construed to waive, with respect to an aircraft sold under the authority of this section, any requirement to obtain a certificate from the Administrator to operate the aircraft for any purpose (other than oil spill spotting, observation, and dispersant delivery) for which such a certificate is required.

''(h) PROCEEDS FROM SALE.—The net proceeds of any amounts received by the Secretary of Defense from the sale of aircraft and aircraft parts under this section shall be covered into the general fund of the Treasury as miscellaneous receipts.

''(i) EXPIRATION OF AUTHORITY.—The authority to sell aircraft and aircraft parts under this section expires on September 30, 2006.''

[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.]

SALE OF AIRCRAFT FOR WILDFIRE SUPPRESSION PURPOSES

Pub. L. 104–307, Oct. 14, 1996, 110 Stat. 3811, as amended by Pub. L. 106–65, div. A, title X, §1067(23), Oct. 5, 1999, 113 Stat. 775; Pub. L. 106–398, §1 [[div. A], title III, §388], Oct. 30, 2000, 114 Stat. 1654, 1654A–89; Pub. L. 107–314, div. A, title X, §1062(k), Dec. 2, 2002, 116 Stat.

2651; Pub. L. 112–239, div. A, title X, § 1090, Jan. 2, 2013, 126 Stat. 1971, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Wildfire Suppression Aircraft Transfer Act of 1996'.

''SEC. 2. AUTHORITY TO SELL AIRCRAFT AND PARTS FOR WILDFIRE SUPPRESSION PURPOSES.

''(a) AUTHORITY.—(1) Notwithstanding subchapter II of chapter 5 of title 40, United States Code, and subject to subsections (b) and (c), the Secretary of Defense may, during a period specified in subsection (g), sell the aircraft and aircraft parts referred to in paragraph (2) to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire.

''(2) Paragraph (1) applies to aircraft and aircraft parts of the Department of Defense that are determined by the Secretary to be—

''(A) excess to the needs of the Department; and

''(B) acceptable for commercial sale.

''(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

''(1) may be used only for the provision of airtanker services for wildfire suppression purposes; and

''(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts or for other purposes jointly approved by the Secretary of Defense and the Secretary of Agriculture in writing in advance.

''(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Agriculture certifies to the Secretary of Defense, in writing, before the sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

''(d) REGULATIONS.—(1) As soon as practicable after October 14, 1996, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. The regulations prescribed under this paragraph shall be effective until the end of the period specified in subsection (a)(1).

''(2) The regulations shall—

''(A) ensure that the sale of the aircraft and aircraft parts is made at fair market value (as determined by the Secretary of Defense) and, to the extent practicable, on a competitive basis;

''(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

''(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other end users in accordance with the conditions set forth in subsections (b) and (e); and

''(D) ensure, to the maximum extent practicable, that the Secretary consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

''(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of the regulations prescribed under subsection (d).

''(f) REPORT.—Not later than March 31, 2005, the Secretary of Defense 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 Secretary's exercise of authority under this section. The report shall set forth—

''(1) the number and type of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

''(2) the persons or entities to which the aircraft were sold; and

''(3) an accounting of the current use of the aircraft sold.

''(g) PERIODS FOR EXERCISE OF AUTHORITY.—The periods specified in this subsection are the following:

''(1) The period beginning on October 1, 1996, and ending on September 30, 2005.

''(2) The period beginning on October 1, 2012, and ending on September 30, 2017.

''(h) CONSTRUCTION.—Nothing in this section may be construed as affecting the authority of the Administrator of the Federal Aviation Administration under any other provision of law.''

§ 2576a. Excess personal property: sale or donation for law enforcement activities

(a) TRANSFER AUTHORIZED.—(1) Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is—

(A) suitable for use by the agencies in law enforcement activities, including counterdrug, counterterrorism, and border security activities; and

(B) excess to the needs of the Department of Defense.

(2) The Secretary shall carry out this section in consultation with the Attorney General, the Director of National Drug Control Policy, and the Secretary of Homeland Security, as appropriate.

(b) CONDITIONS FOR TRANSFER.—The Secretary of Defense may transfer personal property under this section only if—

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment;

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient; and[1]

(5) the recipient, on an annual basis, and with the authorization of the relevant local governing body or authority, certifies that it has adopted publicly available protocols for the appropriate use of controlled property, the supervision of such use, and the evaluation of the effectiveness of such use, including auditing and accountability policies; and

(6) after the completion of the assessment required by section 1051(e) of the National Defense Authorization Act for Fiscal Year 2016, the recipient, on an annual basis, certifies that it provides annual training to relevant personnel on the maintenance, sustainment, and appropriate use of controlled property.

(c) CONSIDERATION.—Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient agency.

[1] So in original.

(d) PREFERENCE FOR CERTAIN TRANSFERS.—In considering applications for the transfer of personal property under this section, the Secretary shall give a preference to those applications indicating that the transferred property will be used in the counterdrug, counterterrorism, or border security activities of the recipient agency.

(e) PUBLICLY ACCESSIBLE WEBSITE.—(1) The Secretary shall create and maintain a publicly available Internet website that provides information on the controlled property transferred under this section and the recipients of such property.

(2) The contents of the Internet website required under paragraph (1) shall include all publicly accessible unclassified information pertaining to the request, transfer, denial, and repossession of controlled property under this section, including—

(A) a current inventory of all controlled property transferred to Federal and State agencies under this section, listed by the name of the recipient and the year of the transfer;

(B) all pending requests for transfers of controlled property under this section, including the information submitted by the Federal and State agencies requesting such transfers; and

(C) all reports required to be submitted to the Secretary under this section by Federal and State agencies that receive controlled property under this section.

(f) CONTROLLED PROPERTY.—In this section, the term ''controlled property'' means any item assigned a demilitarization code of B, C, D, E, G, or Q under Department of Defense Manual 4160.21–M, ''Defense Materiel Disposition Manual'', or any successor document.

(Added Pub. L. 104–201, div. A, title X, §1033(a)(1), Sept. 23, 1996, 110 Stat. 2639; amended Pub. L. 114–92, div. A, title X, §§1051(a)–(c), 1052, Nov. 25, 2015, 129 Stat. 979–981.)

REFERENCES IN TEXT

Section 1051(e) of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (b)(6), is section 1051(e) of Pub. L. 114–92, div. A, title X, Nov. 25, 2015, 129 Stat. 980, which is not classified to the Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title XII, §1208, Nov. 29, 1989, 103 Stat. 1566, as amended, which was set out as a note under section 372 of this title, prior to repeal by Pub. L. 104–201, §1033(b)(1).

AMENDMENTS

2015—Subsec. (a)(1)(A). Pub. L. 114–92, §1052(1)(A), substituted ''counterdrug, counterterrorism, and border security activities'' for ''counter-drug and counter-terrorism activities''.

Subsec. (a)(2). Pub. L. 114–92, §1052(1)(B), substituted ''the Attorney General, the Director of National Drug Control Policy, and the Secretary of Homeland Security, as appropriate'' for ''the Attorney General and the Director of National Drug Control Policy''.

Subsec. (b)(5), (6). Pub. L. 114–92, §1051(b), added pars. (5) and (6).

Subsec. (d). Pub. L. 114–92, §1052(2), substituted ''counterdrug, counterterrorism, or border security activities'' for ''counter-drug or counter-terrorism activities''.

Subsec. (e). Pub. L. 114–92, §1051(a), added subsec. (e).

Subsec. (f). Pub. L. 114–92, §1051(c), added subsec. (f).

§ 2576b. Excess personal property: sale or donation to assist firefighting agencies

(a) TRANSFER AUTHORIZED.—Subject to subsection (b), the Secretary of Defense shall transfer to a firefighting agency in a State any personal property of the Department of Defense that the Secretary determines is—

(1) excess to the needs of the Department of Defense; and

(2) suitable for use in providing fire and emergency medical services, including personal protective equipment and equipment for communication and monitoring.

(b) CONDITIONS FOR TRANSFER.—The Secretary of Defense shall transfer personal property under this section only if—

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient firefighting agency accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment; and

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient.

(c) CONSIDERATION.—Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient firefighting agency.

(d) DEFINITIONS.—In this section:

(1) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(2) FIREFIGHTING AGENCY.—The term ''firefighting agency'' means any volunteer, paid, or combined departments that provide fire and emergency medical services.

(Added Pub. L. 106–398, §1 [[div. A], title XVII, §1706(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–367; amended Pub. L. 108–375, div. A, title III, §354, Oct. 28, 2004, 118 Stat. 1861.)

AMENDMENTS

2004—Subsecs. (a), (b). Pub. L. 108–375 substituted ''shall'' for ''may'' in introductory provisions.

IDENTIFICATION OF DEFENSE TECHNOLOGIES SUITABLE FOR USE, OR CONVERSION FOR USE, IN PROVIDING FIRE AND EMERGENCY MEDICAL SERVICES

Pub. L. 106–398, §1 [[div. A], title XVII, §1707], Oct. 30, 2000, 114 Stat. 1654, 1654A–367, provided that:

''(a) APPOINTMENT OF TASK FORCE; PURPOSE.—The Secretary of Defense shall appoint a task force consisting of representatives from the Department of Defense and each of the seven major fire organizations identified in subsection (b) to identify defense technologies and equipment that—

''(1) can be readily put to civilian use by fire service and the emergency response agencies; and

''(2) can be transferred to these agencies using the authority provided by section 2576b of title 10, United States Code, as added by section 1706 of this Act.

''(b) PARTICIPATING MAJOR FIRE ORGANIZATIONS.—Members of the task force shall be appointed from each of the following:

''(1) The International Association of Fire Chiefs.

''(2) The International Association of Fire Fighters.

''(3) The National Volunteer Fire Council.

''(4) The International Association of Arson Investigators.

''(5) The International Society of Fire Service Instructors.

''(6) The National Association of State Fire Marshals.

''(7) The National Fire Protection Association.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for activities of the task force $1,000,000 for fiscal year 2001.''

§ 2577. Disposal of recyclable materials

(a)(1) The Secretary of Defense shall prescribe regulations to provide for the sale of recyclable materials held by a military department or defense agency and for the operation of recycling programs at military installations. Such regulations shall include procedures for the designation by the Secretary of a military department (or by the Secretary of Defense with respect to facilities of a defense agency) of military installations that have established a qualifying recycling program for the purposes of subsection (b)(2).

(2) Any sale of recyclable materials by the Secretary of Defense or Secretary of a military department shall be in accordance with the procedures in sections 541–555 of title 40 for the sale of surplus property.

(b)(1) Proceeds from the sale of recyclable materials at an installation shall be credited to funds available for operations and maintenance at that installation in amounts sufficient to cover the costs of operations, maintenance, and overhead for processing recyclable materials at the installation (including the cost of any equipment purchased for recycling purposes).

(2) If after such funds are credited a balance remains available to a military installation and such installation has a qualifying recycling program (as determined by the Secretary of the military department concerned or the Secretary of Defense), not more than 50 percent of that balance may be used at the installation for projects for pollution abatement, energy conservation, and occupational safety and health activities. A project may not be carried out under the preceding sentence for an amount greater than 50 percent of the amount established by law as the maximum amount for a minor construction project.

(3) The remaining balance available to a military installation may be transferred to the nonappropriated morale and welfare account of the installation to be used for any morale or welfare activity.

(c) If the balance available to a military installation under this section at the end of any fiscal year is in excess of $2,000,000, the amount of that excess shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 97–214, § 6(b)(1), July 12, 1982, 96 Stat. 172; amended Pub. L. 98–525, title XIV, § 1405(37), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 107–217, § 3(b)(11), Aug. 21, 2002, 116 Stat. 1296.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–217 substituted ''sections 541–555 of title 40'' for ''section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)''.

1984—Subsec. (a)(1). Pub. L. 98–525 substituted ''purposes'' for ''puposes''.

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2578. Vessels: transfer between departments

A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department of Homeland Security, and a vessel under the jurisdiction of the Department of Homeland Security may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary of Homeland Security, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.

(Added Pub. L. 100–370, § 1(k)(1), July 19, 1988, 102 Stat. 848; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8012], Dec. 19, 1985, 99 Stat. 1185, 1204.

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

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.

§ 2579. War booty: procedures for handling and retaining battlefield objects

(a) POLICY.—The United States recognizes that battlefield souvenirs have traditionally provided military personnel with a valued memento of service in a national cause. At the same time, it is the policy and tradition of the United States that the desire for souvenirs in a combat theater not blemish the conduct of combat operations or result in the mistreatment of enemy personnel, the dishonoring of the dead, distraction from the conduct of operations, or other unbecoming activities.

(b) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations for the handling of battlefield objects that are consistent with the policies expressed in subsection (a) and the requirements of this section.

(2) When forces of the United States are operating in a theater of operations, enemy material captured or found abandoned shall be turned over to appropriate United States or allied military personnel except as otherwise provided in such regulations. A member of the armed forces (or other person under the authority of the armed forces in a theater of operations) may not (except in accordance with such regulations)

take from a theater of operations as a souvenir an object formerly in the possession of the enemy.

(3) Such regulations shall provide that a member of the armed forces who wishes to retain as a souvenir an object covered by paragraph (2) may so request at the time the object is turned over pursuant to paragraph (2).

(4) Such regulations shall provide for an officer to be designated to review requests under paragraph (3). If the officer determines that the object may be appropriately retained as a war souvenir, the object shall be turned over to the member who requested the right to retain it.

(5) Such regulations shall provide for captured weaponry to be retained as souvenirs, as follows:

(A) The only weapons that may be retained are those in categories to be agreed upon jointly by the Secretary of Defense and the Secretary of the Treasury.

(B) Before a weapon is turned over to a member, the weapon shall be rendered unserviceable.

(C) A charge may be assessed in connection with each weapon in an amount sufficient to cover the full cost of rendering the weapon unserviceable.

(Added Pub. L. 103–160, div. A, title XI, §1171(a)(1), Nov. 30, 1993, 107 Stat. 1765.)

REGULATIONS

Pub. L. 103–160, div. A, title XI, §1171(b), Nov. 30, 1993, 107 Stat. 1766, provided that: ''The initial regulations required by section 2579 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 270 days after the date of enactment of this Act [Nov. 30, 1993]. Such regulations shall specifically address the following, consistent with section 2579 of title 10, United States Code, as added by subsection (a):

''(1) The general procedures for collection and disposition of weapons and other enemy material.

''(2) The criteria and procedures for evaluation and disposition of enemy material for intelligence, testing, or other military purposes.

''(3) The criteria and procedures for determining when retention of enemy material by an individual or a unit in the theater of operations may be appropriate.

''(4) The criteria and procedures for disposition of enemy material to a unit or other Department of Defense entity as a souvenir.

''(5) The criteria and procedures for disposition of enemy material to an individual as an individual souvenir.

''(6) The criteria and procedures for determining when demilitarization or the rendering unserviceable of firearms is appropriate.

''(7) The criteria and procedures necessary to ensure that servicemembers who have obtained battlefield souvenirs in a manner consistent with military customs, traditions, and regulations have a reasonable opportunity to obtain possession of such souvenirs, consistent with the needs of the service.''

§ 2580. Donation of excess chapel property

(a) AUTHORITY TO DONATE.—The Secretary of a military department may donate personal property specified in subsection (b) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is a religious organization in order to assist the organization in restoring or replacing property of the organization that has been damaged or destroyed as a result of an act of arson or terrorism, as determined pursuant to procedures prescribed by the Secretary of Defense.

(b) PROPERTY COVERED.—(1) The property authorized to be donated under subsection (a) is furniture and other personal property that—

(A) is in, or was formerly in, a chapel under the jurisdiction of the Secretary of a military department and closed or being closed; and

(B) is determined by the Secretary to be excess to the requirements of the armed forces.

(2) No real property may be donated under this section.

(c) DONEES NOT TO BE CHARGED.—No charge may be imposed by the Secretary of a military department on a donee of property under this section in connection with the donation. However, the donee shall agree to defray any expense for shipping or other transportation of property donated under this section from the location of the property when donated to any other location.

(Added Pub. L. 105–85, div. A, title X, §1063(a), Nov. 18, 1997, 111 Stat. 1892.)

REFERENCES IN TEXT

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

§ 2581. Excess UH–1 Huey and AH–1 Cobra helicopters: requirements for transfer to foreign countries

(a) REQUIREMENTS.—(1) Before an excess UH–1 Huey helicopter or AH–1 Cobra helicopter is transferred on a grant or sales basis to a foreign country for the purpose of flight operations by that country, the Secretary of Defense shall make all reasonable efforts to ensure that the helicopter receives, to the extent necessary, maintenance and repair equivalent to the depot-level maintenance and repair (as defined in section 2460 of this title) that the helicopter would need were the helicopter to remain in operational use with the armed forces. Any such maintenance and repair work shall be performed at no cost to the Department of Defense.

(2) The Secretary shall make all reasonable efforts to ensure that maintenance and repair work described in paragraph (1) is performed in the United States.

(b) EXCEPTION.—Subsection (a) does not apply with respect to salvage helicopters provided to the foreign country solely as a source for spare parts.

(Added Pub. L. 105–261, div. A, title XII, §1234(a), Oct. 17, 1998, 112 Stat. 2156.)

[§ 2582. Repealed. Pub. L. 112–81, div. A, title X, § 1061(19)(A), Dec. 31, 2011, 125 Stat. 1584]

Section, added Pub. L. 106–398, §1 [[div. A], title III, §381(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–84, related to annual report of public sales of military equipment identified on United States munitions list.

CODIFICATION

Another section 2582 was renumbered section 2583 of this title.

§ 2583. Military animals: transfer and adoption

(a) AVAILABILITY FOR ADOPTION.—The Secretary of the military department concerned

shall make a military animal of such military department available for adoption by a person or entity referred to in subsection (c), unless the animal has been determined to be unsuitable for adoption under subsection (b), under circumstances as follows:

(1) At the end of the animal's useful life.

(2) Before the end of the animal's useful life, if such Secretary, in such Secretary's discretion, determines that unusual or extraordinary circumstances, including circumstances under which the handler of a military working dog is killed in action, dies of wounds received in action, or is medically retired as a result of injuries received in action, justify making the animal available for adoption before that time.

(3) When the animal is otherwise excess to the needs of such military department.

(b) SUITABILITY FOR ADOPTION.—The decision whether a particular military animal is suitable or unsuitable for adoption under this section shall be made by the commander of the last unit to which the animal is assigned before being declared excess. The unit commander shall consider the recommendations of the unit's veterinarian in making the decision regarding the adoptability of the animal.

(c) AUTHORIZED RECIPIENTS.—(1) A military animal shall be made available for adoption under this section, in order of recommended priority—

(A) by former handlers of the animal;

(B) by other persons capable of humanely caring for the animal; and

(C) by law enforcement agencies.

(2) If the Secretary of the military department concerned determines that an adoption is justified under subsection (a)(2) under circumstances under which the handler of a military working dog is wounded in action, the dog shall be made available for adoption only by the handler. If the Secretary of the military department concerned determines that such an adoption is justified under circumstances under which the handler of a military working dog is killed in action or dies of wounds received in action, the military working dog shall be made available for adoption only by a parent, child, spouse, or sibling of the deceased handler.

(d) CONSIDERATION.—The transfer of a military animal under this section may be without charge to the recipient.

(e) LIMITATIONS ON LIABILITY FOR TRANSFERRED ANIMALS.—(1) Notwithstanding any other provision of law, the United States shall not be subject to any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or other economic loss) that results from, or is in any manner predicated upon, the act or omission of a former military animal transferred under this section, including any training provided to the animal while a military animal.

(2) Notwithstanding any other provision of law, the United States shall not be liable for any veterinary expense associated with a military animal transferred under this section for a condition of the military animal before transfer under this section, whether or not such condition is known at the time of transfer under this section.

(f) TRANSFER OF RETIRED MILITARY WORKING DOGS.—(1) If the Secretary of the military department concerned determines that a military working dog should be retired the Secretary shall transfer the dog—

(A) to the 341st Training Squadron; or

(B) to another location within the United States for adoption under this section.

(2) Paragraph (1) shall not apply if at the time of retirement—

(A) the dog is located outside the United States and a United States citizen or service member living abroad adopts the dog; or

(B) the dog is located within the United States and suitable adoption is available where the dog is located.

(g) PREFERENCE IN ADOPTION OF RETIRED MILITARY WORKING DOGS FOR FORMER HANDLERS.—(1) In providing for the adoption under this section of a retired military working dog described in paragraph (1) or (3) of subsection (a), the Secretary of the military department concerned shall accord a preference to the former handler of the dog unless the Secretary determines that adoption of the dog by the former handler would not be in the best interests of the dog.

(2) In the case of a dog covered by paragraph (1) with more than one former handler seeking adoption of the dog at the time of adoption, the Secretary shall provide for the adoption of the dog by such former handler whose adoption of the dog will best serve the interests of the dog and such former handlers. The Secretary shall make any determination required by this paragraph with respect to a dog following consultation with the kennel master of the unit at which the dog was last located before adoption under this section.

(3) Nothing in this subsection shall be construed as altering, revising, or overriding any policy of a military department for the adoption of military working dogs by law enforcement agencies before the end of the dogs' useful lives.

(h) MILITARY ANIMAL DEFINED.—In this section, the term ''military animal'' means the following:

(1) A military working dog.

(2) A horse owned by the Department of Defense.

(Added Pub. L. 106–446, § 1(a), Nov. 6, 2000, 114 Stat. 1932, § 2582; renumbered § 2583, Pub. L. 107–107, div. A, title X, § 1048(a)(25), Dec. 28, 2001, 115 Stat. 1224; amended Pub. L. 109–163, div. A, title V, § 599, Jan. 6, 2006, 119 Stat. 3284; Pub. L. 109–364, div. A, title III, § 352(a), Oct. 17, 2006, 120 Stat. 2160; Pub. L. 110–181, div. A, title X, § 1063(a)(13), Jan. 28, 2008, 122 Stat. 322; Pub. L. 112–81, div. A, title III, § 351, title X, § 1061(20), Dec. 31, 2011, 125 Stat. 1375, 1584; Pub. L. 112–239, div. A, title III, § 371(a), Jan. 2, 2013, 126 Stat. 1706; Pub. L. 113–66, div. A, title X, § 1091(b)(2), Dec. 26, 2013, 127 Stat. 876; Pub. L. 114–92, div. A, title III, § 342, Nov. 25, 2015, 129 Stat. 793.)

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–92, § 342(a), substituted ''shall make'' for ''may make'' in introductory provisions.

Subsec. (c). Pub. L. 114–92, §342(b), amended subsec. (c) generally. Prior to amendment, text read as follows: ''Military animals may be adopted under this section by law enforcement agencies, former handlers of these animals, and other persons capable of humanely caring for these animals. If the Secretary of the military department concerned determines that an adoption is justified under subsection (a)(2) under circumstances under which the handler of a military working dog is wounded in action, the dog may be made available for adoption only by the handler. If the Secretary of the military department concerned determines that such an adoption is justified under circumstances under which the handler of a military working dog is killed in action or dies of wounds received in action, the military working dog shall be made available for adoption only by a parent, child, spouse, or sibling of the deceased handler.''

Subsec. (f). Pub. L. 114–92, §342(d)(1), (2), (4), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Pub. L. 114–92, §342(c), substituted ''shall transfer'' for ''may transfer'' in introductory provisions.

Subsec. (f)(1). Pub. L. 114–92, §342(d)(3)(A), struck out '', and no suitable adoption is available at the military facility where the dog is located,'' after ''should be retired'' in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 114–92, §342(d)(3)(B), inserted ''within the United States'' after ''to another location''.

Subsecs. (g), (h). Pub. L. 114–92, §342(e), added subsec. (g) and redesignated former subsec. (g) as (h).

2013—Subsecs. (f), (g). Pub. L. 112–239, §371(a), as amended by Pub. L. 113–66, §1091(b)(2), added subsec. (f) and redesignated former subsec. (f) as (g).

2011—Subsec. (a)(2). Pub. L. 112–81, §351(1), inserted '', including circumstances under which the handler of a military working dog is killed in action, dies of wounds received in action, or is medically retired as a result of injuries received in action,'' after ''extraordinary circumstances''.

Subsec. (c). Pub. L. 112–81, §351(2), inserted at end ''If the Secretary of the military department concerned determines that an adoption is justified under subsection (a)(2) under circumstances under which the handler of a military working dog is wounded in action, the dog may be made available for adoption only by the handler. If the Secretary of the military department concerned determines that such an adoption is justified under circumstances under which the handler of a military working dog is killed in action or dies of wounds received in action, the military working dog shall be made available for adoption only by a parent, child, spouse, or sibling of the deceased handler.''.

Subsecs. (f), (g). Pub. L. 112–81, §1061(20), redesignated subsec. (g) as (f) and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: ''The Secretary of Defense shall submit to Congress an annual report specifying the number of military animals adopted under this section during the preceding year, the number of these animals currently awaiting adoption, and the number of these animals euthanized during the preceding year. With respect to each euthanized military animal, the report shall contain an explanation of the reasons why the animal was euthanized rather than retained for adoption under this section.''

2008—Subsec. (e). Pub. L. 110–181 substituted ''ANIMALS'' for ''DOGS'' in heading.

2006—Pub. L. 109–364, §352(a)(1), substituted ''animals'' for ''working dogs'' in section catchline.

Pub. L. 109–163, §599(d), struck out ''at end of useful working life'' after ''adoption'' in section catchline.

Subsec. (a). Pub. L. 109–364, §352(a)(2)–(4), substituted ''animal's'' for ''dog's'' in pars. (1) and (2) and ''animal'' for ''dog'' wherever appearing, and struck out ''working'' after ''may make a military'' in introductory provisions and after ''useful'' in pars. (1) and (2).

Pub. L. 109–163, §599(a), (b), substituted ''Secretary of the military department concerned may'' for ''Secretary of Defense may'', ''such military department'' for ''the Department of Defense'', and '', unless the dog has been determined to be unsuitable for adoption under subsection (b), under circumstances as follows:'' and pars. (1) to (3) for ''at the end of the dog's useful working life or when the dog is otherwise excess to the needs of the Department, unless the dog has been determined to be unsuitable for adoption under subsection (b).''

Subsec. (b). Pub. L. 109–364, §352(a)(2), (3), (5), substituted ''the adoptability of the animal'' for ''a dog's adoptability'' and ''animal'' for ''dog'' in two places and struck out ''working'' after ''military''.

Subsec. (c). Pub. L. 109–364, §352(a)(2), (3), substituted ''animals'' for ''dogs'' wherever appearing and struck out ''working'' after ''Military''.

Subsec. (d). Pub. L. 109–364, §352(a)(2), (3), substituted ''animal'' for ''dog'' and struck out ''working'' after ''military''.

2006—Subsec. (e). Pub. L. 109–364, §352(a)(3), substituted ''animal'' for ''dog'' wherever appearing in text.

Pub. L. 109–364, §352(a)(2), struck out ''working'' after ''military'' wherever appearing.

Subsec. (f). Pub. L. 109–364, §352(a)(2), (3), substituted ''animal'' for ''dog'' in two places and ''animals'' for ''dogs'' wherever appearing and struck out ''working'' after ''military'' in two places.

Pub. L. 109–163, §599(c), inserted ''of Defense'' after ''Secretary''.

Subsec. (g). Pub. L. 109–364, §352(a)(6), added subsec. (g).

2001—Pub. L. 107–107 renumbered section 2582 of this title as this section.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title X, §1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(2) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.

CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES

Sec.
2601. General gift funds.
2601a. Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families.
2602. American National Red Cross: cooperation and assistance.
2603. Acceptance of fellowships, scholarships, or grants.
2604. United Seamen's Service: cooperation and assistance.
2605. Acceptance of gifts for defense dependents' schools.
2606. Scouting: cooperation and assistance in foreign areas.
2607. Acceptance of gifts for the Defense Intelligence College.
2608. Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account.
[2609. Repealed.]
2610. Competitions for excellence: acceptance of monetary awards.
2611. Regional centers for security studies: acceptance of gifts and donations.
2612. National Defense University: acceptance of gifts.
2613. Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families.
2614. Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters.
2615. Military museums and military education programs: cooperative agreement authority.

Sec.

AMENDMENTS

2013—Pub. L. 112–239, div. B, title XXVIII, § 2852(b)(2), Jan. 2, 2013, 126 Stat. 2161, added item 2615.

2011—Pub. L. 112–81, div. A, title V, § 576(d)(2), Dec. 31, 2011, 125 Stat. 1429, substituted ''Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families'' for ''Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families'' in item 2613.

Pub. L. 111–383, div. A, title V, § 591(b), Jan. 7, 2011, 124 Stat. 4232, added item 2601a.

2006—Pub. L. 109–364, div. A, title X, § 1071(a)(19)(B), Oct. 17, 2006, 120 Stat. 2399, renumbered item 2613 ''Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters'' as 2614.

Pub. L. 109–163, div. A, title IX, § 903(a)(2), Jan. 6, 2006, 119 Stat. 3399, substituted ''Regional centers for security studies'' for ''Asia-Pacific Center for Security Studies'' in item 2611.

2004—Pub. L. 108–375, div. A, title V, § 585(a)(2), title X, § 1051(b), Oct. 28, 2004, 118 Stat. 1931, 2054, added two items 2613.

2003—Pub. L. 108–136, div. A, title IX, § 931(c), Nov. 24, 2003, 117 Stat. 1581, struck out ''foreign'' before ''gifts'' in item 2611.

2002—Pub. L. 107–314, div. A, title IX, § 931(b), Dec. 2, 2002, 116 Stat. 2625, added item 2612.

1999—Pub. L. 106–65, div. A, title IX, § 915(b), Oct. 5, 1999, 113 Stat. 722, added item 2611.

1996—Pub. L. 104–201, div. A, title X, § 1074(a)(15), Sept. 23, 1996, 110 Stat. 2659, struck out item 2609 ''Theater Missile Defense: acceptance of contributions from allies; Theater Missile Defense Cooperation Account''.

Pub. L. 104–106, div. A, title III, § 377(b), Feb. 10, 1996, 110 Stat. 284, added item 2610.

1994—Pub. L. 103–337, div. A, title III, § 353(c)(2), Oct. 5, 1994, 108 Stat. 2732, substituted ''schools'' for ''education system'' in item 2605.

1993—Pub. L. 103–160, div. A, title II, § 242(f)(2), title XI, § 1105(b)(3), Nov. 30, 1993, 107 Stat. 1605, 1750, inserted ''; Defense Cooperation Account'' in item 2608 and added item 2609.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(15), Dec. 5, 1991, 105 Stat. 1473, struck out ''and services'' after ''contributions'' in item 2608.

1990—Pub. L. 101–403, title II, § 202(a)(2), Oct. 1, 1990, 104 Stat. 874, added item 2608.

1989—Pub. L. 101–193, title V, § 502(b), Nov. 30, 1989, 103 Stat. 1708, added item 2607.

1988—Pub. L. 100–456, div. A, title III, § 323(b), Sept. 29, 1988, 102 Stat. 1953, added item 2606.

1986—Pub. L. 99–661, div. A, title III, § 314(b), Nov. 14, 1986, 100 Stat. 3854, added item 2605.

1970—Pub. L. 91–603, § 3(2), Dec. 31, 1970, 84 Stat. 1675, added item 2604.

1962—Pub. L. 87–555, § 1(2), July 27, 1962, 76 Stat. 244, added item 2603.

REGULATIONS TO CLARIFY GIFT ACCEPTANCE POLICY FOR SERVICE MEMBERS AND THEIR FAMILIES

Pub. L. 109–148, div. A, title VIII, § 8127, Dec. 30, 2005, 119 Stat. 2730, provided that:

''(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to provide that, subject to such limitations as may be specified in such regulations, members of the Armed Forces described in subsection (c), and the family members of such a member, may accept gifts from non-profit organizations, private parties, and other sources outside the Department of Defense, other than foreign governments and their agents. Such regulations shall apply uniformly to the Army, Navy, Air Force, and Marine Corps, and, to the maximum extent feasible, to the Coast Guard, and shall apply uniformly to the active and reserve components.

''(b) AUTHORITY.—A member of the Armed Forces described in subsection (c) may accept gifts as provided in the regulations authorized in subsection (a), notwithstanding section 7353 of title 5, United States Code.

''(c) COVERED MEMBERS.—A member of the Armed Forces is described in this subsection in the case of a member who is on active duty and who on or after September 11, 2001, and while on active duty, incurred an injury or illness—

''(1) as described in section 1413a(e)(2) of title 10, United States Code; or

''(2) in an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense in accordance with the regulations prescribed under subsection (a).

''(d) DEADLINE FOR REGULATIONS.—Regulations under subsection (a) shall be prescribed not later than 90 days after the date of the enactment of this Act [Dec. 30, 2005].

''(e) RETROACTIVE APPLICABILITY OF REGULATIONS.—Regulations under subsection (a) shall, to the extent provided in such regulations, also apply to the acceptance of gifts during the period beginning on September 11, 2001, and ending on the date on which such regulations go into effect.''

§ 2601. General gift funds

(a) GENERAL AUTHORITY TO ACCEPT GIFTS.—(1) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, or money made on the condition that the gift, devise, or bequest be used for the benefit, or in connection with, the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Secretary.

(2)(A) Notwithstanding section 1342 of title 31, the Secretary concerned may accept a gift of services for a military museum program from a nonprofit entity established for the purpose of supporting a military museum program. Employees or personnel of a nonprofit entity who provide a gift of services under this subparagraph may not be considered to be employees of the United States.

(B) For the use and benefit of a military museum program, the Secretary concerned may solicit from a bona fide collector a gift of books, manuscripts, works of art, historical artifacts, drawings, plans, models, or condemned or obsolete combat materiel.

(b) ADDITIONAL AUTHORITY TO ACCEPT GIFTS TO BENEFIT CERTAIN MEMBERS, DEPENDENTS, AND CIVILIAN EMPLOYEES.—(1) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, money, or services made on the condition that the gift, devise, or bequest be used for the benefit of—

(A) members of the armed forces, including members performing full-time National Guard duty under section 502(f) of title 32, who incur a wound, injury, or illness while in the line of duty;

(B) civilian employees of the Department of Defense who incur a wound, injury, or illness while in the line of duty;

(C) dependents of such members or employees; and

(D) survivors of such members or employees who are killed.

(2) The Secretary concerned may not accept a gift of services from a foreign government or international organization under this sub-

section. A gift of real property, personal property, or money from a foreign government or international organization may be accepted under this subsection only if the gift is not designated for a specific individual.

(3) The Secretary of Defense shall prescribe regulations specifying the conditions that may be attached to a gift, devise, or bequest accepted under this subsection.

(c) GIFT FUNDS.—Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) or (b) shall be deposited in the Treasury in the following accounts:

(1) The Department of the Army General Gift Fund, in the case of deposits made by the Secretary of the Army.

(2) The Department of the Navy General Gift Fund, in the case of deposits made by the Secretary of the Navy.

(3) The Department of the Air Force General Gift Fund, in the case of deposits made by the Secretary of the Air Force.

(4) The Coast Guard General Gift Fund, in the case of deposits made by the Secretary of Homeland Security.

(5) The Department of Defense General Gift Fund, in the case of deposits made by the Secretary of Defense.

(d) USE OF GIFTS; PROHIBITIONS.—(1) Except as provided in paragraph (2), property and money accepted under subsection (a) or (b) may be used by the Secretary concerned, and services accepted under such subsections may be performed, without further specific authorization in law.

(2) Property, money, and services may not be accepted under subsection (a) or (b)—

(A) if the use of the property or money or the performance of the services in connection with any program, project, or activity would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity;

(B) if the conditions attached to the property, money, or services are inconsistent with applicable law or regulations;

(C) if the Secretary concerned determines that the use of the property or money or the performance of the services would reflect unfavorably on the ability of the Department of Defense or the Coast Guard, any employee of the Department or Coast Guard, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner; or

(D) if the Secretary concerned determines that the use of the property or money or the performance of the services would compromise the integrity or appearance of integrity of any program of the Department of Defense or Coast Guard, or any individual involved in such a program.

(3) The Secretary concerned may disburse funds deposited in a gift fund referred to in subsection (c) for the purposes specified in subsections (a) and (b), subject to the terms of the gift, devise, or bequest.

(e) ACCEPTANCE OF REAL PROPERTY GIFTS; NAMING RIGHTS.—(1) The Secretary concerned may accept a gift under subsection (a) or (b) consisting of the provision, acquisition, enhancement, or construction of real property offered to the United States Military Academy, the Naval Academy, the Air Force Academy, or the Coast Guard Academy even though the gift will be subject to the condition that the real property, or a portion thereof, bear a specified name.

(2) The authority conferred by this subsection may be delegated by the Secretary concerned only to a civilian official appointed by the President, by and with the advice and consent of the Senate.

(3) A gift may not be accepted under paragraph (1) if—

(A) the acceptance of the gift or the imposition of the naming-rights condition would reflect unfavorably upon the United States, as provided in subsection (d)(2); or

(B) the real property to be subject to the condition, or portion thereof, has been named by an act of Congress.

(4) The Secretaries concerned shall issue uniform regulations governing the circumstances under which gifts conditioned on naming rights may be accepted, appropriate naming conventions, and suitable display standards.

(f) PAYMENT OF EXPENSES.—The Secretary concerned may pay all necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest accepted under this section.

(g) TREATMENT OF GIFTS.—For the purposes of Federal income, estate, and gift taxes, any property, money, or services accepted under subsection (a) or (b) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(h) MANAGEMENT OF FUNDS.—In the case of each gift fund referred to in subsection (c), the Secretary of the Treasury, upon the request of the Secretary concerned, may retain money, securities, and the proceeds of the sale of securities in the gift fund and may invest money and reinvest the proceeds of the sale of securities in the gift fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and profits accruing from those securities shall be deposited to the credit of the gift fund and may be disbursed as provided in subsection (d).

(i) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall make periodic audits of gifts, devises, and bequests accepted under subsection (a) or (b) at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(j) DEFINITIONS.—In this section:

(1) The term ''Secretary concerned'' includes the Secretary of Defense.

(2) The term ''services'' includes activities that benefit the education, morale, welfare, or recreation of members of the armed forces and their dependents or are related or incidental to the conveyance of a gift, devise, or bequest of real property or personal property under subsection (a) or (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Pub. L. 96–513, title V, § 511(86), Dec. 12, 1980, 94 Stat.

2927; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title III, § 374, Jan. 6, 2006, 119 Stat. 3211; Pub. L. 110–181, div. A, title V, § 593(a), Jan. 28, 2008, 122 Stat. 138; Pub. L. 112–239, div. A, title V, § 587(a), div. B, title XXVIII, § 2852(a), Jan. 2, 2013, 126 Stat. 1768, 2160; Pub. L. 114–92, div. B, title XXVIII, § 2812, Nov. 25, 2015, 129 Stat. 1174.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2601(a)	5:150q.	Mar. 11, 1948, ch. 107, 62 Stat. 71.
2601(b)	5:150r.	
2601(c)	5:150s.	
2601(d)	5:150t.	

In subsection (a), the words ''receive'' and ''administration'' are omitted as surplusage.

In subsection (b), the words ''and conditions'' and ''United States'' are omitted as surplusage.

In subsection (c), the words ''any gift, devise, or bequest of'' and ''real or personal'' are omitted as surplusage.

In subsection (d), the words ''or any part thereof deposited in the Treasury pursuant to section 150r of this title'' are omitted as surplusage.

AMENDMENTS

2015—Subsecs. (e) to (j). Pub. L. 114–92 added subsec. (e) and redesignated former subsecs. (e) to (i) as (f) to (j), respectively.

2013—Subsec. (a). Pub. L. 112–239, § 2852(a)(1), designated existing provisions as par. (1), substituted ''The'' for ''Subject to subsection (d)(2), the'', and added par. (2).

Subsec. (b)(1). Pub. L. 112–239, § 2852(a)(2)(A), substituted ''The'' for ''Subject to subsection (d)(2), the'' in introductory provisions.

Subsec. (d)(1). Pub. L. 112–239, § 2852(a)(2)(B)(i), substituted ''such subsections'' for ''subsection (b)''.

Subsec. (d)(2). Pub. L. 112–239, § 2852(a)(2)(B)(ii), substituted '', money, and services may not be accepted under subsection (a) or'' for ''and money may not be accepted under subsection (a) and property, money, and services may not be accepted under subsection'' in introductory provisions.

Subsec. (f). Pub. L. 112–239, § 2852(a)(2)(C), substituted '', money, or services accepted under subsection (a) or'' for ''or money accepted under subsection (a) and any property, money, or services accepted under subsection''.

Subsec. (i)(2). Pub. L. 112–239, § 587(a), inserted ''education,'' before ''morale,''.

2008—Subsec. (b)(4). Pub. L. 110–181 struck out par. (4) which read as follows: ''The authority to accept gifts, devises, or bequests under this subsection expires on December 31, 2007.''

2006—Pub. L. 109–163 reenacted section catchline without change and amended text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to general gift funds.

2002—Subsec. (b)(4). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1980—Subsec. (b)(4). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

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.

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.

LIMITATION ON SOLICITATION OF GIFTS

Pub. L. 110–181, div. A, title V, § 593(b), Jan. 28, 2008, 122 Stat. 138, provided that: ''The Secretary of Defense shall prescribe regulations implementing sections 2601 and 2608 of title 10, United States Code, that prohibit the solicitation of any gift under such sections by any employee of the Department of Defense if the nature or circumstances of such solicitation would compromise the integrity or the appearance of integrity of any program of the Department of Defense or of any individual involved in such program.''

§ 2601a. Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families

(a) REGULATIONS GOVERNING ACCEPTANCE OF GIFTS.—(1) The Secretary of Defense (and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy) shall prescribe regulations to provide that, subject to such limitations as may be specified in such regulations, the following individuals may accept gifts from nonprofit organizations, private parties, and other sources outside the Department of Defense or the Department of Homeland Security:

(A) A member of the armed forces described in subsection (b).

(B) A civilian employee of the Department of Defense or Coast Guard described in subsection (c).

(C) The family members of such a member or employee.

(D) Survivors of such a member or employee who is killed.

(2) The regulations required by this subsection shall—

(A) apply uniformly to all elements of the Department of Defense and, to the maximum extent feasible, to the Coast Guard; and

(B) require review and approval by a designated agency ethics official before acceptance of a gift to ensure that acceptance of the gift complies with the Joint Ethics Regulation.

(b) COVERED MEMBERS.—This section applies to a member of the armed forces who, while performing active duty, full-time National Guard duty, or inactive-duty training on or after September 11, 2001, incurred an injury or illness—

(1) as described in section 1413a(e)(2) of this title;

(2) in an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense in accordance with the regulations prescribed under subsection (a); or

(3) under other circumstances determined by the Secretary concerned to warrant treatment analogous to members covered by paragraph (1).

(c) COVERED EMPLOYEES.—This section applies to a civilian employee of the Department of Defense or Coast Guard who, while an employee on or after September 11, 2001, incurred an injury or illness under a circumstance described in paragraph (1), (2) or (3) of subsection (b).

(d) GIFTS FROM CERTAIN SOURCES PROHIBITED.—The regulations prescribed under sub-

section (a) may not authorize the acceptance of a gift from a foreign government or international organization or their agents.

(e) APPLICATION OF CERTAIN REGULATIONS.—To the extent provided in the regulations issued under subsection (a) to implement subsection (b)(2), the regulations shall apply to the acceptance of gifts received after December 31, 2011, for injuries or illnesses incurred on or after September 11, 2001.

(Added Pub. L. 111–383, div. A, title V, § 591(a), Jan. 7, 2011, 124 Stat. 4231; amended Pub. L. 112–81, div. A, title V, § 543, Dec. 31, 2011, 125 Stat. 1411; Pub. L. 112–239, div. A, title X, § 1076(f)(32), Jan. 2, 2013, 126 Stat. 1954; Pub. L. 113–291, div. A, title X, § 1071(e)(4), (f)(19), Dec. 19, 2014, 128 Stat. 3510, 3511.)

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–291, § 1071(f)(19)(A), substituted ''prescribe'' for ''issue''.

Subsec. (d). Pub. L. 113–291, § 1071(f)(19)(B), substituted ''prescribed'' for ''issued''.

Subsec. (e). Pub. L. 113–291, § 1071(e)(4), substituted ''after December 31, 2011,'' for ''after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012''.

2013—Subsec. (a)(1). Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''Coast Guard'' in introductory provisions.

2011—Subsec. (b)(2), (3). Pub. L. 112–81, § 543(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 112–81, § 543(2), substituted ''paragraph (1), (2) or (3) of subsection (b)'' for ''paragraph (1) or (2) of subsection (c)''.

Subsec. (e). Pub. L. 112–81, § 543(3), added subsec. (e).

§ 2602. American National Red Cross: cooperation and assistance

(a) Whenever the President finds it necessary, he may accept the cooperation and assistance of the American National Red Cross, and employ it under the armed forces under regulations to be prescribed by the Secretary of Defense.

(b) Personnel of the American National Red Cross who are performing duties in connection with its cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing, those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the American National Red Cross, except that where civilian employees of the armed forces are quartered without charge, employees of the American National Red Cross may also be quartered without charge; and

(3) available office space, warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the American National Red Cross for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the American National Red Cross, including gifts for the use of the armed forces, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance accepted under this section.

(e) For the purposes of this section, employees of the American National Red Cross may not be considered as employees of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 145.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2602(a)	36:17.	July 17, 1953, ch. 222, §§ 1, 2, 7, 67 Stat. 178, 179.
2602(b)	36:17a (less provisos).	
2602(c)	36:17a (1st proviso).	
2602(d)	36:17a (last proviso).	
2602(e)	36:17b.	

In subsection (a), the words ''finds it necessary'' are substituted for the words ''shall find the * * * to be necessary''. The words ''cooperation and assistance'' are substituted for the words ''cooperation and use * * * assistance * * * the same''. The words ''under regulations to be prescribed by the Secretary of Defense'' are substituted for 36:17 (last sentence). The words ''tendered by the said Red Cross'' are omitted as surplusage.

In subsection (b), the introductory clause is substituted for 36:17a (1st 33 words). In clause (1), the word ''expense'' is substituted for the words ''cost and charge''. The words ''traveling to and from, and while performing, those duties'' are substituted for the words ''proceeding to their place of duty, while serving thereat, and while returning therefrom''. In clause (2), the words ''at their expense or at the expense of'' are substituted for the words ''providing the cost thereof is borne by such personnel or by''. The words ''quartered without charge'' are substituted for the words ''furnished quarters on the same basis without cost''. In clause (3), the words ''when such facilities are'' are omitted as surplusage.

In subsection (c), the words ''for travel outside the United States to assume or perform'' are substituted for the words ''so serving or proceeding abroad to enter upon such service''.

In subsection (d), the word ''equipment'' is omitted as covered by the word ''supplies''. The words ''gifts for the use of'' are substituted for the words ''Red Cross supplies that may be tendered as a gift and accepted for use by''. The word ''expense'' is substituted for the words ''cost and charge''. The words ''rules and'' are omitted as surplusage.

In subsection (e), the words ''Federal Government of'' are omitted as surplusage.

REPORT ON ASSISTANCE TO RED CROSS FOR EMERGENCY COMMUNICATIONS SERVICES FOR MEMBERS OF ARMED FORCES AND FAMILIES

Pub. L. 103–337, div. A, title III, § 383(b), Oct. 5, 1994, 108 Stat. 2740, provided that, not later than Nov. 30 in each of 1994, 1995, and 1996, the Secretary of Defense was to submit to Congress a report on whether it was necessary for the Department of Defense to support the emergency communications services of the American National Red Cross in order to provide such services for members of the Armed Forces and their families.

§ 2603. Acceptance of fellowships, scholarships, or grants

(a) Notwithstanding any other provision of law, a fellowship, scholarship, or grant may, under regulations to be prescribed by the President or his designee, be made by a corporation, fund, foundation, or educational institution that is organized and operated primarily for scientific, literary, or educational purposes to any member of the armed forces, and the benefits thereof may be accepted by him—

(1) in recognition of outstanding performance in his field;

(2) to undertake a project that may be of value to the United States; or

(3) for development of his recognized potential for future career service.

However, the benefits of such a fellowship, scholarship, or grant may be accepted by the member in addition to his pay and allowances only to the extent that those benefits would be conferred upon him if the education or training contemplated by that fellowship, scholarship, or grant were provided at the expense of the United States. In addition, if such a benefit, in cash or in kind, is for travel, subsistence, or other expenses, an appropriate reduction shall be made from any payment that is made for the same purpose to the member by the United States incident to his acceptance of the fellowship, scholarship, or grant.

(b) Each member of the armed forces who accepts a fellowship, scholarship, or grant in accordance with subsection (a) shall, before he is permitted to undertake the education or training contemplated by that fellowship, scholarship, or grant, agree in writing that, after he completes the education or training, he will serve on active duty for a period at least three times the length of the period of the education or training.

(Added Pub. L. 87–555, §1(1), July 27, 1962, 76 Stat. 244; amended Pub. L. 111–383, div. A, title X, §1075(b)(39), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces'' in two places.

EX. ORD. NO. 11079. REGULATIONS FOR ACCEPTANCE OF FELLOWSHIPS, SCHOLARSHIPS, OR GRANTS

Ex. Ord. No. 11079, Jan. 25, 1963, 28 F.R. 819, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 13286, §69, Feb. 28, 2003, 68 F.R. 10630, provided:

By virtue of the authority vested in me by section 2603 of Title 10, United States Code [this section], I hereby designate the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, the Secretary of Homeland Security, with respect to members of the Coast Guard when it is not operating as a service in the Navy, and the Secretary of Health and Human Services, with respect to commissioned officers of the Public Health Service, to prescribe regulations under which members of the Armed Forces and commissioned officers of the Public Health Service may accept fellowships, scholarships, or grants from corporations, funds, foundations, or educational institutions organized and operated primarily for scientific, literary, or educational purposes. To the extent practicable, such regulations shall be uniform.

§ 2604. United Seamen's Service: cooperation and assistance

(a) Whenever the President finds it necessary in the interest of United States commitments abroad to provide facilities and services for United States merchant seamen in foreign areas, he may authorize the Secretary of Defense, under such regulations as the Secretary may prescribe, to cooperate with and assist the United Seamen's Service in establishing and providing those facilities and services.

(b) Personnel of the United Seamen's Service who are performing duties in connection with the cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the United Seamen's Service, except that where civilian employees of the armed forces are quartered without charge, employees of the United Seamen's Service may also be quartered without charge; and

(3) available office space (including space for recreational activities for seamen), warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the United Seamen's Service for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the United Seamen's Service, including gifts for the use of merchant seamen, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance provided under this section.

(e) Where practicable, the President shall also make arrangements to provide for convertibility of local currencies for the United Seamen's Service, in connection with its activities under subsection (a).

(f) For the purposes of this section, employees of the United Seamen's Service may not be considered as employees of the United States.

(Added Pub. L. 91–603, §3(1), Dec. 31, 1970, 84 Stat. 1674.)

SHORT TITLE

Pub. L. 91–603, §1, Dec. 31, 1970, 84 Stat. 1674, provided: ''That this Act [enacting this section, amending sections 1151, 1152, 1171, and 1223 of Title 46, Appendix, Shipping, and enacting provisions set out as a note under this section] may be cited as the 'Seamen's Service Act'.''

CONGRESSIONAL DECLARATION OF PURPOSE

Pub. L. 91–603, §2, Dec. 31, 1970, 84 Stat. 1674, provided that: ''It is the purpose of this Act [enacting this section and amending sections 1151, 1152, 1171 and 1223 of Title 46, Appendix, Shipping], by authorizing appropriate departments and agencies of the United States Government to cooperate with the United Seamen's Service (a nonprofit, charitable organization incorporated under the laws of the State of New York) in the establishment and operation of facilities for United States merchant seamen in foreign areas, to promote the welfare of such seamen, essential to the overall interests of shipment of United States goods and supplies to such areas.''

§ 2605. Acceptance of gifts for defense dependents' schools

(a) The Secretary of Defense may accept, hold, administer, and spend any gift (including any gift of an interest in real property) made on the condition that it be used in connection with the operation or administration of a defense dependents' school. The Secretary may pay all necessary expenses in connection with the acceptance of a gift under this subsection.

(b) There is established in the Treasury a fund to be known as the ''Department of Defense Dependents' Education Gift Fund''. Gifts of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the fund. The Secretary may disburse funds deposited under this subsection for the benefit or use of defense dependents' schools, subject to the terms of the gift.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d)(1) Upon request of the Secretary of Defense, the Secretary of the Treasury may—

(A) retain money, securities, and the proceeds of the sale of securities, in the Department of Defense Dependents' Education Gift Fund; and

(B) invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) The interest and profits accruing from those securities shall be deposited to the credit of the fund and may be disbursed as provided in subsection (b).

(e) In this section, the term ''gift'' includes a devise of real property or a bequest of personal property.

(f) The Secretary of Defense shall prescribe regulations to carry out this section.

(g) In this section, the term ''defense dependents' school'' means the following:

(1) A school established as part of the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) An elementary or secondary school established pursuant to section 2164 of this title.

(Added Pub. L. 99–661, div. A, title III, §314(a), Nov. 14, 1986, 100 Stat. 3853; amended Pub. L. 103–337, div. A, title III, §353(a)–(c)(1), Oct. 5, 1994, 108 Stat. 2731.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (g)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

1994—Pub. L. 103–337, §353(c)(1), substituted ''schools'' for ''education system'' in section catchline.

Subsec. (a). Pub. L. 103–337, §353(a)(1), substituted ''a defense dependents' school'' for ''the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.)''.

Subsec. (b). Pub. L. 103–337, §353(a)(2), substituted ''defense dependents' schools'' for ''the defense dependent's education system''.

Subsec. (g). Pub. L. 103–337, §353(b), added subsec. (g).

§ 2606. Scouting: cooperation and assistance in foreign areas

(a) Subject to subsection (b), the Secretary concerned may cooperate with and assist qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States.

(b) Cooperation and assistance under subsection (a) shall be provided under regulations prescribed by the Secretary of Defense and may be provided only if the President determines that such cooperation and assistance is necessary in the interest of the morale, welfare, and recreation of members of the armed forces.

(c) Personnel of a qualified scouting organization, including officials certified by that organization as representing that organization, who are performing duties in connection with cooperation and assistance provided under subsection (a) may be furnished—

(1) transportation at the expense of the United States while traveling to and from, and while performing, such duties in the same manner as civilian employees of the United States; and

(2) available office space (including space for recreational activities for Boy Scouts and Girl Scouts), warehousing, utilities, and a means of communication, without charge.

(d) Supplies of a qualified scouting organization may be transported at the expense of the United States if the Secretary concerned determines, under regulations prescribed under subsection (b), that the supplies are necessary to the cooperation and assistance provided under this section.

(e) The Secretary concerned may reimburse a qualified scouting organization for all or part of the pay of an employee of that organization for any period during which the employee was performing services under subsection (a). Any such reimbursement may not be made from appropriated funds and shall be made under regulations prescribed under subsection (b).

(f) For the purposes of this section, employees of a qualified scouting organization performing services under subsection (a) may not be considered to be employees of the United States.

(g) In this section, the term ''qualified scouting organization'' means the Girl Scouts of the United States of America and the Boy Scouts of America.

(Added Pub. L. 100–456, div. A, title III, §323(a), Sept. 29, 1988, 102 Stat. 1953.)

EX. ORD. NO. 12715. DETERMINATION FOR SUPPORT OF SCOUTING ACTIVITIES OVERSEAS

Ex. Ord. No. 12715, May 3, 1990, 55 F.R. 19051, provided: By the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to section 2606(b) of title 10, United States Code, with regard to support of scouting activities overseas, I hereby determine that the cooperation and assistance authorized by section 2606(a) of that title is necessary in the interest of the morale, welfare, and recreation of members of the armed forces. The Secretary of Defense, or his designee, shall issue regulations concerning such cooperation and support.

GEORGE BUSH.

§ 2607. Acceptance of gifts for the Defense Intelligence College

(a) The Secretary of Defense may accept, hold, administer, and use any gift (including any gift

of an interest in real property) made for the purpose of aiding and facilitating the work of the Defense Intelligence College and may pay all necessary expenses in connection with the acceptance of such a gift.

(b) Money, and proceeds from the sale of property, received as a gift under subsection (a) shall be deposited in the Treasury and shall be available for disbursement upon the order of the Secretary of Defense to the extent provided in annual appropriation Acts.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d) In this section, the term ''gift'' includes a bequest of personal property or a devise of real property.

(Added Pub. L. 101–193, title V, § 502(a), Nov. 30, 1989, 103 Stat. 1708.)

§ 2608. Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account

(a) ACCEPTANCE AUTHORITY.—The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money or real or personal property made by such person, foreign government, or international organization for use by the Department of Defense and may accept from any foreign government or international organization any contribution of services made by such foreign government or international organization for use by the Department of Defense.

(b) ESTABLISHMENT OF DEFENSE COOPERATION ACCOUNT.—(1) There is established in the Treasury of the United States a special account to be known as the ''Defense Cooperation Account''.

(2) Contributions of money and proceeds from the sale of any property accepted by the Secretary of Defense under subsection (a) shall be credited to the Defense Cooperation Account.

(c) USE OF THE DEFENSE COOPERATION ACCOUNT.—(1) Funds in the Defense Cooperation Account may be appropriated for a function described in section 114 of this title only to the extent that the appropriation of such funds for such purpose is authorized in accordance with that section.

(2) Funds in the Defense Cooperation Account shall not be made available for obligation or expenditure except to the extent and in the manner provided in subsequent appropriations Acts.

(d) USE OF PROPERTY.—Any contribution of property received under this section may be—

(1) retained and used by the Department of Defense in the form in which it was donated;

(2) sold or otherwise disposed of upon such terms and conditions and in accordance with such procedures as the Secretary determines appropriate; or

(3) converted into a form usable by the Department of Defense.

(e) REPORTING REQUIREMENT.—(1) Not later than 30 days after the end of the second quarter and the fourth quarter of each fiscal year, the Secretary of Defense shall submit to Congress a report on contributions of property accepted by the Secretary under this section during the preceding two quarters. The Secretary shall include in each such report a description of all property having a value of more than $1,000,000.

(2) In computing the value of any property referred to in paragraph (1), the Secretary shall aggregate the value of—

(A) similar items of property accepted by the Secretary during the quarter concerned; and

(B) components which, if assembled, would comprise all or a substantial part of an item of equipment or a facility.

(f) AUTHORITY TO USE PROPERTY.—Property accepted under subsection (a) may be used by the Secretary of Defense without specific authorization, except that such property may not be used in connection with any program, project, or activity if the use of such property would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity.

(g) INVESTMENT OF MONEY.—(1) Upon request by the Secretary of Defense, the Secretary of the Treasury may invest money in the Defense Cooperation Account in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) Any interest or other income that accrues from investment in securities referred to in paragraph (1) shall be deposited to the credit of the Defense Cooperation Account.

(h) NOTIFICATION OF CONDITIONS.—The Secretary of Defense shall notify Congress of any condition imposed by the donor on the use of any contribution accepted by the Secretary under the authority of this section.

(i) PERIODIC AUDITS BY GAO.—The Comptroller General of the United States shall make periodic audits of money and property accepted under this section, at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(j) ITEMS INCLUDED AS CONTRIBUTIONS.—In this section, the term ''contribution'' includes a devise of real property or a bequest of personal property.

(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 101–403, title II, § 202(a)(1), Oct. 1, 1990, 104 Stat. 872; amended Pub. L. 102–190, div. A, title X, § 1061(a)(16), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–160, div. A, title XI, § 1105(b)(1), (2), Nov. 30, 1993, 107 Stat. 1750; Pub. L. 104–201, div. A, title X, § 1063, Sept. 23, 1996, 110 Stat. 2652; Pub. L. 112–81, div. A, title X, § 1064(7), Dec. 31, 2011, 125 Stat. 1587.)

AMENDMENTS

2011—Subsec. (e)(1). Pub. L. 112–81 substituted ''the second quarter and the fourth quarter'' for ''each quarter'' and ''the preceding two quarters'' for ''the preceding quarter''.

1996—Subsec. (a). Pub. L. 104–201 inserted before period at end ''and may accept from any foreign government or international organization any contribution of services made by such foreign government or international organization for use by the Department of Defense''.

1993—Pub. L. 103–160, §1105(b)(2), inserted ''; Defense Cooperation Account'' in section catchline.

Subsec. (i). Pub. L. 103–160, §1105(b)(1), substituted ''Periodic Audits'' for ''Annual Audit'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall conduct an annual audit of money and property accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.''

1991—Subsec. (g)(1). Pub. L. 102–190 inserted ''(1)'' before ''Upon request''.

[§ 2609. Repealed. Pub. L. 104–106, div. A, title II, § 253(9), Feb. 10, 1996, 110 Stat. 235]

Section, added Pub. L. 103–160, div. A, title II, §242(f)(1), Nov. 30, 1993, 107 Stat. 1605, related to acceptance of contributions from allies for Theater Missile Defense programs and establishment and use of Theater Missile Defense Cooperation Account.

§ 2610. Competitions for excellence: acceptance of monetary awards

(a) ACCEPTANCE AUTHORIZED.—The Secretary of Defense may accept a monetary award given to the Department of Defense by a nongovernmental entity as a result of the participation of the Department in a competition carried out to recognize excellence or innovation in providing services or administering programs.

(b) DISPOSITION OF AWARDS.—A monetary award accepted under subsection (a) shall be credited to one or more nonappropriated fund accounts supporting morale, welfare, and recreation activities for the command, installation, or other activity that is recognized for the award. Amounts so credited may be expended only for such activities.

(c) INCIDENTAL EXPENSES.—Subject to such limitations as may be provided in appropriation Acts, appropriations available to the Department of Defense may be used to pay incidental expenses incurred by the Department to participate in a competition described in subsection (a) or to accept a monetary award under this section.

(d) REGULATIONS AND REPORTING.—(1) The Secretary shall prescribe regulations to determine the disposition of monetary awards accepted under this section and the payment of incidental expenses under subsection (c).

(2) At the end of each year, the Secretary shall submit to Congress a report for that year describing the disposition of monetary awards accepted under this section and the payment of incidental expenses under subsection (c).

(e) TERMINATION.—The authority of the Secretary under this section shall expire on February 10, 1998.

(Added Pub. L. 104–106, div. A, title III, §377(a), Feb. 10, 1996, 110 Stat. 283; amended Pub. L. 104–201, div. A, title X, §1074(a)(16), Sept. 23, 1996, 110 Stat. 2659.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–201 substituted ''on February 10, 1998'' for ''two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

§ 2611. Regional centers for security studies: acceptance of gifts and donations

(a) AUTHORITY TO ACCEPT GIFTS AND DONATIONS.—(1) Subject to subsection (c), the Secretary of Defense may, on behalf of any Department of Defense regional center for security studies, any combination of such centers, or such centers generally, accept from any source specified in subsection (b) any gift or donation for purposes of defraying the costs or enhancing the operation of such a center, combination of centers, or centers generally, as the case may be.

(2) For purposes of this section, the Department of Defense regional centers for security studies are the following:

(A) The George C. Marshall European Center for Security Studies.

(B) The Daniel K. Inouye Asia-Pacific Center for Security Studies.

(C) The William J. Perry Center for Hemispheric Defense Studies.

(D) The Africa Center for Strategic Studies.

(E) The Near East South Asia Center for Strategic Studies.

(b) SOURCES.—The sources from which gifts and donations may be accepted under subsection (a) are the following:

(1) The government of a State or a political subdivision of a State.

(2) The government of a foreign country.

(3) A foundation or other charitable organization, including a foundation or charitable organization this is organized or operates under the laws of a foreign country.

(4) Any source in the private sector of the United States or a foreign country.

(c) LIMITATION.—The Secretary may not accept a gift or donation under subsection (a) if acceptance of the gift or donation would compromise or appear to compromise—

(1) the ability of the Department of Defense, any employee of the Department, or any member of the armed forces to carry out the responsibility or duty of the Department in a fair and objective manner; or

(2) the integrity of any program of the Department, or of any person involved in such a program.

(d) CRITERIA FOR ACCEPTANCE.—The Secretary shall prescribe written guidance setting forth the criteria to be used in determining whether the acceptance of a gift or donation would have a result described in subsection (c).

(e) CREDITING OF FUNDS.—Funds accepted by the Secretary under section (a) shall be credited to appropriations available to the Department of Defense for the regional center, combination of centers, or centers generally for which accepted. Funds so credited shall be merged with the appropriations to which credited and shall be available for the regional center, combination of centers, or centers generally, as the case may be, for the same purposes as the appropriations with which merged. Any funds accepted under this section shall remain available until expended.

(f) GIFT OR DONATION DEFINED.—In this section, the term ''gift or donation'' means any gift or donation of funds, materials (including research materials), real or personal property, or services (including lecture services and faculty services).

(Added Pub. L. 106–65, div. A, title IX, §915(a), Oct. 5, 1999, 113 Stat. 721; amended Pub. L.

107–314, div. A, title X, § 1041(a)(17), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 108–136, div. A, title IX, § 931(a), (b)(1), (c), Nov. 24, 2003, 117 Stat. 1580, 1581; Pub. L. 108–375, div. A, title X, § 1084(f)(2), Oct. 28, 2004, 118 Stat. 2064; Pub. L. 109–163, div. A, title IX, § 903(a)(1), Jan. 6, 2006, 119 Stat. 3397; Pub. L. 112–239, div. B, title XXVIII, § 2854(b)(2), Jan. 2, 2013, 126 Stat. 2162; Pub. L. 113–291, div. B, title XXVIII, § 2861(b)(2), Dec. 19, 2014, 128 Stat. 3716.)

AMENDMENTS

2014—Subsec. (a)(2)(B). Pub. L. 113–291 substituted ''Daniel K. Inouye Asia-Pacific Center for Security Studies'' for ''Asia-Pacific Center for Security Studies''.

2013—Subsec. (a)(2)(C). Pub. L. 112–239 substituted ''William J. Perry Center for Hemispheric Defense Studies'' for ''Center for Hemispheric Defense Studies''.

2006—Pub. L. 109–163 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (f) relating to acceptance of gifts and donations for the Asia-Pacific Center for Security Studies.

2004—Subsec. (a)(1). Pub. L. 108–375 amended directory language of Pub. L. 108–136, § 931(a)(1). See 2003 Amendment note below.

2003—Pub. L. 108–136, § 931(c), struck out ''foreign'' before ''gifts'' in section catchline.

Subsec. (a). Pub. L. 108–136, § 931(b)(1)(A), struck out ''Foreign'' before ''Gifts'' in heading.

Subsec. (a)(1). Pub. L. 108–136, § 931(a)(1), as amended by Pub. L. 108–375, substituted ''gifts and donations from sources described in paragraph (2)'' for ''foreign gifts or donations''.

Subsec. (a)(2), (3). Pub. L. 108–136, § 931(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 108–136, § 931(b)(1)(B), struck out ''foreign'' before ''gift''.

Subsec. (f). Pub. L. 108–136, § 931(b)(1)(A), (C), in heading, struck out ''Foreign'' before ''Gift'' and in text, struck out ''foreign'' after ''section, a'' and ''from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country'' before period at end.

2002—Subsec. (e). Pub. L. 107–314 struck out heading and text of subsec. (e). Text read as follows: ''If the total amount of funds accepted under subsection (a) in any fiscal year exceeds $2,000,000, the Secretary shall notify Congress of the amount of those donations for that fiscal year. Any such notice shall list each of the contributors of such amounts and the amount of each contribution in that fiscal year.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title X, § 1084(f), Oct. 28, 2004, 118 Stat. 2064, provided that the amendment made by section 1084(f)(2) is effective as of Nov. 24, 2003, and as if included in Pub. L. 108–136 as enacted.

§ 2612. National Defense University: acceptance of gifts

(a) The Secretary of Defense may accept, hold, administer, and spend any gift, including a gift from an international organization and a foreign gift or donation (as defined in section 2166(f)(4) of this title), that is made on the condition that it be used in connection with the operation or administration of the National Defense University. The Secretary may pay all necessary expenses in connection with the acceptance of a gift under this subsection.

(b) There is established in the Treasury a fund to be known as the ''National Defense University Gift Fund''. Gifts of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the fund. The Secretary may disburse funds deposited under this subsection for the benefit or use of the National Defense University.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d)(1) Upon request of the Secretary of Defense, the Secretary of the Treasury may—

(A) retain money, securities, and the proceeds of the sale of securities, in the National Defense University Gift Fund; and

(B) invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) The interest and profits accruing from those securities shall be deposited to the credit of the fund and may be disbursed as provided in subsection (b).

(e) In this section:

(1) the term ''gift'' includes a devise of real property or a bequest of personal property and any gift of an interest in real property.

(2) The term ''National Defense University'' includes any school or other component of the National Defense University specified under section 2165(b) of this title.

(f) The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 107–314, div. A, title IX, § 931(a), Dec. 2, 2002, 116 Stat. 2624; amended Pub. L. 108–136, div. A, title IX, § 931(d), Nov. 24, 2003, 117 Stat. 1581.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136 substituted ''2166(f)(4)'' for ''2611(f)''.

§ 2613. Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families

(a) AUTHORITY TO ACCEPT DONATION OF TRAVEL BENEFITS.—Subject to subsection (c), the Secretary of Defense may accept from any person or government agency the donation of travel benefits for the purposes of use under subsection (d).

(b) TRAVEL BENEFIT DEFINED.—In this section, the term ''travel benefit'' means—

(1) frequent traveler miles, credits for tickets, or tickets for air or surface transportation issued by an air carrier or a surface carrier, respectively, that serves the public; and

(2) points or awards for free or reduced-cost accommodations issued by an inn, hotel, or other commercial establishment that provides lodging to transient guests.

(c) CONDITION ON AUTHORITY TO ACCEPT DONATION.—The Secretary may accept a donation of a travel benefit under this section only if the business entity referred to in subsection (b) that is the source of the benefit consents to such donation. Any such donation shall be under such terms and conditions as the business entity may specify, and the travel benefit so donated may

be used only in accordance with the rules established by the business entity.

(d) USE OF DONATED TRAVEL BENEFITS.—A travel benefit accepted under this section may be used only for the purpose of—

(1) facilitating the travel of a member of the armed forces who—

(A) is deployed on active duty outside the United States away from the permanent duty station of the member in support of a contingency operation; and

(B) is granted, during such deployment, rest and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member; or

(2) in the case of a member of the armed forces recuperating from an injury or illness incurred or aggravated in the line of duty during such a deployment, facilitating the travel of family members of the member in order to be reunited with the member.

(e) ADMINISTRATION.—(1) The Secretary shall designate a single office in the Department of Defense to carry out this section. That office shall develop rules and procedures to facilitate the acceptance and distribution of travel benefits under this section.

(2) For the use of travel benefits under subsection (d)(2) by family members of a member of the armed forces, the Secretary may, as the Secretary determines appropriate, limit—

(A) eligibility to family members who, by reason of affinity, degree of consanguinity, or otherwise, are sufficiently close in relationship to the member of the armed forces to justify the travel assistance;

(B) the number of family members who may travel; and

(C) the number of trips that family members may take.

(3) The Secretary of Defense may, in an exceptional case, authorize a person not described in subsection (d)(2) to use a travel benefit accepted under this subsection to visit a member of the armed forces described in subsection (d)(1) if that person has a notably close relationship with the member. The travel benefit may be used by such person only in accordance with such conditions and restrictions as the Secretary determines appropriate and the rules established by the business entity referred to in subsection (b) that is the source of the travel benefit.

(f) SERVICES OF NONPROFIT ORGANIZATION.—The Secretary of Defense may enter into an agreement with a nonprofit organization to use the services of the organization—

(1) to promote the donation of travel benefits under this section, except that amounts appropriated to the Department of Defense may not be expended for this purpose; and

(2) to assist in administering the collection, distribution, and use of travel benefits under this section.

(g) FAMILY MEMBER DEFINED.—In this section, the term ''family member'' has the meaning given that term in section 481h(b)(1) of title 37.

(Added Pub. L. 108–375, div. A, title V, §585(a)(1), Oct. 28, 2004, 118 Stat. 1930; amended Pub. L. 109–364, div. A, title X, §1071(a)(20), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–81, div. A, title V, §576(a)–(d)(1), title VI, §631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1428, 1429, 1465; Pub. L. 112–239, div. A, title X, §1076(a)(9), Jan. 2, 2013, 126 Stat. 1948.)

CODIFICATION

Another section 2613 was renumbered section 2614 of this title.

AMENDMENTS

2013—Subsec. (g). Pub. L. 112–239, §1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, §631(f)(4)(A). See 2011 Amendment note below.

2011—Pub. L. 112–81, §576(d)(1), substituted ''Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families'' for ''Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families'' in section catchline.

Subsec. (b). Pub. L. 112–81, §576(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) defined travel benefit.

Subsec. (c). Pub. L. 112–81, §576(b), substituted ''the business entity referred to in subsection (b)'' for ''the air or surface carrier'' and substituted ''the business entity'' for ''the surface carrier'' and for ''the carrier''.

Subsec. (e)(3). Pub. L. 112–81, §576(c), substituted ''the business entity referred to in subsection (b)'' for ''the air carrier or surface carrier''.

Subsec. (g). Pub. L. 112–81, §631(f)(4)(A), as amended by Pub. L. 112–239, §1076(a)(9), substituted ''481h(b)(1)'' for ''411h(b)(1)''.

2006—Subsec. (b). Pub. L. 109–364 substituted ''In this'' for ''In the''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

§ 2614. Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters

(a) AUTHORITY TO ACCEPT EQUIPMENT.—(1) Subject to subsection (c), the Secretary concerned—

(1) may accept communications equipment for use in coordinating joint response and recovery operations with public safety agencies in the event of a disaster; and

(2) may accept services related to the operation and maintenance of such equipment.

(b) REGULATIONS.—The authority under subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

(c) LIMITATIONS.—(1) Equipment may be accepted under subsection (a)(1) only to the extent that communications equipment under the control of the Secretary concerned at the potential disaster response site is inadequate to meet military requirements for communicating with public safety agencies during the period of response to the disaster.

(2) Services may be accepted under subsection (a)(2) related to the operation and maintenance of communications equipment only to the extent that the necessary capabilities are not available to the military commander having custody of the equipment.

(d) LIABILITY.—A person providing services accepted under this section may not be considered, by reason of the provision of such services, to be

an officer, employee, or agent of the United States for any purpose.

(Added Pub. L. 108–375, div. A, title X, § 1051(a), Oct. 28, 2004, 118 Stat. 2053, § 2613; renumbered § 2614 and amended Pub. L. 109–364, div. A, title X, § 1071(a)(19)(A), Oct. 17, 2006, 120 Stat. 2399.)

AMENDMENTS

2006—Pub. L. 109–364 renumbered section 2613 of this title as this section and redesignated the second subsec. (c) as (d).

§ 2615. Military museums and military education programs: cooperative agreement authority

(a) USE AUTHORIZED.—The Secretary concerned may enter into a cooperative agreement with a nonprofit entity for purposes related to—

(1) a military museum program; or

(2) the support of a military educational institution program.

(b) COOPERATIVE AGREEMENT DESCRIBED.—For purposes of subsection (a), an authorized cooperative agreement is described in section 6305 of title 31, except that the use of a cooperative agreement by the Secretary concerned is limited to nonprofit entities.

(Added Pub. L. 112–239, div. B, title XXVIII, § 2852(b)(1), Jan. 2, 2013, 126 Stat. 2161.)

CHAPTER 157—TRANSPORTATION

Sec.
2631. Supplies: preference to United States vessels.
2631a. Contingency planning: sealift and related intermodal transportation requirements.
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Sec.
2646. Travel services: procurement for official and unofficial travel under one contract.
2647. Next-of-kin of persons unaccounted for from conflicts after World War II: transportation to annual meetings.
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2650. Civilian personnel in Alaska.
2651. Passengers and merchandise to Guam: sea transport.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title X, § 1071(f)(21), Dec. 19, 2014, 128 Stat. 3511, which directed substitution of ''rate'' for ''rates'' in item 2642, could not be executed because the word ''rates'' did not appear after the amendment by Pub. L. 113–291, § 1044(c)(2). See below.

Pub. L. 113–291, div. A, title X, § 1044(c)(2), Dec. 19, 2014, 128 Stat. 3494, amended item 2642 generally, substituting ''Transportation services provided to certain non-Department of Defense agencies and entities: use of Department of Defense reimbursement rate'' for ''Transportation services provided to certain other agencies: use of Department of Defense reimbursement rates''.

2013—Pub. L. 113–66, div. A, title VI, § 621(g)(2), title X, § 1073(c), Dec. 26, 2013, 127 Stat. 784, 870, struck out item 2634 ''Motor vehicles: transportation or storage for members on change of permanent station or extended deployment'', added item 2642, and struck out former item 2642 ''Airlift services provided to certain other agencies: use of Department of Defense reimbursement rate''.

Pub. L. 112–239, div. A, title VI, § 622(b), Jan. 2, 2013, 126 Stat. 1781, substituted in item 2641b ''Space-available travel on Department of Defense aircraft: program authorized and eligible recipients.'' for ''Space-available travel on Department of Defense aircraft: retired members residing in Commonwealths and possessions of the United States for certain health care services.''

2011—Pub. L. 111–383, div. A, title III, § 352(f), Jan. 7, 2011, 124 Stat. 4194, added items 2648 and 2649 and struck out former items 2648 ''Persons and supplies: sea transportation'' and 2649 ''Civilian passengers and commercial cargoes: transportation on Department of Defense vessels''.

2008—Pub. L. 110–181, div. A, title III, § 374(b), Jan. 28, 2008, 122 Stat. 83, added item 2641b.

2004—Pub. L. 108–375, div. A, title X, § 1072(d)(1), Oct. 28, 2004, 118 Stat. 2058, added items 2648 to 2651.

2003—Pub. L. 108–136, div. A, title VI, § 634(b), title X, § 1006(b)(2), Nov. 24, 2003, 117 Stat. 1510, 1585, added item 2636a and amended item 2642 generally, substituting ''Airlift services provided to certain other agencies: use of Department of Defense reimbursement rate'' for ''Reimbursement rate for airlift services provided to Central Intelligence Agency''.

2001—Pub. L. 107–107, div. A, title V, § 574(b), Dec. 28, 2001, 115 Stat. 1122, added item 2647.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1009(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–251, substituted ''Deductions from amounts due carriers'' for ''Deductions from carriers because of loss or damage to material in transit'' in item 2636.

1998—Pub. L. 105–262, title VIII, § 8121(b), Oct. 17, 1998, 112 Stat. 2332, added item 2641a.

Pub. L. 105–261, div. A, title VIII, § 813(b), Oct. 17, 1998, 112 Stat. 2087, added item 2646.

1996—Pub. L. 104–201, div. A, title III, § 368(a)(2)(B), title IX, § 906(d)(1), title X, § 1079(b)(2), Sept. 23, 1996, 110 Stat. 2498, 2620, 2670, substituted ''Motor vehicles: transportation or storage for members on change of permanent station or extended deployment'' for ''Motor vehicles: for members on change of permanent station'' in item 2634 and added items 2644 and 2645.

Pub. L. 104–106, div. A, title III, § 334(b), Feb. 10, 1996, 110 Stat. 262, added item 2643.

1993—Pub. L. 103–160, div. A, title XI, §1173(b), Nov. 30, 1993, 107 Stat. 1767, added item 2631a.
1991—Pub. L. 102–88, title V, §501(b), Aug. 14, 1991, 105 Stat. 435, added item 2642.
1990—Pub. L. 101–510, div. A, title III, §326(a)(2), Nov. 5, 1990, 104 Stat. 1531, added item 2637.
1987—Pub. L. 100–180, div. A, title XII, §1250(a)(2), Dec. 4, 1987, 101 Stat. 1168, added item 2641.
1986—Pub. L. 99–661, div. A, title XII, §1204(a)(2), Nov. 14, 1986, 100 Stat. 3971, added item 2640.
Pub. L. 99–550, §2(a)(2), Oct. 27, 1986, 100 Stat. 3070, struck out item 2637 ''Transportation between residence and place of work for senior defense officials''.
1984—Pub. L. 98–525, title VI, §614(b), title XIV, §1401(j)(2), Oct. 19, 1984, 98 Stat. 2540, 2620, added items 2637 to 2639.
1982—Pub. L. 97–258, §2(b)(5)(A), Sept. 13, 1982, 96 Stat. 1053, added item 2636.
1979—Pub. L. 96–125, title VIII, §807(c)(2), Nov. 26, 1979, 93 Stat. 950, inserted ''and on military installations'' after ''places of employment'' in item 2632.
1973—Pub. L. 93–155, title VIII, §814(b), Nov. 16, 1973, 87 Stat. 621, added item 2635.
1965—Pub. L. 89–101, §1(2), July 30, 1965, 79 Stat. 425, substituted ''change of permanent station'' for ''permanent change of station'' in item 2634.
1962—Pub. L. 87–651, title I, §111(c), Sept. 7, 1962, 76 Stat. 511, substituted ''Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department'' for ''Terminal Services, furnish to commercial steamship companies'' in item 2633, and added item 2634.
1957—Pub. L. 85–44, §2, June 1, 1957, 71 Stat. 45, added item 2633.

§ 2631. Supplies: preference to United States vessels

(a) Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

(b)(1) In each request for proposals to enter into a time-charter contract for the use of a vessel for the transportation of supplies under this section, the Secretary of Defense shall require that any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the United States (including any territory of the United States).

(2) In paragraph (1), the term ''reflagging or repair work'' means work performed on a vessel—

(A) to enable the vessel to meet applicable standards to become a vessel of the United States; or

(B) to convert the vessel to a more useful military configuration.

(3) The Secretary of Defense may waive the requirement described in paragraph (1) if the Secretary determines that such waiver is critical to the national security of the United States. The Secretary shall immediately notify the Congress of any such waiver and the reasons for such waiver.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Pub. L. 103–160, div. A, title III, §315(a), Nov. 30, 1993, 107 Stat. 1619.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2631	10:1365. 34:528.	Apr. 28, 1904, ch. 1766, 33 Stat. 518.

The word ''supplies'' is substituted for the words ''coal, provisions, fodder, or supplies of any description'', in 10:1365 and 34:528. The words ''pursuant to law'' and ''the use of'', in 10:1365 and 34:528, are omitted as surplusage. The words ''as otherwise provided by law'', in 10:1365 and 34:528, are used rather than the words ''under the law as it now exists'', in section 1 of the Act of April 28, 1904, ch. 1766, 33 Stat. 518. The word ''may'' is substituted for the word ''shall''. The words ''However, if'' are substituted for the words ''unless * * * in which case''. The words ''private persons'' are substituted for the words ''private parties or companies'', in 10:1365 and 34:528. The last sentence is substituted for the proviso of 10:1365 and 34:528.

AMENDMENTS

1993—Pub. L. 103–160 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title III, §315(b), Nov. 30, 1993, 107 Stat. 1619, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a vessel for which reflagging or repair work is necessary to be performed after the date of the enactment of this Act [Nov. 30, 1993].''

OBTAINING CARRIAGE BY VESSEL: CRITERION REGARDING OVERHAUL, REPAIR, AND MAINTENANCE OF VESSELS IN THE UNITED STATES

Pub. L. 109–364, div. A, title X, §1017, Oct. 17, 2006, 120 Stat. 2379, as amended by Pub. L. 110–181, div. A, title X, §1063(c)(9), div. C, title XXXV, §3526(a), Jan. 28, 2008, 122 Stat. 323, 601, provided that:

''(a) ACQUISITION POLICY.—In order to maintain the national defense industrial base, the Secretary of Defense shall issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage by vessel of cargo for the Department of Defense, the extent to which an offeror of such carriage had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.

''(b) COVERED VESSELS.—A vessel is a covered vessel of an offeror under this section if the vessel is—

''(1) owned, operated, or controlled by the offeror; and

''(2) qualified to engage in the carriage of cargo in the coastwise or non-contiguous trade under sections 12112 and 50501 and chapter 551 of title 46, United States Code.

''(c) APPLICATION OF POLICY.—The acquisition policy shall include rules providing for application of the policy to covered vessels as expeditiously as is practicable based on the nature of carriage obtained, and by no later than June 1, 2007.

''(d) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall prescribe regulations as necessary to carry out the acquisition policy and submit such regulations to the Committees on Armed Services of the Senate and the House of Representatives, by not later than June 1, 2007.

''(2) INTERIM REGULATIONS.—

''(A) IN GENERAL.—The Secretary may prescribe interim regulations as necessary to carry out the acquisition policy. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code.

''(B) SUBMISSION TO CONGRESS.—Upon the issuance of interim regulations under this paragraph, the Secretary shall submit to the Committees on

Armed Services of the Senate and the House of Representatives the interim regulations and a description of the acquisition policy developed (or being developed) under subsection (a).

''(C) EXPIRATION.—All interim regulations prescribed under the authority of this paragraph that are not earlier superseded by final regulations shall expire no later than June 1, 2007.

''(e) ANNUAL REPORT.—The Secretary, acting through the United States Transportation Command, shall annually submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding overhaul, repair, and maintenance performed on covered vessels of each offeror of carriage to which the acquisition policy applies.

''(f) DEFINITIONS.—In this section:

''(1) FOREIGN SHIPYARD.—The term 'foreign shipyard' means a shipyard that is not located in the United States.

''(2) UNITED STATES.—The term 'United States' means—

''(A) any State of the United States; and

''(B) Guam.''

[Pub. L. 110–181, div. C, title XXXV, § 3526(a), Jan. 28, 2008, 122 Stat. 601, which directed amendment of section 1017(b)(2) of Pub. L. 109–364, set out above, by substituting ''sections 12112, 50501, and 55102 of title 46, United States Code'' for ''section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), section 12106 of title 46, United States Code, and section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)'', could not be executed because those words did not appear subsequent to amendment by section 1063(c)(9) of Pub. L. 110–181, which was effective as of Oct. 17, 2006, and as if included in Pub. L. 109–364 as enacted. See Effective Date of 2008 Amendment note under section 624 of this title.]

DELEGATION OF AUTHORITY UNDER THE CARGO PREFERENCE ACT

Memorandum of the President of the United States, Aug. 7, 1985, 50 F.R. 36565, provided:

Memorandum for the Honorable Caspar W. Weinberger, the Secretary of Defense

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Defense all the functions vested in me by the Cargo preference Act of 1904, 10 U.S.C. 2631. This authority may be redelegated.

This memorandum shall be published in the Federal Register.

RONALD REAGAN.

§ 2631a. Contingency planning: sealift and related intermodal transportation requirements

(a) CONSIDERATION OF PRIVATE CAPABILITIES.—The Secretary of Defense shall ensure that all studies and reports of the Department of Defense, and all actions taken in the Department of Defense, concerning sealift and related intermodal transportation requirements take into consideration the full range of the transportation and distribution capabilities that are available from operators of privately owned United States flag merchant vessels.

(b) PRIVATE CAPACITIES PRESENTATIONS.—The Secretary shall afford each operator of a vessel referred to in subsection (a), not less often than annually, an opportunity to present to the Department of Defense information on its port-to-port and intermodal transportation capacities.

(Added Pub. L. 103–160, div. A, title XI, § 1173(a), Nov. 30, 1993, 107 Stat. 1767.)

§ 2632. Transportation to and from certain places of employment and on military installations

(a)(1) Whenever the Secretary of the military department concerned determines that it is necessary for the effective conduct of the affairs of his department, the Secretary may provide the transportation described in paragraph (2).

(2) Transportation that may be provided under this subsection is assured and adequate transportation by motor vehicle or water carrier as follows:

(A) Transportation among places on a military installation (including any subinstallation of a military installation).

(B) Transportation to and from their places of duty or employment on a military installation for persons covered by this subsection.

(C) Transportation to and from a military installation for persons covered by this subsection and their dependents, in the case of a military installation located in an area determined by the Secretary concerned not to be adequately served by regularly scheduled, and timely, commercial or municipal mass transit services.

(D) Transportation to and from their places of employment for persons attached to, or employed in, a private plant that is manufacturing material for that department, but only during a war or a national emergency declared by Congress or the President.

(3) Except as provided under subsection (b)(3), transportation under this subsection shall be provided at reasonable rates of fare under regulations prescribed by the Secretary of Defense.

(4) Persons covered by this subsection, in the case of any military installation, are members of the armed forces, employees of the military department concerned, and other persons attached to that department who are assigned to or employed at that installation.

(b)(1) Transportation described in subparagraphs (B), (C), and (D) of subsection (a)(2) may not be provided unless the Secretary concerned, or an officer of the department concerned designated by the Secretary, determines that—

(A) other facilities are inadequate and cannot be made adequate;

(B) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

(C) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

(2) The Secretary of Defense shall require that, in determining whether to provide transportation described in subsection (a)(2)(A) at any military installation, the Secretary of the military department concerned shall give careful consideration to the potential for saving energy and reducing air pollution.

(3) In providing transportation described in subsection (a)(2)(A) at any military installation, the Secretary concerned may not require a fare for the transportation of members of the armed forces if the transportation is incident to the performance of duty. In providing transportation described in subsection (a)(2)(C) to and from any military installation, the Secretary

concerned (under regulations prescribed under subsection (a)(3)) may waive any requirement for a fare.

(4) The authority under subsection (a) to enter into contracts under which the United States is obligated to make outlays shall be effective for any fiscal year only to the extent that the budget authority for such outlays is provided in advance by appropriation Acts.

(c) To provide transportation under subsection (a), the department may—

(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

(2) maintain and operate that equipment by—

(A) enlisted members of the Army, Navy, Air Force, Marine Corps, or the Coast Guard, as the case may be;

(B) employees of the department concerned; and

(C) private persons under contract; and

(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer of the department designated by the Secretary, and that may provide for the pooling of Government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c)(3), shall be covered into the Treasury as miscellaneous receipts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Pub. L. 95–362, Sept. 11, 1978, 92 Stat. 596; Pub. L. 96–125, title VIII, §807(a)–(c)(1), Nov. 26, 1979, 93 Stat. 949, 950; Pub. L. 100–180, div. A, title III, §318(a)–(c), Dec. 4, 1987, 101 Stat. 1076, 1077.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2632(a)	5:189c (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3). 5:415d (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3). 5:626n (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3).	May 28, 1948, ch. 352, §1, 62 Stat. 276.
2632(b)	5:189c (clause 4). 5:415d (clause 4). 5:626n (clause 4).	
2632(c)	5:189c (clause 1; and clause 3, less 17 words before proviso). 5:415d (clause 1; and clause 3, less 17 words before proviso). 5:626n (clause 1; and clause 3, less 17 words before proviso).	
2632(d)	5:189c (clause 2, less words before semicolon). 5:415d (clause 2, less words before semicolon). 5:626n (clause 2, less words before semicolon).	

In subsection (a), the words ''it is necessary * * * he may * * * provide assured and adequate transportation'' are substituted for the words ''requires assured and adequate transportation facilities * * * he is authorized * * * to provide such transportation''. The words ''in the absence of adequate private or other facilities'' are omitted as covered by subsection (b)(2). The words ''subject, however, to the following provisions and conditions'' are omitted, since the revised section states those conditions positively in the following subsections. The words ''at reasonable rates of fare'' are substituted for the first 23 words of clause 2 of 5:189c, 415d, and 626n. The words ''under regulations to be prescribed by him'' are substituted for the words ''under such regulations as the Secretary of the Army [Navy, Air Force] shall prescribe'' in clause 2, and the 17 words before the proviso of clause 3, of 5:189c, 415d, and 626n.

In subsection (b), the words ''Transportation * * * under subsection (a)'' are substituted for the words ''The authority granted in this section to the Secretary of the Army [Navy, Air Force]''. The words ''may not be provided'' are substituted for the words ''shall be exercised''. The word ''transportation'' is substituted for the word ''service''. The words ''in each case'', ''as the case may be, that existing private and'', and ''by other means'' are omitted as surplusage.

Subsection (b)(3) is substituted for the last 25 words of clause 4 of 5:189c, 415d, and 626n.

In subsection (c), the introductory clause is substituted for the words ''The equipment required to provide such transportation facilities may be either''. The words ''considered necessary'' are substituted for the words ''shall determine necessary and advisable under the existing circumstances''. The proviso of clause 3 of 5:189c, 415d, and 626n is stated as a positive rule in clause (3) of the revised subsection. The words ''for operation by the Department of the Army [Navy, Air Force], and when so obtained'', ''civil'', ''with such department'', ''Equipment so obtained'', ''and conditions'', and the first 25 words of clause 3 of 5:189c, 415d, and 626n are omitted as surplusage.

In subsection (d), the words ''Treasury as'' are substituted for the words ''Treasury of the United States to the credit of''.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–180, §318(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Whenever the Secretary of a military department determines that it is necessary for the effective conduct of the affairs of that department, he may, at reasonable rates of fare under regulations to be prescribed by the Secretary of Defense, provide assured and adequate transportation by motor vehicle or water carrier—

''(1) among places on any military installation (including any subinstallation thereof) under the jurisdiction of that department; and

''(2) to and from their places of employment—

''(A) for persons attached to, or employed in, that department; and

''(B) during a war or national emergency declared by the Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for that department.''

Subsec. (b)(1). Pub. L. 100–180, §318(c)(1), substituted ''Transportation described in subparagraphs (B), (C), and (D) of subsection (a)(2) may not be provided'' for ''Transportation may not be provided under subsection (a)(2)''.

Subsec. (b)(2). Pub. L. 100–180, §318(b)(1), (c)(2), redesignated subpar. (A) as par. (2) and substituted ''transportation described in subsection (a)(2)(A) at any military installation'' for ''transportation at any military installation under subsection (a)(1)''. Subpar. (B) was struck out and replaced by par. (3) and subpar. (C) was redesignated par. (4).

Subsec. (b)(3). Pub. L. 100–180, §318(b)(2), substituted par. (3) for former subpar. (2)(B) which read as follows: ''In providing transportation at any military installation under such subsection, the Secretary of the mili-

tary department concerned may not require any fare for the transportation of members of the armed forces if the transportation is incident to training or other operational activities on such installation.''

Subsec. (b)(4). Pub. L. 100–180, §318(b)(3), (c)(3), redesignated former par. (2)(C) as par. (4) and substituted ''subsection (a)'' for ''subsection (a)(1)''.

1979—Pub. L. 96–125, §807(c)(1), inserted ''and on military installations'' after ''places of employment'' in section catchline.

Subsec. (a). Pub. L. 96–125, §807(a), substituted reference to Secretary of a military department and to the Secretary of Defense for references to Secretary concerned and inserted reference to any military installation (including any subinstallation thereof) under the jurisdiction of that department.

Subsec. (b). Pub. L. 96–125, §807(b), designated existing provisions as par. (1) and cls. (1) to (3) as cls. (A) to (C), substituted ''subsection (a)(2)'' for ''subsection (a)'' and added par. (2).

1978—Subsec. (a). Pub. L. 95–362, §1(1), substituted ''concerned'' for ''of a military department'' and ''of his department'' for ''of that department''.

Subsec. (b). Pub. L. 95–362, §1(2), struck out ''of the military department'' before ''concerned''.

Subsec. (c)(2)(A). Pub. L. 95–362, §1(3), inserted reference to the Coast Guard.

REGULATIONS

Pub. L. 100–180, div. A, title III, §318(d), Dec. 4, 1987, 101 Stat. 1077, required that regulations to implement amendments to this section be prescribed not later than 90 days after Dec. 4, 1987.

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.

§ 2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department

(a) Notwithstanding section 1301(a) of title 31, the Secretary of a military department may, under such regulations as he may prescribe, furnish stevedoring and terminal services and facilities to vessels carrying cargo, or passengers, or both, sponsored by his department.

(b) The furnishing of services and facilities under this section shall be at fair and reasonable rates.

(c) The proceeds from furnishing services and facilities under this section shall be paid to the credit of the appropriation or fund out of which the services or facilities were supplied.

(Added Pub. L. 85–44, §1, June 1, 1957, 71 Stat. 45; amended Pub. L. 87–651, title I, §111(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 96–513, title V, §511(87), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 97–258, §3(b)(7), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES

1962 ACT

Section 2633 is restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 1301(a) of title 31'' for ''section 3678 of the Revised Statutes (31 U.S.C. 628)''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 3678 of the Revised Statutes (31 U.S.C. 628)'' for ''section 628 of title 31''.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

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.

[§ 2634. Repealed. Pub. L. 113–66, div. A, title VI, § 621(g)(1), Dec. 26, 2013, 127 Stat. 784]

Section, added Pub. L. 87–651, title I, §111(b), Sept. 7, 1962, 76 Stat. 510; amended Pub. L. 88–431, §1(b), Aug. 14, 1964, 78 Stat. 439; Pub. L. 89–101, §1(1), July 30, 1965, 79 Stat. 425; Pub. L. 93–548, §§1, 2, Dec. 26, 1974, 88 Stat. 1743; Pub. L. 97–60, title II, §202, Oct. 14, 1981, 95 Stat. 1005; Pub. L. 99–661, div. A, title VI, §§611, 620(b)(2), Nov. 14, 1986, 100 Stat. 3878, 3883; Pub. L. 100–26, §7(j)(6), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. A, title VI, §616(a), Dec. 4, 1987, 101 Stat. 1096; Pub. L. 102–484, div. A, title VI, §622(b), Oct. 23, 1992, 106 Stat. 2422; Pub. L. 104–106, div. A, title VI, §642(a)(2), Feb. 10, 1996, 110 Stat. 368; Pub. L. 104–201, div. A, title III, §368(a)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2497; Pub. L. 105–261, div. A, title VI, §§631(b)(2), 653(a), Oct. 17, 1998, 112 Stat. 2044, 2051; Pub. L. 107–107, div. A, title V, §594(a), (b), Dec. 28, 2001, 115 Stat. 1126; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, §575(a), (b), Dec. 2, 2002, 116 Stat. 2558, 2559; Pub. L. 108–136, div. A, title VI, §631(a), Nov. 24, 2003, 117 Stat. 1508; Pub. L. 112–81, div. A, title VI, §631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, §1076(a)(9), Jan. 2, 2013, 126 Stat. 1948, related to transportation or storage of motor vehicles for members on change of permanent station or extended deployment.

§ 2635. Medical emergency helicopter transportation assistance and limitation of individual liability

(a) The Secretary of Defense is authorized to assist the Department of Health and Human Services and the Department of Homeland Security in providing medical emergency helicopter transportation services to civilians. Any resources provided under this section shall be under such terms and conditions, including reimbursement, as the Secretary of Defense deems appropriate and shall be subject to the following specific limitations:

(1) Assistance may be provided only in areas where military units able to provide such assistance are regularly assigned, and military units shall not be transferred from one area to another for the purpose of providing such assistance.

(2) Assistance may be provided only to the extent that it does not interfere with the performance of the military mission.

(3) The provision of assistance shall not cause any increase in funds required for the operation of the Department of Defense.

(b) No individual (or his estate) who is authorized by the Department of Defense to perform services under a program established pursuant to subsection (a), and who is acting within the scope of his duties, shall be liable for injury to, or loss of property or personal injury or death which may be caused incident to providing such services.

(Added Pub. L. 93–155, title VIII, §814(a), Nov. 16, 1973, 87 Stat. 620; amended Pub. L. 96–513, title V,

§ 511(88), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''Department of Homeland Security'' for ''Department of Transportation'' in introductory provisions.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare''.

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.

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.

§ 2636. Deductions from amounts due carriers

(a) AMOUNTS FOR LOSS OR DAMAGE.—An amount deducted from an amount due a carrier shall be credited as follows:

(1) If deducted because of loss of or damage to material in transit for a military department, the amount shall be credited to the proper appropriation, account, or fund from which the same or similar material may be replaced.

(2) If deducted as an administrative offset for an overpayment previously made to the carrier under any Department of Defense contract for transportation services or as liquidated damages due under any such contract, the amount shall be credited to the appropriation or account from which payments for the transportation services were made.

(b) SIMPLIFIED OFFSET FOR COLLECTION OF CLAIMS NOT IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—(1) In any case in which the total amount of a claim for the recovery of overpayments or liquidated damages under a contract described in subsection (a)(2) does not exceed the simplified acquisition threshold, the Secretary of Defense or the Secretary concerned, in exercising the authority to collect the claim by administrative offset under section 3716 of title 31, may apply paragraphs (2) and (3) of subsection (a) of that section with respect to that collection after (rather than before) the claim is so collected.

(2) Regulations prescribed by the Secretary of Defense under subsection (b) of section 3716 of title 31—

(A) shall include provisions to carry out paragraph (1); and

(B) shall provide the carrier for a claim subject to paragraph (1) with an opportunity to offer an alternative method of repaying the claim (rather than by administrative offset) if the collection of the claim by administrative offset has not already been made.

(3) In this subsection, the term ''simplified acquisition threshold'' has the meaning given that term in section 134 of title 41.

(Added Pub. L. 97–258, § 2(b)(5)(B), Sept. 13, 1982, 96 Stat. 1053; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1009(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250; Pub. L. 111–350, § 5(b)(43), Jan. 4, 2011, 124 Stat. 3846.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2636	31:489a.	June 25, 1956, ch. 442, § 1, 70 Stat. 336.

The words ''An amount deducted from an amount due'' are substituted for ''Moneys arising from deductions made from'' for clarity. The words ''military or naval'' and ''account of'' are omitted as surplus. The words ''a military department'' are substituted for ''the Departments of the Army, Navy, or Air Force'' because of 10:101(7). The Department of War was designated the Department of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Department of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488).

AMENDMENTS

2011—Subsec. (b)(3). Pub. L. 111–350 substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))''.

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, text read as follows: ''An amount deducted from an amount due a carrier because of loss of or damage to material in transit for a military department shall be credited to the proper appropriation, account, or fund from which the same or similar material may be replaced.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title X, § 1009(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–251, provided that: ''Subsections (a)(2) and (b) of section 2636 of title 10, United States Code, as added by subsection (a)(1), shall apply with respect to contracts entered into after the date of the enactment of this Act [Oct. 30, 2000].''

§ 2636a. Loss or damage to personal property transported at Government expense: full replacement value; deduction from amounts due carriers

(a) PROCUREMENT OF COVERAGE.—The Secretary of Defense shall include in a contract for the transportation at Government expense of baggage and household effects for members of the armed forces or civilian employees of the Department of Defense (or both) a clause that requires the carrier under the contract to pay the full replacement value for loss or damage to the baggage or household effects transported under the contract.

(b) DEDUCTION UPON FAILURE OF CARRIER TO SETTLE.—In the case of a loss or damage of baggage or household effects transported under a contract with a carrier that includes a clause described in subsection (a), the amount equal to the full replacement value for the baggage or household effects shall be deducted from the amount owed by the United States to the carrier under the contract upon a failure of the carrier to settle a claim for such loss or total damage within a reasonable time. The amount so deducted shall be remitted to the claimant, notwithstanding section 2636 of this title.

(c) INAPPLICABILITY OF RELATED LIMITS.—The limitations on amounts of claims that may be

settled under section 3721(b) of title 31 do not apply to a carrier's contractual obligation to pay full replacement value under this section.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for administering this section. The regulations shall include policies and procedures for validating and evaluating claims, validating proper claimants, and determining reasonable time for settlement. The regulations may include a requirement that a member of the armed forces or civilian employee of the Department of Defense comply with reasonable restrictions or conditions prescribed by the Secretary in order to receive the full amount deducted under subsection (b).

(e) TRANSPORTATION DEFINED.—In this section, the terms ''transportation'' and ''transport'', with respect to baggage or household effects, includes packing, crating, drayage, temporary storage, and unpacking of the baggage or household effects.

(Added Pub. L. 108–136, div. A, title VI, § 634(a), Nov. 24, 2003, 117 Stat. 1509; amended Pub. L. 109–364, div. A, title III, § 363(a), (b), Oct. 17, 2006, 120 Stat. 2167; Pub. L. 110–181, div. A, title III, § 373, Jan. 28, 2008, 122 Stat. 82.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–181 inserted at end ''The regulations may include a requirement that a member of the armed forces or civilian employee of the Department of Defense comply with reasonable restrictions or conditions prescribed by the Secretary in order to receive the full amount deducted under subsection (b).''

2006—Subsec. (a). Pub. L. 109–364, § 363(b)(1), substituted ''shall include'' for ''may include''.

Pub. L. 109–364, § 363(a), substituted ''at Government expense of baggage and household effects for members of the armed forces or civilian employees of the Department of Defense (or both)'' for ''of baggage and household effects for members of the armed forces at Government expense''.

Subsec. (b). Pub. L. 109–364, § 363(b)(2), substituted ''shall be deducted'' for ''may be deducted''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title III, § 363(b), Oct. 17, 2006, 120 Stat. 2167, provided that the amendment made by section 363(b) is effective Mar. 1, 2008.

§ 2637. Transportation in certain areas outside the United States

The Secretary of Defense may authorize the commander of a unified combatant command to use Government owned or leased vehicles to provide transportation in an area outside the United States for members of the uniformed services and Federal civilian employees under the jurisdiction of that commander, and for the dependents of such members and employees, if the commander determines that public or private transportation in such area is unsafe or not available. Such transportation shall be provided in accordance with regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–510, div. A, title III, § 326(a)(1), Nov. 5, 1990, 104 Stat. 1531.)

PRIOR PROVISIONS

A prior section 2637, added Pub. L. 98–525, title VI, § 614(a), Oct. 19, 1984, 98 Stat. 2540, related to use of passenger motor vehicles of United States for transportation between residences and places of work of senior defense officials, prior to repeal by Pub. L. 99–550, § 2(a)(1), Oct. 27, 1986, 100 Stat. 3070.

§ 2638. Transportation of civilian clothing of enlisted members

The Secretary of the military department concerned may provide for the transportation of the civilian clothing of any person entering the armed forces as an enlisted member to the member's home of record.

(Added Pub. L. 98–525, title XIV, § 1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 708], 96 Stat. 1833, 1850.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 708, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 708, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 708, 93 Stat. 1152.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 808, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 807, 91 Stat. 899.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 707, 90 Stat. 1291.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 707, 90 Stat. 168.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 807, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 707, 87 Stat. 1038.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 707, 86 Stat. 1196.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 707, 85 Stat. 727.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 807, 84 Stat. 2030.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 607, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, § 506, 82 Stat. 1129.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 606, 81 Stat. 242.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2639. Transportation to and from school for certain minor dependents

Funds appropriated to the Department of Defense may be used to provide minor dependents of members of the armed forces and of civilian officers and employees of the Department of Defense with transportation to and from primary and secondary schools if the schools attended by the dependents are not accessible by regular means of transportation.

(Added Pub. L. 98–525, title XIV, § 1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §708], 96 Stat. 1833, 1850.
Dec. 29, 1981, Pub. L. 97–114, title VII, §708, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, §708, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, §708, 93 Stat. 1152.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §808, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §807, 91 Stat. 899.
Sept. 22, 1976, Pub. L. 94–419, title VII, §707, 90 Stat. 1291.
Feb. 9, 1976, Pub. L. 94–212, title VII, §707, 90 Stat. 168.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §807, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §707, 87 Stat. 1038.
Oct. 26, 1972, Pub. L. 92–570, title VII, §707, 86 Stat. 1196.
Dec. 18, 1971, Pub. L. 92–204, title VII, §707, 85 Stat. 727.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §807, 84 Stat. 2030.
Dec. 29, 1969, Pub. L. 91–171, title VI, §607, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §506, 82 Stat. 1129.
Sept. 29, 1967, Pub. L. 90–96, title VI, §606, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, §606, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, §606, 79 Stat. 873.
Aug. 19, 1964, Pub. L. 88–446, title V, §506, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, §506, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, §506, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title VI, §606, 75 Stat. 375.
July 7, 1960, Pub. L. 86–601, title V, §506, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86–166, title V, §606, 73 Stat. 378.
Aug. 22, 1958, Pub. L. 85–724, title VI, §606, 72 Stat. 724.
Aug. 2, 1957, Pub. L. 85–117, title VI, §607, 71 Stat. 323.
July 2, 1956, ch. 488, title VI, §607, 70 Stat. 468.
July 13, 1955, ch. 358, title VI, §609, 69 Stat. 315.
June 30, 1954, ch. 432, title VII, §709, 68 Stat. 351.
Aug. 1, 1953, ch. 305, title VI, §614, 67 Stat. 351.
July 10, 1952, ch. 630, title VI, §616, 66 Stat. 533.
Oct. 18, 1951, ch. 512, title VI, §616, 65 Stat. 446.
Sept. 6, 1950, ch. 896, Ch. X, title VI, §619, 64 Stat. 755.
Oct. 29, 1949, ch. 787, title VI, §625, 63 Stat. 1021.
June 24, 1948, ch. 632, §2, 62 Stat. 667.
July 30, 1947, ch. 357, title I, §2, 61 Stat. 569.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2640. Charter air transportation of members of the armed forces

(a) REQUIREMENTS.—(1) The Secretary of Defense may not enter into a contract with an air carrier for the charter air transportation of members of the armed forces unless the air carrier—

(A) meets, at a minimum, the safety standards established by the Secretary of Transportation under chapter 447 of title 49;

(B) has at least 12 months of experience operating services in air transportation that are substantially equivalent to the service sought by the Department of Defense; and

(C) undergoes a technical safety evaluation.

(2) For purposes of paragraph (1)(C), a technical safety evaluation—

(A) shall include inspection of a representative number of aircraft; and

(B) shall be conducted in accordance with regulations prescribed by the Secretary, after consultation with the Secretary of Transportation.

(b) INSPECTIONS.—The Secretary shall provide for inspections of each air carrier that contracts with the Department of Defense for the charter air transportation of members of the armed forces. The inspections shall be conducted in accordance with standards established by the Secretary, after consultation with the Secretary of Transportation, and shall include, at a minimum, the following:

(1) An on-site capability survey of the air carrier conducted at least once every two years.

(2) A performance evaluation of the air carrier conducted at least once every six months.

(3) A preflight safety inspection of each aircraft conducted at any time during the operation of, but not more than 72 hours before, each internationally scheduled charter mission departing the United States.

(4) A preflight safety inspection of each aircraft used for domestic charter missions conducted to the greatest extent practical.

(5) Operational check-rides on aircraft conducted periodically.

(c) COMMERCIAL AIRLIFT REVIEW BOARD.—The Secretary shall establish a Commercial Airlift Review Board within the Department of Defense. The Board shall consist of personnel from the Department of Defense and other Government personnel as may be appropriate. The duties of the Board shall be—

(1) to make recommendations to the Secretary on suspension and reinstatement of air carriers under subsection (d);

(2) to make recommendations to the Secretary on waivers under subsection (g); and

(3) to carry out such other duties and make recommendations on such other matters as the Secretary considers appropriate.

(d) SUSPENSION AND REINSTATEMENT.—(1) The Secretary shall establish guidelines for the suspension of air carriers under contract with the Department of Defense for the charter air transportation of members of the armed forces and for the reinstatement of air carriers that have been so suspended. The guidelines—

(A) shall require the immediate determination of whether to suspend an air carrier if an aircraft of the air carrier is involved in a fatal accident; and

(B) may require the suspension of an air carrier—

(i) if the carrier is in violation of any order, rule, regulation, or standard prescribed under chapter 447 of title 49; or

(ii) if an aircraft of the air carrier is involved in a serious accident.

(2) The Commercial Airlift Review Board shall make recommendations to the Secretary on suspension and reinstatement under this subsection.

(3) The Secretary shall include in each contract subject to this section the provisions on suspension and reinstatement established under this subsection.

(e) AUTHORITY TO LEAVE UNSAFE AIRCRAFT.—A representative of the Military Airlift Command,

the Military Traffic Management Command, or such other agency as may be designated by the Secretary of Defense (or if there is no such representative reasonably available, the senior officer on board a chartered aircraft) may order members of the armed forces to leave a chartered aircraft if the representative (or officer) determines that a condition exists on the aircraft which may endanger the safety of the members.

(f) FAA INFORMATION.—The Secretary shall request the Secretary of Transportation to provide to the Secretary a report on each inspection performed by Federal Aviation Administration personnel, and the status of corrective actions taken, on each aircraft of an air carrier under contract with the Department of Defense for the charter air transportation of members of the armed forces.

(g) WAIVER.—After considering recommendations by the Commercial Airlift Review Board, the Secretary may waive any provision of this section in an emergency.

(h) AUTHORITY TO PROTECT SAFETY-RELATED INFORMATION VOLUNTARILY PROVIDED BY AN AIR CARRIER.—(1) Subject to paragraph (2), the Secretary of Defense may (notwithstanding any other provision of law) withhold from public disclosure safety-related information that is provided to the Secretary voluntarily by an air carrier for the purposes of this section.

(2) Information may be withheld under paragraph (1) from public disclosure only if the Secretary determines that—

(A) the disclosure of the information would inhibit an air carrier from voluntarily providing, in the future, safety-related information for the purposes of this section or for other air safety purposes involving the Department of Defense or another Federal agency; and

(B) the receipt of such information generally enhances the fulfillment of responsibilities under this section or other air safety responsibilities involving the Department of Defense or another Federal agency.

(3) If the Secretary provides to the head of another agency safety-related information described in paragraph (1) with respect to which the Secretary has made a determination described in paragraph (2), the head of that agency shall (notwithstanding any other provision of law) withhold the information from public disclosure unless the disclosure is specifically authorized by the Secretary.

(i) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section, including requirements and identification of inspecting personnel with respect to preflight safety inspections required by subsection (b)(3).

(j) DEFINITIONS.—In this section:

(1) The terms ''air carrier'', ''aircraft'', ''air transportation'', and ''charter air transportation'' have the meanings given such terms by section 40102(a) of title 49.

(2) The term ''members of the armed forces'' means members of the Army, Navy, Air Force, and Marine Corps.

(Added Pub. L. 99–661, div. A, title XII, §1204(a)(1), Nov. 14, 1986, 100 Stat. 3969; amended Pub. L. 103–272, §5(b)(1), July 5, 1994, 108 Stat. 1373; Pub. L. 105–85, div. A, title X, §1075(a), Nov. 18, 1997, 111 Stat. 1911.)

AMENDMENTS

1997—Subsecs. (h) to (j). Pub. L. 105–85 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

1994—Subsecs. (a)(1)(A), (d)(1)(B)(i). Pub. L. 103–272, §5(b)(1)(A), substituted ''chapter 447 of title 49'' for ''title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)''.

Subsec. (i)(1). Pub. L. 103–272, §5(b)(1)(B), substituted ''section 40102(a) of title 49'' for ''sections 101(3), 101(5), 101(10), and 101(15), respectively, of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15))''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title X, §1075(b), Nov. 18, 1997, 111 Stat. 1911, provided that: ''Subsection (h) of section 2640 of title 10, United States Code, as added by subsection (a), shall apply with respect to requests for information made on or after the date of the enactment of this Act [Nov. 18, 1997].''

EFFECTIVE DATE

Pub. L. 99–661, div. A, title XII, §1204(c), Nov. 14, 1986, 100 Stat. 3971, provided that: ''Section 2640 of title 10, United States Code, as added by subsection (a), shall apply only to contracts which are entered into on or after the date on which the regulations required by subsection (b) are prescribed [set out below].''

REGULATIONS

Pub. L. 99–661, div. A, title XII, §1204(b), Nov. 14, 1986, 100 Stat. 3971, required Secretary of Defense, not later than 120 days after Nov. 14, 1986, to prescribe regulations required by this section.

§ 2641. Transportation of certain veterans on Department of Defense aeromedical evacuation aircraft

(a) The Secretary of Defense may provide transportation on an aircraft operating under the aeromedical evacuation system of the Department of Defense for the purpose of transporting a veteran to or from a Department of Veterans Affairs medical facility or of transporting the remains of a deceased veteran who died at such a facility after being transported to the facility under this subsection. Transportation of the remains of a deceased veteran under this subsection may be provided to the place from which the veteran was transported to the facility or to any other destination which is not farther away from the facility than such place.

(b) Transportation under this section shall be provided in accordance with an agreement entered into between the Secretary of Defense and the Secretary of Veterans Affairs. Such an agreement shall provide that transportation may be furnished to a veteran (or for the remains of a veteran) on an aircraft referred to in subsection (a) only if—

(1) the Secretary of Veterans Affairs notifies the Secretary of Defense that the veteran needs or has been furnished medical care or services in a Department of Veterans Affairs facility and the Secretary of Veterans Affairs requests such transportation in connection with the travel of such veteran (or of the remains of such veteran) to or from the Department of Veterans Affairs facility where the

care or services are to be furnished or were furnished to such veteran;

(2) there is space available for the veteran (or the remains of the veteran) on the aircraft; and

(3) there is an adequate number of medical and other service attendants to care for all persons being transported on the aircraft.

(c) A veteran is not eligible for transportation under this section unless the veteran is a primary beneficiary within the meaning of clause (A) of section 8111(g)(5) of title 38.

(d)(1) A charge may not be imposed on a veteran (or on the survivors of a veteran) for transportation provided to the veteran (or for the remains of the veteran) under this section.

(2) An agreement under subsection (b) shall provide that the Department of Veterans Affairs shall reimburse the Department of Defense for any costs incurred in providing transportation to veterans (or for the remains of veterans) under this section that would not otherwise have been incurred by the Department of Defense.

(e) In this section, the term ''veteran'' has the meaning given that term in section 101(2) of title 38.

(Added Pub. L. 100–180, div. A, title XII, §1250(a)(1), Dec. 4, 1987, 101 Stat. 1167; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(1), (2), (8), Nov. 29, 1989, 103 Stat. 1602, 1603; Pub. L. 103–337, div. A, title VI, §652(b), title X, §1070(e)(8), Oct. 5, 1994, 108 Stat. 2794, 2859.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §652(b)(1), inserted before period ''or of transporting the remains of a deceased veteran who died at such a facility after being transported to the facility under this subsection. Transportation of the remains of a deceased veteran under this subsection may be provided to the place from which the veteran was transported to the facility or to any other destination which is not farther away from the facility than such place''.

Subsec. (b). Pub. L. 103–337, §652(b)(2)(A)(i), inserted ''(or for the remains of a veteran)'' after ''furnished to a veteran'' in introductory provisions.

Subsec. (b)(1). Pub. L. 103–337, §652(b)(2)(A)(ii), inserted ''(or of the remains of such veteran)'' after ''of such veteran''.

Subsec. (b)(2). Pub. L. 103–337, §652(b)(2)(A)(iii), inserted ''(or the remains of the veteran)'' after ''for the veteran''.

Subsec. (c). Pub. L. 103–337, §1070(e)(8), substituted ''section 8111(g)(5) of title 38'' for ''section 5011(g)(5) of title 38''.

Subsec. (d)(1). Pub. L. 103–337, §652(b)(2)(B), inserted ''(or on the survivors of a veteran)'' after ''on a veteran'' and ''(or for the remains of the veteran)'' after ''to the veteran''.

Subsec. (d)(2). Pub. L. 103–337, §652(b)(2)(C), inserted ''(or for the remains of veterans)'' after ''to veterans''.

1989—Subsec. (a). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (b). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' in introductory provisions and in par. (1).

Subsec. (b)(1). Pub. L. 101–189, §1621(a)(8), substituted ''the Secretary of Veterans Affairs requests'' for ''the Administrator requests''.

Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

Subsec. (d)(2). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

DEADLINE FOR ENTRY INTO TRANSPORTATION AGREEMENT

Pub. L. 100–180, div. A, title XII, §1250(b), Dec. 4, 1987, 101 Stat. 1168, directed Secretary of Defense and Administrator of Veterans' Affairs to enter into an agreement required by this section not later than 60 days after Dec. 4, 1987.

§ 2641a. Transportation of American Samoa veterans on Department of Defense aircraft for certain medical care in Hawaii

(a) TRANSPORTATION AUTHORIZED.—The Secretary of Defense may provide transportation on Department of Defense aircraft for the purpose of transporting any veteran specified in subsection (b) between American Samoa and the State of Hawaii if such transportation is required in order to provide hospital care to such veteran as described in that subsection.

(b) VETERANS ELIGIBLE FOR TRANSPORT.—A veteran eligible for transport under subsection (a) is any veteran who—

(1) resides in and is located in American Samoa; and

(2) as determined by an official of the Department of Veterans Affairs designated for that purpose by the Secretary of Veterans Affairs, must be transported to the State of Hawaii in order to receive hospital care to which such veteran is entitled under chapter 17 of title 38 in facilities of such Department in the State of Hawaii.

(c) ADMINISTRATION.—(1) Transportation may be provided to veterans under this section only on a space-available basis.

(2) A charge may not be imposed on a veteran for transportation provided to the veteran under this section.

(Added Pub. L. 105–262, title VIII, §8121(a), Oct. 17, 1998, 112 Stat. 2332; amended Pub. L. 106–65, div. A, title X, §1066(a)(24), Oct. 5, 1999, 113 Stat. 771.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65, §1066(a)(24)(A), struck out '', United States Code,'' after ''title 38''.

Subsec. (d). Pub. L. 106–65, §1066(a)(24)(B), struck out heading and text of subsec. (d). Text read as follows: ''In this section:

''(1) The term 'veteran' has the meaning given that term in section 101(2) of title 38, United States Code.

''(2) The term 'hospital care' has the meaning given that term in section 1701(5) of title 38, United States Code.''

§ 2641b. Space-available travel on Department of Defense aircraft: program authorized and eligible recipients

(a) AUTHORITY TO ESTABLISH PROGRAM.—(1) The Secretary of Defense may establish a program (in this section referred to as the ''travel program'') to provide transportation on Department of Defense aircraft on a space-available basis to the categories of individuals eligible under subsection (c).

(2) If the Secretary makes a determination to establish the travel program, the Secretary shall prescribe regulations for the operation of

the travel program not later than one year after the date on which the determination was made. The regulations shall take effect on that date or such earlier date as the Secretary shall specify in the regulations.

(3) Not later than 30 days after making the determination to establish the travel program, the Secretary shall submit to the congressional defense committees an initial implementation report describing—

(A) the basis for the determination;

(B) any additional categories of individuals to be eligible for the travel program under subsection (c)(5);

(C) how the Secretary will ensure that the travel program is established and operated in compliance with the conditions specified in subsection (b); and

(D) the metrics by which the Secretary will monitor the travel program to determine the efficient and effective execution of the travel program.

(b) CONDITIONS ON ESTABLISHMENT AND OPERATION.—(1) The Secretary of Defense shall operate the travel program in a budget-neutral manner.

(2) No additional funds may be used, or flight hours performed, for the purpose of providing transportation under the travel program.

(c) ELIGIBLE INDIVIDUALS.—Subject to subsection (d), the Secretary of Defense shall provide transportation under the travel program (if established) to the following categories of individuals:

(1) Members of the armed forces on active duty.

(2) Members of the Selected Reserve who hold a valid Uniformed Services Identification and Privilege Card.

(3) Retired members of a regular or reserve component of the armed forces, including retired members of reserve components who, but for being under the eligibility age applicable under section 12731 of this title, would be eligible for retired pay under chapter 1223 of this title.

(4) Such categories of dependents of individuals described in paragraphs (1) through (3) as the Secretary shall specify in the regulations under subsection (a), under such conditions and circumstances as the Secretary shall specify in such regulations.

(5) Such other categories of individuals as the Secretary, in the discretion of the Secretary, considers appropriate.

(d) PRIORITIES AND RESTRICTIONS.—In operating the travel program, the Secretary of Defense shall—

(1) in the sole discretion of the Secretary, establish an order of priority for transportation under the travel program for categories of eligible individuals that is based on considerations of military necessity, humanitarian concerns, and enhancement of morale;

(2) give priority in consideration of transportation under the travel program to the demands of members of the armed forces in the regular components and in the reserve components on active duty and to the need to provide such members, and their dependents, a means of respite from such demands; and

(3) implement policies aimed at ensuring cost control (as required by subsection (b)) and the safety, security, and efficient processing of travelers, including limiting the benefit under the travel program to one or more categories of otherwise eligible individuals if considered necessary by the Secretary.

(e) SPECIAL PRIORITY FOR RETIRED MEMBERS RESIDING IN COMMONWEALTHS AND POSSESSIONS OF THE UNITED STATES WHO NEED CERTAIN HEALTH CARE SERVICES.—(1) Notwithstanding subsection (d)(1), in establishing space-available transportation priorities under the travel program, the Secretary of Defense shall provide transportation for an individual described in paragraph (2), and a single dependent of the individual if needed to accompany the individual, at a priority level in the same category as the priority level for an unaccompanied dependent over the age of 18 traveling on environmental and morale leave.

(2) Subject to paragraph (3), paragraph (1) applies with respect to an individual described in subsection (c)(3) who—

(A) resides in or is located in a Commonwealth or possession of the United States; and

(B) is referred by a military or civilian primary care provider located in that Commonwealth or possession to a specialty care provider for services to be provided outside of that Commonwealth or possession.

(3) If an individual described in subsection (c)(3) is a retired member of a reserve component who is ineligible for retired pay under chapter 1223 of this title by reason of being under the eligibility age applicable under section 12731 of this title, paragraph (1) applies to the individual only if the individual is also enrolled in the TRICARE program for certain members of the Retired Reserve authorized under section 1076e of this title.

(4) The priority for space-available transportation required by this subsection applies with respect to both—

(A) the travel from the Commonwealth or possession of the United States to receive the specialty care services; and

(B) the return travel.

(5) The requirement to provide transportation on Department of Defense aircraft on a space-available basis on the priority basis described in paragraph (1) to individuals covered by this subsection applies whether or not the travel program is established under this section.

(6) In this subsection, the terms ''primary care provider'' and ''specialty care provider'' refer to a medical or dental professional who provides health care services under chapter 55 of this title.

(f) CONSTRUCTION.—The authority to provide transportation under the travel program is in addition to any other authority under law to provide transportation on Department of Defense aircraft on a space-available basis.

(Added Pub. L. 110–181, div. A, title III, § 374(a), Jan. 28, 2008, 122 Stat. 82; amended Pub. L. 112–239, div. A, title VI, § 622(a), Jan. 2, 2013, 126 Stat. 1779.)

AMENDMENTS

2013—Pub. L. 112–239 amended section generally. Prior to amendment, section related to increased priority for space-available transportation on Department of Defense aircraft for certain members and former members of the uniformed services.

§ 2642. Transportation services provided to certain non-Department of Defense agencies and entities: use of Department of Defense reimbursement rate

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense may authorize the use of the Department of Defense reimbursement rate for military transportation services provided by a component of the Department of Defense as follows:

(1) For military transportation services provided to the Central Intelligence Agency, if the Secretary of Defense determines that those military transportation services are provided for activities related to national security objectives.

(2) For military transportation services provided to the Department of State for the transportation of armored motor vehicles to a foreign country to meet requirements of the Department of State for armored motor vehicles associated with the overseas travel of the Secretary of State in that country.

(3) For military transportation services provided to any element of the Federal Government outside the Department of Defense in circumstances other than those specified in paragraphs (1) and (2), but only if the Secretary of Defense determines that the provision of such services will promote the improved use of transportation capacity without any negative effect on the national security objectives or the national security interests contained within the United States commercial transportation industry.

(4) For military transportation services provided in support of foreign military sales.

(5) For military transportation services provided to a State, local, or tribal agency (including any organization composed of State, local, or tribal agencies).

(6) For military transportation services provided to a Department of Defense contractor when transporting supplies that are for, or destined for, a Department of Defense entity.

(b) TERMINATION OF AUTHORITY FOR CERTAIN CATEGORIES OF TRANSPORTATION.—The provisions of paragraphs (3), (4), (5), and (6) of subsection (a) shall apply only to military transportation services provided before October 1, 2019.

(c) DEFINITION.—In this section, the term ''Department of Defense reimbursement rate'' means the amount charged a component of the Department of Defense by another component of the Department of Defense.

(Added Pub. L. 102–88, title V, §501(a), Aug. 14, 1991, 105 Stat. 435; amended Pub. L. 108–136, div. A, title X, §1006(a), (b)(1), Nov. 24, 2003, 117 Stat. 1585; Pub. L. 111–84, div. A, title III, §351(a), Oct. 28, 2009, 123 Stat. 2262; Pub. L. 111–383, div. A, title X, §1075(b)(40), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 113–66, div. A, title X, §1073(a), (b), Dec. 26, 2013, 127 Stat. 869; Pub. L. 113–291, div. A, title X, §§1044(a)–(c)(1), 1071(f)(22), (g)(4), Dec. 19, 2014, 128 Stat. 3493, 3494, 3511.)

AMENDMENTS

2014—Pub. L. 113–291, §1044(c)(1), amended section catchline generally, substituting ''Transportation services provided to certain non-Department of Defense agencies and entities: use of Department of Defense reimbursement rate'' for ''Transportation services provided to certain other agencies: use of Department of Defense reimbursement rate''.

Subsec. (a). Pub. L. 113–291, §1044(a)(1), substituted ''Subject to subsection (b), the Secretary'' for ''The Secretary'' in introductory provisions.

Subsec. (a)(3). Pub. L. 113–291, §1071(g)(4), amended Pub. L. 113–66, §1073(a)(2)(B). See 2013 Amendment note below.

Pub. L. 113–291, §1071(f)(22), inserted ''and'' before ''military transportation services provided in support''. Amendment was executed prior to amendment by Pub. L. 113–291, §1044(a)(2)(B), see below, pursuant to section 1071(k) of Pub. L. 113–291, set out as a note under section 101 of this title.

Pub. L. 113–291, §1044(a)(2)(B), substituted ''Department of Defense'' for ''Department of Defense and military transportation services provided in support of foreign military sales''.

Pub. L. 113–291, §1044(a)(2)(A), which directed substitution of ''For'' for ''During the period beginning on October 28, 2009, and ending on October 28, 2019, for'', was executed by making the substitution for ''During the period beginning on October 28, 2009, and ending on September 30, 2019, for'' to reflect the probable intent of Congress.

Subsec. (a)(4) to (6). Pub. L. 113–291, §1044(a)(3), added pars. (4) to (6).

Subsecs. (b), (c). Pub. L. 113–291, §1044(b), added subsec. (b) and redesignated former subsec. (b) as (c).

2013—Pub. L. 113–66, §1073(b), substituted ''Transportation'' for ''Airlift'' in section catchline.

Subsec. (a). Pub. L. 113–66, §1073(a)(1), substituted ''transportation services'' for ''airlift services'' wherever appearing and ''transportation capacity'' for ''airlift capacity'' in par. (3).

Subsec. (a)(3). Pub. L. 113–66, §1073(a)(2)(B), as amended by Pub. L. 113–291, §1071(g)(4), inserted ''military transportation services provided in support of foreign military sales'' after ''Department of Defense''.

Pub. L. 113–66, §1073(a)(2)(A), (C), substituted ''September 30, 2019'' for ''October 28, 2014'' and ''transportation industry'' for ''air industry''.

2011—Subsec. (a)(3). Pub. L. 111–383 substituted ''During the period beginning on October 28, 2009, and ending on October 28, 2014'' for ''During the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010''.

2009—Subsec. (a)(3). Pub. L. 111–84 added par. (3).

2003—Pub. L. 108–136, §1006(b)(1), substituted ''Airlift services provided to certain other agencies: use of Department of Defense reimbursement rate'' for ''Reimbursement rate for airlift services provided to Central Intelligence Agency'' as section catchline.

Subsec. (a). Pub. L. 108–136, §1006(a), inserted ''as follows:

''(1) For military airlift services provided''

before ''to the Central Intelligence Agency'', and added par. (2).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title X, §1071(g), Dec. 19, 2014, 128 Stat. 3511, provided that the amendment made by section 1071(g)(4) is effective as of Dec. 26, 2013, and as if included in Pub. L. 113–66 as enacted.

§ 2643. Commissary and exchange services: transportation overseas

(a) TRANSPORTATION OPTIONS.—The Secretary of Defense shall authorize the officials respon-

sible for operation of commissaries and military exchanges to negotiate directly with private carriers for the most cost-effective transportation of commissary and exchange supplies to destinations outside the continental United States without relying on the Air Mobility Command, the Military Sealift Command, or the Military Traffic Management Command. Section 2631 of this title, regarding the preference for vessels of the United States or belonging to the United States in the transportation of supplies by sea, shall apply to the negotiation of contracts for sea-borne transportation under the authority of this section.

(b) PAYMENT OF TRANSPORTATION COSTS.—Section 2483(b)(5) of this title, regarding the use of appropriated funds to cover the expenses of operating commissary stores, shall apply to the transportation of commissary supplies and products. Appropriated funds for the Department of Defense shall also be used to cover the expenses of transporting exchange supplies and products to destinations outside the continental United States.

(Added Pub. L. 104–106, div. A, title III, § 334(a), Feb. 10, 1996, 110 Stat. 261; amended Pub. L. 109–163, div. A, title VI, § 673, Jan. 6, 2006, 119 Stat. 3319.)

AMENDMENTS

2006—Pub. L. 109–163 designated existing provisions as subsec. (a), inserted heading, substituted ''to destinations outside the continental United States without relying on the Air Mobility Command, the Military Sealift Command,'' for ''by sea without relying on the Military Sealift Command'' and ''contracts for sea-borne transportation'' for ''transportation contracts'', and added subsec. (b).

§ 2644. Control of transportation systems in time of war

In time of war, the President, through the Secretary of Defense, may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266, § 4742; renumbered § 2644 and amended Pub. L. 104–201, div. A, title IX, § 906(a), (b), Sept. 23, 1996, 110 Stat. 2620.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4742	10:1361.	Aug. 29, 1916, ch. 418 (last par. under ''Ordnance Department''), 39 Stat. 645.

The words ''as may be needful or desirable'' are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 4742 of this title as this section and substituted ''Secretary of Defense'' for ''Secretary of the Army''.

§ 2645. Indemnification of Department of Transportation for losses covered by vessel war risk insurance

(a) PROMPT INDEMNIFICATION REQUIRED.—(1) In the event of a loss that is covered by vessel war risk insurance, the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification—

(A) in the case of a claim for the loss of a vessel, not later than 90 days after the date on which the Secretary of Transportation determines the claim to be payable or that amounts are due under the policy that provided the vessel war risk insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of a vessel that is (or may be) covered by vessel war risk insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such vessel. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the vessel to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is payable, any amount paid under this paragraph arising from such claim shall be credited against the amount payable under the vessel war risk insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) SOURCE OF FUNDS FOR PAYMENT OF INDEMNITY.—The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

(c) DEPOSIT OF FUNDS.—Any amount transferred to the Secretary of Transportation under this section shall be deposited in, and merged with amounts in, the Vessel War Risk Insurance Fund as provided in section 53909(b) of title 46.

(d) NOTICE TO CONGRESS.—In the event of a loss that is covered by vessel war risk insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of $10,000,000, the Secretary of Defense shall submit to Congress notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss.

(e) IMPLEMENTING MATTERS.—(1) Payment of indemnification under this section is not subject

to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

(f) CONSTRUCTION WITH OTHER TRANSFER AUTHORITY.—Authority to transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

[(g) Repealed. Pub. L. 108–136, div. A, title X, §1031(a)(26)(B), Nov. 24, 2003, 117 Stat. 1598.]

(h) DEFINITIONS.—In this section:

(1) VESSEL WAR RISK INSURANCE.—The term ''vessel war risk insurance'' means insurance and reinsurance provided through policies issued by the Secretary of Transportation under chapter 539 of title 46 that is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) VESSEL WAR RISK INSURANCE FUND.—The term ''Vessel War Risk Insurance Fund'' means the insurance fund referred to in section 53909(a) of title 46.

(3) LOSS.—The term ''loss'' includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the vessel war risk insurance.

(Added Pub. L. 104–201, div. A, title X, §1079(b)(1), Sept. 23, 1996, 110 Stat. 2669; amended Pub. L. 105–85, div. A, title X, §1073(a)(57), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 108–136, div. A, title X, §1031(a)(26), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 109–304, §17(a)(4), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 112–81, div. A, title X, §1064(8), Dec. 31, 2011, 125 Stat. 1587.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f), is the date of enactment of Pub. L. 104–201, which was approved Sept. 23, 1996.

AMENDMENTS

2011—Subsec. (d). Pub. L. 112–81 substituted ''$10,000,000'' for ''$1,000,000''.

2006—Subsec. (c). Pub. L. 109–304, §17(a)(4)(A), substituted ''section 53909(b) of title 46'' for ''the second sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a))''.

Subsec. (h)(1). Pub. L. 109–304, §17(a)(4)(B), substituted ''chapter 539 of title 46'' for ''title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.),''.

Subsec. (h)(2). Pub. L. 109–304, §17(a)(4)(C), substituted ''section 53909(a) of title 46'' for ''the first sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a))''.

2003—Subsec. (d). Pub. L. 108–136, §1031(a)(26)(A), substituted ''Congress'' for ''Congress—'', struck out par. (1) designation before ''notification'', substituted a period for ''; and'' after ''date of the loss'', and struck out par. (2) which read as follows: ''semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of such funds, pending litigation, and estimated total cost to the Government.''

Subsec. (g). Pub. L. 108–136, §1031(a)(26)(B), struck out heading and text of subsec. (g). Text read as follows: ''Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report setting forth the current amount of the contingent outstanding liability of the United States under the vessel war risk insurance program under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.).''

1997—Subsec. (a)(1)(B). Pub. L. 105–85 struck out ''on which'' after ''after the date on which''.

§ 2646. Travel services: procurement for official and unofficial travel under one contract

(a) AUTHORITY.—The head of an agency may enter into a contract for travel-related services that provides for the contractor to furnish services for both official travel and unofficial travel.

(b) CREDITS, DISCOUNTS, COMMISSIONS, FEES.—(1) A contract entered into under this section may provide for credits, discounts, or commissions or other fees to accrue to the Department of Defense. The accrual and amounts of credits, discounts, or commissions or other fees may be determined on the basis of the volume (measured in the number or total amount of transactions or otherwise) of the travel-related sales that are made by the contractor under the contract.

(2) The evaluation factors applicable to offers for a contract under this section may include a factor that relates to the estimated aggregate value of any credits, discounts, commissions, or other fees that would accrue to the Department of Defense for the travel-related sales made under the contract.

(3) Commissions or fees received by the Department of Defense as a result of travel-related sales made under a contract entered into under this section shall be distributed as follows:

(A) For amounts relating to sales for official travel, credit to appropriations available for official travel for the fiscal year in which the amounts were charged.

(B) For amounts relating to sales for unofficial travel, deposit in nonappropriated fund accounts available for morale, welfare, and recreation programs.

(c) DEFINITIONS.—In this section:

(1) The term ''head of an agency'' has the meaning given that term in section 2302(1) of this title.

(2) The term ''official travel'' means travel at the expense of the Federal Government.

(3) The term ''unofficial travel'' means personal travel or other travel that is not paid for or reimbursed by the Federal Government out of appropriated funds.

(d) INAPPLICABILITY TO COAST GUARD AND NASA.—This section does not apply to the Coast Guard when it is not operating as a service in the Navy, nor to the National Aeronautics and Space Administration.

(Added Pub. L. 105–261, div. A, title VIII, §813(a), Oct. 17, 1998, 112 Stat. 2087.)

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.

§ 2647. Next-of-kin of persons unaccounted for from conflicts after World War II: transportation to annual meetings

The Secretary of Defense may provide transportation for the next-of-kin of persons who are unaccounted for from the Korean conflict, the Cold War, Vietnam War era, or the Persian Gulf War to and from an annual meeting in the United States. Such transportation shall be provided under such regulations as the Secretary of Defense may prescribe.

(Added Pub. L. 107–107, div. A, title V, § 574(a), Dec. 28, 2001, 115 Stat. 1122.)

AVAILABILITY OF FUNDS FOR NEXT-OF-KIN OF VIETNAM ERA INDIVIDUALS

Pub. L. 107–117, div. A, title VIII, § 8018, Jan. 10, 2002, 115 Stat. 2251, provided that: ''Funds available in this Act [see Tables for classification] and hereafter may be used to provide transportation for the next-of-kin of individuals who have been prisoners of war or missing in action from the Vietnam era to an annual meeting in the United States, under such regulations as the Secretary of Defense may prescribe.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–259, title VIII, § 8018, Aug. 9, 2000, 114 Stat. 678.

Pub. L. 106–79, title VIII, § 8018, Oct. 25, 1999, 113 Stat. 1235.

Pub. L. 105–262, title VIII, § 8018, Oct. 17, 1998, 112 Stat. 2301.

Pub. L. 105–56, title VIII, § 8018, Oct. 8, 1997, 111 Stat. 1224.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8019], Sept. 30, 1996, 110 Stat. 3009–71, 3009–92.

Pub. L. 104–61, title VIII, § 8025, Dec. 1, 1995, 109 Stat. 657.

Pub. L. 103–335, title VIII, § 8031, Sept. 30, 1994, 108 Stat. 2625.

Pub. L. 103–139, title VIII, § 8034, Nov. 11, 1993, 107 Stat. 1447.

Pub. L. 102–396, title IX, § 9046, Oct. 6, 1992, 106 Stat. 1912.

Pub. L. 102–172, title VIII, § 8047, Nov. 26, 1991, 105 Stat. 1182.

Pub. L. 101–511, title VIII, § 8051, Nov. 5, 1990, 104 Stat. 1886.

Pub. L. 101–165, title IX, § 9065, Nov. 21, 1989, 103 Stat. 1143.

§ 2648. Persons and supplies: sea, land, and air transportation

Whenever the Secretary of Defense considers that space is available, the following persons and supplies may be transported on vessels, vehicles, or aircraft operated by the Department of Defense:

(1) Members of Congress.

(2) Other officers of the United States traveling on official business.

(3) Secretaries and supplies of the Armed Services Department of the Young Men's Christian Association.

(4) Officers and employees of the Commonwealth of Puerto Rico on official business.

(5) The families of members of the armed forces, officers and employees of the Department of Defense or the Coast Guard, and persons described in paragraphs (1), (2), and (4).

However, a person described in paragraph (4) or (5) may be so transported only if the transportation is without expense to the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266, § 4744; Pub. L. 86–624, § 4(d), July 12, 1960, 74 Stat. 411; renumbered § 2648 and amended Pub. L. 108–375, div. A, title X, § 1072(a), (b)(1), Oct. 28, 2004, 118 Stat. 2057; Pub. L. 111–383, div. A, title III, § 352(d), (e)(1), Jan. 7, 2011, 124 Stat. 4193.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4744	10:1369. 10:1370. 10:1371 (less last 29 words).	Mar. 2, 1907, ch. 2511 (6th proviso, less last 29 words under ''Transportation of the Army and Its Supplies''), 34 Stat. 1170. June 30, 1921, ch. 33 (8th proviso under ''Transportation of the Army and Its Supplies''), 42 Stat. 81. Mar. 3, 1911, ch. 209 (3d proviso under ''Transportation of the Army and Its Supplies''), 36 Stat. 1051.

Reference to the Philippine government, contained in the source statute for 10:1371, is omitted, since the Philippine Republic now has the status of a foreign country and only possessions of the United States are intended to be covered by the source statute. The words ''Armed Services Department'' are substituted for the words ''Army and Navy Department'', in 10:1370, to reflect the present name of that Department of the Young Men's Christian Association. (See also third sentence of revision note for section 4746 of this title, below.)

AMENDMENTS

2011—Pub. L. 111–383 substituted ''Persons and supplies: sea, land, and air transportation'' for ''Persons and supplies: sea transportation'' in section catchline and inserted '', vehicles, or aircraft'' after ''vessels'' in introductory provisions.

2004—Pub. L. 108–375, § 1072(b)(1), in introductory provisions, substituted ''Secretary of Defense'' for ''Secretary of the Army'' and struck out ''Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any military transport agency of'' before ''the Department of Defense'', redesignated pars. (4) to (8) as (1) to (5), respectively, in par. (5), substituted ''members of the armed forces, officers and employees of the Department of Defense or the Coast Guard, and persons described in paragraphs (1), (2), and (4)'' for ''persons described in clauses (1), (2), (4), (5), and (7)'', in concluding provisions, substituted ''paragraph (4) or (5)'' for ''clause (7) or (8)'', and struck out former pars. (1) to (3) which read as follows:

''(1) Members of the Navy, Marine Corps, or Coast Guard.

''(2) Officers and employees of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Coast Guard.

''(3) Supplies of the Department of the Navy.''

Pub. L. 108–375, § 1072(a), renumbered section 4744 of this title as this section.

1960—Pub. L. 86–624 struck out cl. (6) which authorized transportation of officers and employees of the Territory of Hawaii, redesignated cls. (7) to (9) as (6) to (8), respectively, and substituted ''clauses (1), (2), (4), (5), and (7)'' for ''clauses (1), (2), (4), (5), (6), and (8)'' in redesignated cl. (8), and ''clause (7) or (8)'' for ''clause (8) or (9)'' in closing sentence.

§ 2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft

(a) AUTHORITY.—Whenever space is unavailable on commercial lines and is available on vessels, vehicles, or aircraft operated by the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of Defense, be transported on those vessels, vehicles, or aircraft. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service, except that in the case of transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance, any amount charged for such transportation may not exceed the cost of providing the transportation.

(b) CREDITING OF RECEIPTS.—Any amount received under this section with respect to transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance may be credited to the appropriation, fund, or account used in incurring the obligation for which such amount is received. In all other cases, amounts received under this section shall be covered into the Treasury as miscellaneous receipts.

(c) TRANSPORTATION OF ALLIED PERSONNEL DURING CONTINGENCIES OR DISASTER RESPONSES.—Until January 6, 2016, when space is available on vessels, vehicles, or aircraft operated by the Department of Defense and the Secretary of Defense determines that operations in the area of a contingency operation or disaster response would be facilitated if allied forces or civilians were to be transported using such vessels, vehicles, or aircraft, the Secretary may provide such transportation on a noninterference basis, without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267, § 4745; Pub. L. 96–513, title V, § 512(22), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 97–31, § 12(3)(C), Aug. 6, 1981, 95 Stat. 154; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; renumbered § 2649 and amended Pub. L. 108–375, div. A, title X, § 1072(a), (b)(2), Oct. 28, 2004, 118 Stat. 2057; Pub. L. 111–383, div. A, title III, § 352(a)–(c), (e)(2), Jan. 7, 2011, 124 Stat. 4193, 4194; Pub. L. 112–239, div. A, title X, § 1076(e)(4), Jan. 2, 2013, 126 Stat. 1951.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4745(a)	10:1367 (less last 20 words).	June 5, 1920, ch. 240 (6th proviso under ''Transportation of the Army and Its Supplies''), 41 Stat. 960.
4745(b)	10:1367 (last 20 words).	

In subsection (a), the words ''Federal Maritime Board'' are substituted for the words ''United States Maritime Commission'', since the functions of the chairman of that commission were transferred to the chairman of the Board by 1950 Reorganization Plan No. 21, effective May 24, 1950, 64 Stat. 1273. The words ''the same kinds of service'' are substituted for the words ''the same class of accommodations''. The words ''shipments of'' and ''between the same ports'' are omitted as surplusage. (See also third sentence of revision note for section 4746 of this title, below.)

AMENDMENTS

2013—Subsec. (c). Pub. L. 112–239 substituted ''Until January 6, 2016'' for ''During the 5-year period beginning on the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011''.

2011—Pub. L. 111–383, § 352(e)(2), substituted ''Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft'' for ''Civilian passengers and commercial cargoes: transportation on Department of Defense vessels'' in section catchline.

Subsec. (a). Pub. L. 111–383, § 352(a), (b)(1), inserted heading, inserted '', vehicles, or aircraft'' after ''vessels'' in two places in first sentence, and inserted '', except that in the case of transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance, any amount charged for such transportation may not exceed the cost of providing the transportation'' before period at end of second sentence.

Subsec. (b). Pub. L. 111–383, § 352(b)(2), inserted heading and substituted ''Any amount received under this section with respect to transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance may be credited to the appropriation, fund, or account used in incurring the obligation for which such amount is received. In all other cases, amounts'' for ''Amounts''.

Subsec. (c). Pub. L. 111–383, § 352(c), added subsec. (c).

2004—Pub. L. 108–375, § 1072(a), (b)(2)(A), renumbered section 4745 of this title as this section and substituted ''Civilian passengers and commercial cargoes: transportation on Department of Defense vessels'' for ''Civilian passengers and commercial cargoes: transports in trans-Atlantic service'' in section catchline.

Subsec. (a). Pub. L. 108–375, § 1072(b)(2)(B)–(D), struck out ''(1) on vessels operated by Army transport agencies, or (2) within bulk space allocations made to the Department of the Army'' after ''available'' and ''any transport agency of'' before ''the Department of Defense'' and substituted ''Secretary of Defense, be transported'' for ''Secretary of the Army and the Secretary of Homeland Security, be transported''.

2002—Subsec. (a). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1981—Subsec. (a). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Commerce'' for ''Chairman of the Federal Maritime Board''.

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.

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.

§ 2650. Civilian personnel in Alaska

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on vessels or airplanes operated by the Department of Defense, if—

(1) the Secretary of Defense considers that accommodations are available;

(2) the transportation is without expense to the United States;

(3) the transportation is limited to one round trip between Alaska and the United

States during any two-year period, except in an emergency such as sickness or death; and

(4) in case of travel by air, the transportation cannot be reasonably handled by a United States commercial air carrier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267, § 4746; Pub. L. 98–443, § 9(k), Oct. 4, 1984, 98 Stat. 1708; renumbered § 2650 and amended Pub. L. 108–375, div. A, title X, § 1072(a), (b)(3), Oct. 28, 2004, 118 Stat. 2057, 2058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4746	10:1371a.	Nov. 21, 1941, ch. 483; restated July 25, 1947, ch. 321, 61 Stat. 423.

Before the enactment of the National Security Act of 1947, the transport functions covered by this section were performed only by the Army. Under section 2(a)(3) of the National Security Act (as it existed before August 10, 1949), the sea and air transportation functions of the Army, Navy, and Air Force were respectively consolidated into the ''Military Sea Transportation Service'', under the Department of the Navy, and the ''Military Air Transport Service'', under the Department of the Air Force. Instead of having space on its own transport vessels and airplanes, the Army is now allotted bulk space on vessels and airplanes operated by those transport services. The words ''or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of the Department of Defense'' are inserted, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1953/5885, 22 July 1953), to make clear that the rule applicable to Army vessels and airplanes applies to the bulk space allocated to the Army. Since the authority to perform transportation functions could again be transferred as between the military departments, the reference to ''vessels or airplanes of Army transport agencies'' is retained. The word ''considers'' is substituted for the words ''in the opinion of''. The words ''Persons residing in Alaska who are and have been employed there by the United States'' are substituted for the words ''employees of the United States, residing in Alaska, who have been in such employment''. The word ''commercial'' is substituted for the word ''civil'' for clarity. The words ''from and after November 21, 1941'', ''and the carriage of all such air traffic shall be terminated'', ''dire'', ''the privilege herein granted'', and ''as to each eligible individual'' are omitted as surplusage. The words ''the continental'' are omitted, since section 101(1) of this title defines the United States as ''the States and the District of Columbia''.

AMENDMENTS

2004—Pub. L. 108–375, § 1072(a), (b)(3)(A), renumbered section 4746 of this title as this section and, in introductory provisions, struck out ''Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of'' before ''the Department of Defense''.

Par. (1). Pub. L. 108–375, § 1072(b)(3)(B), substituted ''Secretary of Defense'' for ''Secretary of the Army''.

Par. (4). Pub. L. 108–375, § 1072(b)(3)(C), substituted ''by air, the transportation cannot'' for ''by air—

''(A) the Secretary of Transportation has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

''(B) the transportation cannot''.

1984—Par. (4)(A). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

§ 2651. Passengers and merchandise to Guam: sea transport

Whenever space is available, passengers, and merchandise produced in the United States, or the Commonwealths and possessions, and consigned to residents and mercantile firms of Guam, may be transported to Guam on vessels operated by the Department of Defense, under regulations and at rates to be prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267, § 4747; renumbered § 2651 and amended Pub. L. 108–375, div. A, title X, § 1072(a), (b)(4), Oct. 28, 2004, 118 Stat. 2057, 2058; Pub. L. 109–163, div. A, title X, § 1057(a)(6), Jan. 6, 2006, 119 Stat. 3441; Pub. L. 111–383, div. A, title X, § 1075(h)(4)(A)(ii), Jan. 7, 2011, 124 Stat. 4377.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4747	10:1368. 10:1371 (last 29 words).	Mar. 3, 1911, ch. 209 (4th proviso under ''Transportation of the Army and Its Supplies''), 36 Stat. 1051. Mar. 2, 1907, ch. 2511 (last 29 words of 6th proviso under ''Transportation of the Army and Its Supplies''), 34 Stat. 1171.

The words ''without displacing military supplies'' and ''of the island of'', in 10:1368 and 1371, are omitted as surplusage. The words ''produced in the United States, or the Territories, Commonwealths, and possessions'' are substituted for the words ''of American production''.

AMENDMENTS

2011—Pub. L. 111–383 made technical amendment to directory language of Pub. L. 109–163, § 1057(a)(6). See 2006 Amendment note below.

2006—Pub. L. 109–163, § 1057(a)(6), as amended by Pub. L. 111–383, substituted ''Commonwealths and possessions'' for ''Territories, Commonwealths, and possessions''.

2004—Pub. L. 108–375, § 1072(b)(4), substituted ''the Department of Defense, under regulations and at rates to be prescribed by the Secretary of Defense'' for ''Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any transport agency of the Department of Defense, under regulations and at rates to be prescribed by the Secretary of the Army''.

Pub. L. 108–375, § 1072(a), renumbered section 4747 of this title as this section.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, § 1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that amendment by section 1075(h)(4)(A)(ii) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109–163 as enacted.

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.

Sec.
[2661a. Repealed.]
2662. Real property transactions: reports to congressional committees.
2663. Land acquisition authorities.
2664. Limitations on real property acquisition.
2665. Sale of certain interests in land; logs.
[2666. Repealed.]
2667. Leases: non-excess property of military departments and Defense Agencies.
[2667a. Repealed.]
2668. Easements for rights-of-way.
2668a. Easements: granting restrictive easements in connection with land conveyances.
[2669. Repealed.]
2670. Use of facilities by private organizations; use as polling places.
2671. Military reservations and facilities: hunting, fishing, and trapping.
2672. Protection of buildings, grounds, property, and persons.
[2672a, 2673. Repealed.]
2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region.
2675. Leases: foreign countries.
[2676, 2677. Renumbered or Repealed.]
2678. Feral horses and burros: removal from military installations.
2679. Installation-support services: intergovernmental support agreements.
[2680. Repealed.]
2681. Use of test and evaluation installations by commercial entities.
2682. Facilities for defense agencies.
2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations.
2684. Cooperative agreements for management of cultural resources.
2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations.
2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities.
2686. Utilities and services: sale; expansion and extension of systems and facilities.
2687. Base closures and realignments.
2687a. Overseas base closures and realignments and basing master plans.
2688. Utility systems: conveyance authority.
[2689, 2690. Renumbered.]
2691. Restoration of land used by permit or lease.
2692. Storage, treatment, and disposal of nondefense toxic and hazardous materials.
[2693. Repealed.]
2694. Conservation and cultural activities.
2694a. Conveyance of surplus real property for natural resource conservation.
2694b. Participation in wetland mitigation banks.
2694c. Participation in conservation banking programs.
2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions.
2696. Real property: transfer between armed forces and screening requirements for other Federal use.
2697. Acceptance and use of landing fees charged for use of domestic military airfields by civil aircraft.

HISTORICAL AND REVISION NOTES

1962 ACT

This section makes necessary clerical amendments to chapter analysis.

AMENDMENTS

2015—Pub. L. 114–92, div. B, title XXVIII, §2811(b), Nov. 25, 2015, 129 Stat. 1174, added item 2672.

2014—Pub. L. 113–291, div. A, title III, §351(c)(2), Dec. 19, 2014, 128 Stat. 3347, added item 2679.

2011—Pub. L. 111–383, div. A, title III, §341(b), div. B, title XXVIII, §2814(c), Jan. 7, 2011, 124 Stat. 4190, 4464, struck out item 2680 ''Leases: land for special operations activities'' and added item 2697.

2009—Pub. L. 111–84, div. B, title XXVIII, §2822(a)(2), Oct. 28, 2009, 123 Stat. 2666, added item 2687a.

2008—Pub. L. 110–417, [div. A], title III, §311(b), div. B, title XXVIII, §2812(f)(2), Oct. 14, 2008, 122 Stat. 4409, 4728, added items 2667 and 2694c and struck out former items 2667 ''Leases: non-excess property of military departments'' and 2667a ''Leases: non-excess property of Defense agencies''.

Pub. L. 110–181, div. B, title XXVIII, §2822(b)(2), Jan. 28, 2008, 122 Stat. 544, struck out item 2677 ''Options: property required for military construction projects''.

2006—Pub. L. 109–364, div. B, title XXVIII, §§2822(d), 2823(b), 2825(d)(2)(B), 2851(c)(3), Oct. 17, 2006, 120 Stat. 2475–2477, 2495, added item 2668a, substituted ''Real property: transfer between armed forces and screening requirements for other Federal use'' for ''Screening of real property for further Federal use before conveyance'' in item 2696, and struck out items 2669 ''Easements for rights-of-way: gas, water, sewer pipe lines'', 2689 ''Development of geothermal energy on military lands'', 2690 ''Fuel sources for heating systems; prohibition on converting certain heating facilities'', and 2693 ''Conveyance of certain property: Department of Justice correctional options program''.

Pub. L. 109–163, div. B, title XXVIII, §2821(g), Jan. 6, 2006, 119 Stat. 3513, added items 2663 and 2664 and struck out former item 2663 ''Acquisition'' and items 2672 ''Authority to acquire low-cost interests in land'', 2672a ''Acquisition: interests in land when need is urgent'', and 2676 ''Acquisition: limitation''.

2004—Pub. L. 108–375, div. B, title XXVIII, §2821(e)(3), Oct. 28, 2004, 118 Stat. 2130, substituted ''Use of facilities by private organizations; use as polling places'' for ''Military installations: use by American National Red Cross; use as polling places'' in item 2670 and struck out items 2664 ''Acquisition of property for lumber production'', 2666 ''Acquisition: land purchase contracts; limitation on commission'', 2673 ''Acquisition of certain interests in land: availability of funds'', and 2679 ''Representatives of veterans' organizations: use of space and equipment''.

2003—Pub. L. 108–136, div. A, title III, §314(a)(2), div. B, title XXVIII, §2811(b)(3), Nov. 24, 2003, 117 Stat. 1431, 1725, substituted ''Authority to acquire low-cost interests in land'' for ''Acquisition: interests in land when cost is not more than $500,000'' in item 2672 and added item 2694b.

2002—Pub. L. 107–314, div. B, title XXVIII, §§2811(b), 2812(a)(2), Dec. 2, 2002, 116 Stat. 2707, 2709, added items 2684a and 2694a.

2001—Pub. L. 107–107, div. A, title X, §1048(a)(26)(B)(ii), title XVI, §1607(b)(3), Dec. 28, 2001, 115 Stat. 1225, 1280, substituted ''Military installations: use by American National Red Cross; use as polling places'' for ''Licenses: military installations; erection and use of buildings; American National Red Cross'' in item 2670 and ''Conveyance of certain property: Department of Justice correctional options program'' for ''Conveyance of certain property'' in item 2693.

1998—Pub. L. 105–261, div. B, title XXVIII, §2812(b)(2), Oct. 17, 1998, 112 Stat. 2206, struck out ''from other agencies'' after ''lease'' in item 2691.

1997—Pub. L. 105–85, div. A, title III, §§343(g)(3), 371(c)(2), title X, §§1061(c)(2), 1062(b), div. B, title XXVIII, §§2811(b)(2), 2812(b), 2813(b), 2814(a)(2), Nov. 18, 1997, 111 Stat. 1688, 1705, 1891, 1892, 1992–1995, inserted ''of military departments'' after ''property'' in item 2667, added item 2667a, substituted ''$500,000'' for ''$200,000'' in item 2672, added items 2686 and 2688, substituted ''Storage, treatment, and'' for ''Storage and'' in item 2692, and added items 2695 and 2696.

1996—Pub. L. 104–201, div. A, title III, §§332(a)(2), 369(b)(2), div. B, title XXVIII, §2862(b), Sept. 23, 1996, 110 Stat. 2485, 2498, 2805, substituted ''of Pentagon Reserva-

tion and defense facilities in National Capital Region'' for ''of the Pentagon Reservation'' in item 2674 and added items 2684 and 2694.

1993—Pub. L. 103–160, div. A, title VIII, § 846(b), Nov. 30, 1993, 107 Stat. 1723, added item 2681.

1992—Pub. L. 102–496, title IV, § 403(a)(2)(B), Oct. 24, 1992, 106 Stat. 3185, substituted ''reports to congressional committees'' for ''Reports to the Armed Services Committees'' in item 2662.

1991—Pub. L. 102–190, div. B, title XXVIII, § 2863(a)(2), Dec. 5, 1991, 105 Stat. 1560, added item 2680.

1990—Pub. L. 101–647, title XVIII, § 1802(b), Nov. 29, 1990, 104 Stat. 4850, added item 2693.

Pub. L. 101–510, div. A, title XIV, § 1481(h)(2), div. B, title XXVIII, § 2804(a)(2), Nov. 5, 1990, 104 Stat. 1708, 1785, added items 2674 and 2678.

1988—Pub. L. 100–370, §§ 1(*l*)(4), 2(b)(2), July 19, 1988, 102 Stat. 849, 854, added items 2661 and 2673 and struck out item 2693 ''Prohibition on contracts for performance of firefighting or security-guard functions''.

1987—Pub. L. 100–224, § 5(b)(3), Dec. 30, 1987, 101 Stat. 1538, inserted ''; prohibition on converting certain heating facilities'' after ''systems'' in item 2690.

Pub. L. 100–180, div. A, title XI, § 1112(b)(3), Dec. 4, 1987, 101 Stat. 1147, inserted ''or security-guard'' before ''functions'' in item 2693.

1986—Pub. L. 99–661, div. A, title XII, §§ 1205(a)(2), 1222(a)(2), Nov. 14, 1986, 100 Stat. 3972, 3976, substituted ''Fuel sources for heating systems'' for ''Restriction on fuel sources for new heating systems'' in item 2690 and added item 2693.

Pub. L. 98–115, title VIII, § 807(c)(2), Oct. 11, 1983, 97 Stat. 789; Pub. L. 99–167, title VIII, § 806(a), Dec. 3, 1985, 99 Stat. 988, struck out item 2667a ''Sale and replacement of nonexcess real property'', eff. Oct. 1, 1986.

1985—Pub. L. 99–167, title VIII, § 810(b)(2), Dec. 3, 1985, 99 Stat. 990, substituted ''$200,000'' for ''$100,000'' in item 2672.

Pub. L. 99–145, title XII, § 1224(c)(2), Nov. 8, 1985, 99 Stat. 729, inserted ''; minimum drinking age on military installations'' in item 2683.

1984—Pub. L. 98–407, title VIII, §§ 804(b), 805(b), Aug. 28, 1984, 98 Stat. 1519, 1521, added items 2691 and 2692.

1983—Pub. L. 98–115, title VIII, § 807(a)(2), Oct. 11, 1983, 97 Stat. 788, added item 2667a.

1982—Pub. L. 97–321, title VIII, § 805(b)(4), Oct. 15, 1982, 96 Stat. 1573, substituted in item 2689 ''Development of geothermal energy on military lands'' for ''Development of sources of energy on or for military installations''.

Pub. L. 97–295, § 1(31)(B), Oct. 12, 1982, 96 Stat. 1296, struck out item 2661a ''Appropriations for advance planning of military public works''.

Pub. L. 97–258, § 2(b)(6)(A), Sept. 13, 1982, 96 Stat. 1053, added item 2661a.

Pub. L. 97–214, §§ 6(c)(2), 10(a)(4), (5)(C), July 12, 1982, 96 Stat. 173, 175, struck out items 2661 ''Planning and construction of public works projects by military departments'', 2673 ''Restoration or replacement of facilities damaged or destroyed'', 2674 ''Minor construction projects'', 2678 ''Acquisition of mortgaged housing units'', 2681 ''Construction or acquisition of family housing and community facilities in foreign countries'', 2684 ''Construction of family quarters; limitations on space'', 2686 ''Leases: military family housing'', and 2688 ''Use of solar energy systems in new facilities'', substituted ''Options: property required for military construction projects'' for ''Options: property required for public works projects of military departments'' in item 2677, and added items 2689 and 2690.

1980—Pub. L. 96–513, title V, § 511(89), Dec. 12, 1980, 94 Stat. 2928, struck out item 2680 ''Reimbursement of owners of property acquired for public works projects for moving expenses''.

Pub. L. 96–418, title VIII, § 806(b), Oct. 10, 1980, 94 Stat. 1777, as amended by Pub. L. 97–22, § 11(c), July 10, 1981, 95 Stat. 138, substituted ''$100,000'' for ''$50,000'' in item 2762.

1979—Pub. L. 96–125, title VIII, § 804(a)(2), Nov. 26, 1979, 93 Stat. 948, added item 2688.

1977—Pub. L. 95–82, title V, § 504(a)(2), title VI, §§ 608(b), 612(b), Aug. 1, 1977, 91 Stat. 371, 378, 380, substituted ''Minor construction projects'' for ''Establishment and development of military facilities and installations costing less than $400,000'' in item 2674 and added items 2686 and 2687.

1975—Pub. L. 94–107, title VI, § 607(1), (9), (10), Oct. 7, 1975, 89 Stat. 566, 567, substituted ''$400,000'' for ''$300,000'' in item 2674, struck out ''; structures not on a military base'' in item 2675, and added item 2672a.

1974—Pub. L. 93–552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765, added item 2685.

1973—Pub. L. 93–166, title V, § 509(b), Nov. 29, 1973, 87 Stat. 677, added item 2684.

1971—Pub. L. 92–145, title VII, § 707(2), Oct. 27, 1971, 85 Stat. 411, substituted ''$50,000'' for ''$25,000'' in item 2672.

1970—Pub. L. 91–511, title VI, §§ 607(1), 613(2), Oct. 26, 1970, 84 Stat. 1223, 1226, substituted ''$300,000'' for ''$200,000'' in item 2674, and added item 2683.

1963—Pub. L. 88–174, title VI, § 609(a)(2), Nov. 7, 1963, 77 Stat. 329, added item 2682.

1962—Pub. L. 87–651, title I, § 112(d), title II, § 209(b), Sept. 7, 1962, 76 Stat. 512, 524, substituted ''$25,000'' for ''$5,000'' in item 2672 and added items 2679 to 2681.

1960—Pub. L. 86–500, title V, § 511(2), June 8, 1960, 74 Stat. 187, substituted ''Reports to the Armed Services Committees'' for ''Agreement with Armed Services Committees; reports'' in item 2662.

1958—Pub. L. 85–861, § 1(52), Sept. 2, 1958, 72 Stat. 1461, added items 2672 to 2678.

Pub. L. 85–337, § 4(2), Feb. 28, 1958, 72 Stat. 29, added item 2671.

§ 2661. Miscellaneous administrative provisions relating to real property

(a) AVAILABILITY OF OPERATION AND MAINTENANCE FUNDS.—Appropriations for operation and maintenance of the active forces shall be available for the following:

(1) The repair of facilities.

(2) The installation of equipment in public and private plants.

(b) LEASING AND ROAD MAINTENANCE AUTHORITY.—The Secretary of Defense and the Secretary of each military department may provide for the following:

(1) The leasing of buildings and facilities (including the payment of rentals for special purpose space at the seat of Government). Rental for such leases may be paid in advance in connection with—

(A) the conduct of field exercises and maneuvers; and

(B) the administration of the Act of July 9, 1942 (43 U.S.C. 315q).

(2) The maintenance of defense access roads which are certified to the Secretary of Transportation as important to the national defense under the provisions of section 210 of title 23.

(c) PROHIBITION ON NAMING DEPARTMENT OF DEFENSE REAL PROPERTY AFTER MEMBER OF CONGRESS.—(1) Real property under the jurisdiction of the Secretary of Defense or the Secretary of a military department may not be named after, or otherwise officially identified by the name of, any individual who is a Member of Congress at the time the property is so named or identified.

(2) In this subsection:

(A) The term ''Member of Congress'' includes a Delegate or Resident Commissioner to the Congress.

(B) The term ''real property'' includes structures, buildings, or other infrastructure of a

military installation, roadways and defense access roads, and any other area on the grounds of a military installation.

(d) TREATMENT OF PENTAGON RESERVATION.—In this chapter, the terms ''Secretary concerned'' and ''Secretary of a military department'' include the Secretary of Defense with respect to the Pentagon Reservation.

(Added Pub. L. 100–370, §1(*l*)(3), July 19, 1988, 102 Stat. 849; amended Pub. L. 108–375, div. B, title XXVIII, §2821(a)(1), (e)(1), Oct. 28, 2004, 118 Stat. 2129, 2130; Pub. L. 109–163, div. B, title XXVIII, §2821(d), (e), Jan. 6, 2006, 119 Stat. 3512; Pub. L. 112–81, div. B, title XXVIII, §2863(a), Dec. 31, 2011, 125 Stat. 1701.)

HISTORICAL AND REVISION NOTES

Subsection (a) of this section and sections 2241(a) and 2253(b) of this title are based on Pub. L. 98–212, title VII, §735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

Subsection (b) is based on Pub. L. 99–190, §101(b) [title VIII, §8005(d), (f)], Dec. 19, 1985, 99 Stat. 1185, 1202.

PRIOR PROVISIONS

A prior section 2661, act Aug. 10, 1956, ch. 1041, 70A Stat. 147, related to planning and construction of public works projects by military departments, prior to repeal by Pub. L. 97–214, §7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

AMENDMENTS

2011—Subsec. (c). Pub. L. 112–81 added subsec. (c).

2006—Subsec. (c). Pub. L. 109–163, §2821(d), redesignated subsec. (c) as section 2664(b) of this title.

Subsec. (d). Pub. L. 109–163, §2821(e), added subsec. (d).

2004—Subsecs. (a), (b). Pub. L. 108–375, §2821(e)(1), inserted headings.

Subsec. (c). Pub. L. 108–375, §2821(a)(1), added subsec. (c).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. B, title XXVIII, §2863(b), Dec. 31, 2011, 125 Stat. 1702, provided that: ''The prohibition in subsection (c) of section 2661 of title 10, United States Code, as added by subsection (a), shall apply only with respect to real property of the Department of Defense named after the date of the enactment of this Act [Dec. 31, 2011].''

PILOT PROGRAM TO PROVIDE ADDITIONAL TOOLS FOR EFFICIENT OPERATION OF MILITARY INSTALLATIONS

Pub. L. 107–107, div. B, title XXVIII, §2813, Dec. 28, 2001, 115 Stat. 1308, authorized the Secretary of Defense, until Dec. 31, 2005, to carry out a pilot program, known as the ''Pilot Efficient Facilities Initiative'', for purposes of determining the potential for increasing the efficiency and effectiveness of the operation of military installations.

STUDY OF ESTABLISHMENT OF LAND MANAGEMENT AND TRAINING CENTER

Pub. L. 103–337, div. A, title III, §329, Oct. 5, 1994, 108 Stat. 2715, directed Secretary of the Army to submit to Congress not later than May 1, 1996, a study and report on feasibility and advisability of establishing a center for land management activities and land management training activities of Department of Defense.

[§ 2661a. Repealed. Pub. L. 97–295, § 1(31)(A), Oct. 12, 1982, 96 Stat. 1296]

Section, added Pub. L. 97–258, §2(b)(6)(B), Sept. 13, 1982, 96 Stat. 1054, authorized appropriations for advance design of military public works not otherwise authorized and for construction management of foreign government funded projects used primarily by United States armed forces, and required preliminary reports to Congress on military public works whose projected advance costs exceeded a specified level.

The repeal of this section by Pub. L. 97–295 reflected the effect of section 7(2) and (8) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 173), which repealed the source statutes of this section (subsec. (a) was based on acts Sept. 28, 1951, ch. 434, §504, 65 Stat. 364; July 15, 1955, ch. 368, §512, 69 Stat. 352; Dec. 23, 1981, Pub. L. 97–99, §902, 95 Stat. 1381 (31 U.S.C. 723); and subsec. (b) was based on acts Sept. 12, 1966, Pub. L. 89–568, §612, 80 Stat. 756; Dec. 27, 1974, Pub. L. 93–552, §607, 88 Stat. 1763 (31 U.S.C. 723a)) subsequent to Apr. 15, 1982, the cut-off date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(6)(B) of which enacted this section.

§2662. Real property transactions: reports to congressional committees

(a) GENERAL NOTICE AND WAIT REQUIREMENTS.—(1) The Secretary of a military department or, with respect to a Defense Agency, the Secretary of Defense may not enter into any of the following listed transactions by or for the use of that department until the Secretary concerned submits a report, subject to paragraph (3), to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(A) An acquisition of fee title to any real property, if the estimated price is more than $750,000.

(B) A lease of any real property to the United States, if the estimated annual rental is more than $750,000.

(C) A lease, license, or easement of real property owned by the United States (other than a lease or license entered into under section 2667(g) of this title), if the estimated annual fair market rental value of the property is more than $750,000.

(D) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $750,000.

(E) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $750,000.

(F) Any termination or modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the use of the property by the military department.

(G) Any transaction or contract action that results in, or includes, the acquisition or use by, or the lease or license to, the United States of real property, if the estimated annual rental or cost for the use of the real property is more than $750,000.

(H) Any transaction or contract action for the provision and operation of energy production facilities on real property under the jurisdiction of the Secretary of a military department, as authorized by section 2922a(a)(2) of this title, if the term of the transaction or contract exceeds 20 years.

(2) If a transaction covered by subparagraph (A) or (B) of paragraph (1) is part of a project,

the report shall include a summary of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made. The report required by this subsection concerning any report of excess real property described in subparagraph (E) of paragraph (1) shall contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such property for other real property authorized to be acquired for military purposes and has determined that the property proposed to be declared excess is not suitable for such purpose.

(3) The authority of the Secretary concerned to enter into a transaction described in paragraph (1) commences only after—

(A) the end of the 30-day period beginning on the first day of the month with respect to which the report containing the facts concerning such transaction, and all other such proposed transactions for that month, is submitted under paragraph (1); or

(B) the end of the 14-day period beginning on the first day of that month when a copy of the report is provided in an electronic medium pursuant to section 480 of this title on or before the first day of that month.

(4) The report for a month under this subsection may not be submitted later than the first day of that month.

(b) ADDITIONAL REPORTING REQUIREMENTS REGARDING LEASES OF REAL PROPERTY OWNED BY THE UNITED STATES.—(1) In the case of a proposed lease, license, or easement of real property owned by the United States covered by paragraph (1)(C) of subsection (a), the Secretary concerned shall comply with the notice-and-wait requirements of paragraph (3) of such subsection before—

(A) issuing a contract solicitation or other lease offering with regard to the transaction; and

(B) providing public notice regarding any meeting to discuss a proposed contract solicitation with regard to the transaction.

(2) The report under paragraph (3) of subsection (a) shall include the following with regard to a proposed transaction covered by paragraph (1)(C) of such subsection:

(A) A description of the proposed transaction, including the proposed duration of the lease, license, or easement.

(B) A description of the authorities to be used in entering into the transaction.

(C) A statement of the scored cost of the entire transaction, determined using the scoring criteria of the Office of Management and Budget.

(D) A determination that the property involved in the transaction is not excess property, as required by section 2667(a)(3) of this title, including the basis for the determination.

(E) A determination that the proposed transaction is directly compatible with the mission of the military installation or Defense Agency at which the property is located and a description of the anticipated long-term use of the property at the conclusion of the lease or license.

(F) A description of the requirements or conditions within the contract solicitation or other lease offering for the person making the offer to address taxation issues, including payments-in-lieu-of taxes, and other development issues related to local municipalities.

(G) If the proposed lease involves a project related to energy production, a certification by the Secretary of Defense that the project, as it will be specified in the contract solicitation or other lease offering, is consistent with the Department of Defense performance goals and plan required by section 2911 of this title.

(3) The Secretary concerned may not enter into the actual lease or license with respect to property for which the information required by paragraph (2) was submitted in a report under subsection (a)(3) unless the Secretary again complies with the notice-and-wait requirements of such subsection. The subsequent report shall include the following with regard to the proposed transaction:

(A) A cross reference to the prior report that contained the information submitted under paragraph (2) with respect to the transaction.

(B) A description of the differences between the information submitted under paragraph (2) and the information regarding the transaction being submitted in the subsequent report.

(C) A description of the payment to be required in connection with the lease, license, or easement, including a description of any in-kind consideration that will be accepted.

(D) A description of any community support facility or provision of community support services under the lease, license, or easement, regardless of whether the facility will be operated by a covered entity (as defined in section 2667(d) of this title) or the lessee or the services will be provided by a covered entity or the lessee.

(E) A description of the competitive procedures used to select the lessee or, in the case of a lease involving the public benefit exception authorized by section 2667(h)(2) of this title, a description of the public benefit to be served by the lease.

(c) EXCEPTED PROJECTS.—This section does not apply to real property for water resource development projects of the Corps of Engineers, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) STATEMENTS OF COMPLIANCE IN TRANSACTION INSTRUMENTS.—A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(e) REPORTS ON TRANSACTIONS INVOLVING INTELLIGENCE COMPONENTS.—Whenever a transaction covered by this section is made by or on behalf of an intelligence component of the Department of Defense or involves real property used by such a component, any report under this section with respect to the transaction that is submitted to the congressional committees named in subsection (a) shall be submitted concurrently to the Permanent Select Committee

on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(f) EXCEPTIONS FOR TRANSACTIONS FOR WAR AND CERTAIN EMERGENCY AND OTHER OPERATIONS.—(1) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection if the Secretary concerned determines that the transaction is made as a result of any of the following:

(A) A declaration of war.

(B) A declaration of a national emergency by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.).

(C) A declaration of an emergency or major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(D) The use of the militia or the armed forces after a proclamation to disperse under section 334 of this title.

(E) A contingency operation.

(2) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection if the Secretary concerned determines that—

(A) an event listed in paragraph (1) is imminent; and

(B) the transaction is necessary for purposes of preparation for such event.

(3) Not later than 30 days after entering into a real property transaction covered by paragraph (1) or (2), the Secretary concerned shall submit to the committees named in subsection (a) a report on the transaction. The report shall set forth any facts or information which would otherwise have been submitted in a report on the transaction under subsection (a), but for the operation of paragraph (1) or (2).

(g) SECRETARY CONCERNED DEFINED.—In this section, the term ''Secretary concerned'' includes, with respect to Defense Agencies, the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Pub. L. 86–70, §6(c), June 25, 1959, 73 Stat. 142; Pub. L. 86–500, title V, §511(1), June 8, 1960, 74 Stat. 186; Pub. L. 86–624, §4(c), July 12, 1960, 74 Stat. 411; Pub. L. 92–145, title VII, §707(5), Oct. 27, 1971, 85 Stat. 412; Pub. L. 92–545, title VII, §709, Oct. 25, 1972, 86 Stat. 1154; Pub. L. 93–552, title VI, §610, Dec. 27, 1974, 88 Stat. 1765; Pub. L. 94–107, title VI, §607(5), (6), Oct. 7, 1975, 89 Stat. 566; Pub. L. 94–431, title VI, §614, Sept. 30, 1976, 90 Stat. 1367; Pub. L. 96–418, title VIII, §805, Oct. 10, 1980, 94 Stat. 1777; Pub. L. 100–456, div. B, title XXVIII, §2803, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–510, div. A, title XIII, §1311(6), Nov. 5, 1990, 104 Stat. 1670; Pub. L. 102–496, title IV, §403(a)(1), (2)(A), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 104–106, div. A, title XV, §1502(a)(23), div. D, title XLIII, §4321(b)(21), Feb. 10, 1996, 110 Stat. 505, 673; Pub. L. 105–261, div. B, title XXVIII, §2811, Oct. 17, 1998, 112 Stat. 2204; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [div. B, title XXVIII, §2811], Oct. 30, 2000, 114 Stat. 1654, 1654A–416; Pub. L. 108–136, div. A, title X, §1031(a)(27), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 108–375, div. A, title X, §1084(d)(22), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 110–181, div. B, title XXVIII, §2821, Jan. 28, 2008, 122 Stat. 543; Pub. L. 110–417, div. B, title XXVIII, §2811, Oct. 14, 2008, 122 Stat. 4725; Pub. L. 111–383, div. B, title XXVIII, §2811(a)–(f), Jan. 7, 2011, 124 Stat. 4461, 4462; Pub. L. 112–81, div. B, title XXVIII, §2812, Dec. 31, 2011, 125 Stat. 1686; Pub. L. 112–239, div. B, title XXVIII, §2821, Jan. 2, 2013, 126 Stat. 2152.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2662(a)	40:551.	Sept. 28, 1951, ch. 434, §§601–604, 65 Stat. 365, 366.
2662(b)	40:552.	
2662(c)	40:553.	
2662(d)	40:554.	

In subsection (a), the words ''must come to an agreement * * * before entering into any of the following transactions by or for the use of that department:'' are substituted for the words ''shall come into agreement * * * with respect to those real-estate actions by or for the use of the military departments * * * that are described in subsection (a)–(e) of this section, and in the manner therein described''. The last sentence is substituted for the last sentence of 40:551(a) and 40:551(b).

In subsection (a)(4), the words ''or another military department'' are substituted for the words ''including transfers between the military departments''. The words ''under the jurisdiction of the military departments'' are omitted as surplusage.

In subsection (b), the words ''more than $5,000 but not more than $25,000'' are substituted for the words ''between $5,000 and $25,000''. The words ''shall report'' are substituted for the words ''will, in addition, furnish * * * reports''.

In subsection (c), the words ''the United States, Alaska, Hawaii'' are substituted for the words ''the continental United States, the Territory of Alaska, the Territory of Hawaii'', since, as defined in section 101(1) of this title, ''United States'' includes the States and the District of Columbia; and ''Territories'' includes Alaska and Hawaii.

In subsection (d), the words ''A statement * * * that the requirements of this section have been met'' are substituted for the words ''A recital of compliance with this chapter * * * to the effect that the requirements of this chapter have been complied with''. The words ''in the alternative'', ''or lease'', and ''evidence thereof'' are omitted as surplusage.

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (f)(1)(B), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 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 1601 of Title 50 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (f)(1)(C), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2013—Subsec. (a)(1)(H). Pub. L. 112–239 added subpar. (H).

2011—Subsec. (a)(1). Pub. L. 111–383, §2811(f)(1)(A), substituted ''the Secretary concerned submits'' for ''the Secretary submits'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 112–81, §2812(1), substituted ''lease, license, or easement'' for ''lease or license''.

Pub. L. 111–383, §2811(a), inserted ''(other than a lease or license entered into under section 2667(g) of this title)'' after ''United States''.

Subsec. (a)(3). Pub. L. 111–383, § 2811(f)(1)(B), substituted ''the Secretary concerned'' for ''the Secretary of a military department or the Secretary of Defense'' in introductory provisions.

Subsec. (b). Pub. L. 111–383, § 2811(b), (e), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: ''The Secretary of each military department and, with respect to Defense Agencies, the Secretary of Defense shall submit annually to the congressional committees named in subsection (a) a report on transactions described in subsection (a) that involve an estimated value of more than $250,000, but not more than $750,000.''

Subsec. (b)(1), (2)(A), (3)(C), (D). Pub. L. 112–81, § 2812(2), substituted ''lease, license, or easement'' for ''lease or license''.

Subsec. (c). Pub. L. 111–383, § 2811(c), substituted ''Excepted Projects'' for ''Geographic Scope; Excepted Projects'' in heading and ''This section does not'' for ''This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not'' in text.

Subsecs. (e), (f). Pub. L. 111–383, § 2811(d), (f)(2), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e). Prior to amendment, text read as follows: ''No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of $750,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of the Department of Defense, until the end of the 30-day period beginning on the date on which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a) or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.''

Subsec. (f)(1). Pub. L. 111–383, § 2811(f)(3)(A), struck out '', and the reporting requirement set forth in subsection (e) shall not apply with respect to a real property transaction otherwise covered by that subsection,'' before ''if the Secretary'' in introductory provisions.

Subsec. (f)(3). Pub. L. 111–383, § 2811(f)(3)(B), struck out ''or (e), as the case may be'' after ''under subsection (a)''.

Subsec. (f)(4). Pub. L. 111–383, § 2811(f)(3)(C), struck out par. (4), which read as follows: ''In this subsection, the term 'Secretary concerned' includes, with respect to Defense Agencies, the Secretary of Defense.''

Subsec. (g). Pub. L. 111–383, § 2811(f)(4), added subsec. (g). Former subsec. (g) redesignated (f).

2008—Subsec. (a)(1). Pub. L. 110–181, § 2821(a)(1)(A), substituted ''or, with respect to a Defense Agency, the Secretary of Defense'' for '', or his designee,'' in introductory provisions.

Subsec. (a)(1)(G). Pub. L. 110–181, § 2821(b), added subpar. (G).

Subsec. (a)(3). Pub. L. 110–181, § 2821(a)(1)(B), inserted ''or the Secretary of Defense'' after ''military department'' in introductory provisions.

Subsec. (b). Pub. L. 110–181, § 2821(a)(2), inserted ''and, with respect to Defense Agencies, the Secretary of Defense'' after ''military department''.

Subsec. (c). Pub. L. 110–417 substituted ''water resource development projects of the Corps of Engineers'' for ''river and harbor projects or flood control projects''.

Subsec. (g)(4). Pub. L. 110–181, § 2821(a)(3), added par. (4).

2004—Subsec. (a)(2). Pub. L. 108–375 substituted ''shall include a summary'' for ''must include a summarization'' and inserted ''of paragraph (1)'' after ''in subparagraph (E)''.

2003—Subsec. (a). Pub. L. 108–136, § 1031(a)(27)(A)(i)–(v), inserted ''(1)'' after subsec. heading, substituted ''the Secretary submits a report, subject to paragraph (3),'' for ''after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted'', redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), substituted ''$750,000'' for ''$500,000'' in subpars. (A) to (E), designated concluding provisions as par. (2), and substituted ''subparagraph (A) or (B) of paragraph (1)'' for ''clause (1) or (2)'' and ''subparagraph (E)'' for ''clause (5)''.

Subsec. (a)(3), (4). Pub. L. 108–136, § 1031(a)(27)(A)(vi), added pars. (3) and (4).

Subsec. (b). Pub. L. 108–136, § 1031(a)(27)(B), substituted ''more than $250,000, but not more than $750,000'' for ''more than the simplified acquisition threshold specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), but not more than $500,000''.

Subsec. (e). Pub. L. 108–136, § 1031(a)(27)(C), substituted ''$750,000'' for ''$500,000'' and ''the end of the 30-day period beginning on the date on which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a) or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title'' for ''the expiration of thirty days from the date upon which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a)''.

2000—Subsec. (a). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2811(a)], substituted ''$500,000'' for ''$200,000'' wherever appearing.

Subsec. (b). Pub. L. 106–398 substituted ''specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)),'' for ''under section 2304(g) of this title'' and ''$500,000'' for ''$200,000''.

Subsec. (e). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2811(a)], substituted ''$500,000'' for ''$200,000''.

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsecs. (a) to (f). Pub. L. 105–261, § 2811(b), inserted subsec. headings.

Subsec. (g). Pub. L. 105–261, § 2811(a), added subsec. (g).

1996—Subsec. (a). Pub. L. 104–106, § 1502(a)(23)(A), substituted ''the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''the Committees on Armed Services of the Senate and House of Representatives'' in introductory provisions and struck out ''to be submitted to the Committees on Armed Services of the Senate and House of Representatives'' after ''The report required by this subsection'' in concluding provisions.

Subsec. (b). Pub. L. 104–106, § 4321(b)(21), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Pub. L. 104–106, § 1502(a)(23)(B), substituted ''shall submit annually to the congressional committees named in subsection (a) a report'' for ''shall report annually to the Committees on Armed Services of the Senate and the House of Representatives''.

Subsec. (e). Pub. L. 104–106, § 1502(a)(23)(C), substituted ''the congressional committees named in subsection (a)'' for ''the Committees on Armed Services of the Senate and the House of Representatives''.

Subsec. (f). Pub. L. 104–106, § 1502(a)(23)(D), substituted ''the congressional committees named in subsection (a) shall'' for ''the Committees on Armed Services of the Senate and the House of Representatives shall''.

1992—Pub. L. 102–496, § 403(a)(2)(A), substituted ''reports to congressional committees'' for ''Reports to the Armed Services Committees'' in section catchline.

Subsec. (f). Pub. L. 102–496, § 403(a)(1), added subsec. (f).

1990—Subsec. (b). Pub. L. 101–510 substituted ''the small purchase threshold under section 2304(g) of this title'' for ''$5,000''.

1988—Subsecs. (a), (b), (e). Pub. L. 100–456 substituted ''$200,000'' for ''$100,000'' wherever appearing.

1980—Subsecs. (a), (b), (e). Pub. L. 96–418 substituted ''$100,000'' for ''$50,000'' wherever appearing.

1976—Subsec. (a). Pub. L. 94–431 provided that the report on the excess property owned by the United States contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such excess property for property suitable for military purposes and has determined such excess property not suitable for exchange.

1975—Subsec. (b). Pub. L. 94–107, §607(5), substituted requirement of annual reports for requirement of quarterly reports.

Subsec. (c). Pub. L. 94–107, §607(6), inserted provisions extending the applicability of the section to Guam, the American Samoa, and the Trust Territory of the Pacific Islands, and, in provisions relating to the inapplicability of the section, inserted reference to any real property acquisition specifically authorized in a Military Construction Authorization Act.

1974—Subsec. (a)(6). Pub. L. 93–552 added par. (6).

1972—Subsec. (e). Pub. L. 92–545 added subsec. (e).

1971—Subsec. (a)(3). Pub. L. 92–145 made the restriction applicable to a license of real property and substituted ''estimated annual fair market rental value'' for ''estimated annual rental''.

1960—Subsec. (a). Pub. L. 86–500 prohibited the Secretary of a military department, or his designee, from entering into any of the transactions listed in subsec. (a) until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives, and increased the amounts in pars. (1) to (5) from $25,000 to $50,000.

Subsec. (b). Pub. L. 86–500 substituted ''$50,000'' for ''$25,000''.

Subsec. (c). Pub. L. 86–624 and Pub. L. 86–500 struck out reference to Hawaii.

Subsec. (d). Pub. L. 86–500 reenacted subsection without change.

1959—Subsec. (c). Pub. L. 86–70 struck out reference to Alaska.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(21) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REDUCTION OR REALIGNMENT OF TRAINING BASES

Pub. L. 95–485, title VI, §602, Oct. 20, 1978, 92 Stat. 1617, prohibited any action to implement any substantial reduction or force structure realignment of the composite of installations, posts, camps, stations, and bases that had as a primary or secondary mission the conduct of formal entry level, advanced individual, or specialty training as a part of the fiscal year 1979 Defense manpower program unless certain criteria were complied with.

CLOSING OF FACILITIES; CLOSURES OR REALIGNMENTS PUBLICLY ANNOUNCED AFTER SEPTEMBER 30, 1977

Pub. L. 95–82, title VI, §612(c), Aug. 1, 1977, 91 Stat. 380, provided that: ''Section 611 of the Military Construction Authorization Act, 1966 (Public Law 89–188; 10 U.S.C. 2662 note), and section 612 of the Military Construction Authorization Act, 1977 (Public Law 94–431; 90 Stat. 1366) [which was not classified to the Code], shall be inapplicable in the case of any closure of a military installation, and any realignment with respect to a military installation, which is first publicly announced after September 30, 1977.''

CLOSING OF FACILITIES; REPORTS TO CONGRESS

Pub. L. 89–188, title VI, §611, Sept. 16, 1965, 79 Stat. 818, as amended by Pub. L. 89–568, title VI, §613, Sept. 12, 1966, 80 Stat. 757, required a report to Congress and a waiting period in connection with the closing of Defense Department facilities, prior to repeal by Pub. L. 97–214, §7(7), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982.

§ 2663. Land acquisition authorities

(a) ACQUISITION OF LAND BY CONDEMNATION FOR CERTAIN MILITARY PURPOSES.—(1) Subject to subsection (f), the Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(A) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(B) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(C) the development and transmission of power for the operation of plants under subparagraph (B).

(2) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under paragraph (1), take and use the land to the extent of the interest sought to be acquired.

(b) ACQUISITION BY PURCHASE IN LIEU OF CONDEMNATION.—The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(c) ACQUISITION OF LOW-COST INTERESTS IN LAND.—(1) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed in the interest of national defense; and

(B) does not cost more than $750,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(2) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; and

(B) does not cost more than $1,500,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(3) This subsection does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than $750,000, in the case of an acquisition under paragraph (1), or $1,500,000, in the case of an acquisition under paragraph (2).

(4) Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of land or interests in land under this subsection.

(d) ACQUISITION OF INTERESTS IN LAND WHEN NEED IS URGENT.—(1) The Secretary of a military department may acquire any interest in land in any case in which the Secretary determines that—

(A) the acquisition is needed in the interest of national defense;

(B) the acquisition is required to maintain the operational integrity of a military installation; and

(C) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(2) Not later than 10 days after the date on which the Secretary of a military department determines to acquire an interest in land under the authority of this subsection, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives written notice containing a description of the property and interest to be acquired and the reasons for the acquisition.

(3) Appropriations available for military construction may be used for the purposes of this subsection.

(e) SURVEY AUTHORITY; ACQUISITION METHODS.—Authority provided the Secretary of a military department by law to acquire an interest in real property (including a temporary interest) includes authority—

(1) to make surveys; and

(2) to acquire the interest in real property by gift, purchase, exchange of real property owned by the United States, or otherwise.

(f) ADVANCE NOTICE OF USE OF CONDEMNATION.—(1) Before commencing any legal proceeding to acquire any interest in land under subsection (a), including acquisition for temporary use, by condemnation, eminent domain, or seizure, the Secretary of the military department concerned shall—

(A) pursue, to the maximum extent practicable, all other available options for the acquisition or use of the land, such as the purchase of an easement or the execution of a land exchange; and

(B) submit to the congressional defense committees a report containing—

(i) a description of the land to be acquired;

(ii) a certification that negotiations with the owner or owners of the land occurred, and that the Secretary tendered consideration in an amount equal to the fair market value of the land, as determined by the Secretary; and

(iii) an explanation of the other approaches considered for acquiring use of the land, the reasons for the acquisition of the land, and the reasons why alternative acquisition strategies are inadequate.

(2) The Secretary concerned may have proceedings brought in the name of the United States to acquire the land after the end of the 21-day period beginning on the date on which the report is received by the committees or, if over sooner, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(g) EXCEPTION TO ADVANCE NOTICE REQUIREMENT.—If the Secretary of a military department determines that the use of condemnation, eminent domain, or seizure to acquire an interest in land is required under subsection (a) to satisfy a requirement vital to national security, and that any delay would be detrimental to national security or the protection of health, safety, or the environment, the Secretary may have proceedings brought in the name of the United States to acquire the land in advance of submitting the report required by subsection (f)(1)(B). However, the Secretary shall submit the report not later than seven days after commencement of the legal proceedings with respect to the land.

(h) LAND ACQUISITION OPTIONS IN ADVANCE OF MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if the Secretary considers it suitable and likely to be needed for a military project of the military department under the jurisdiction of the Secretary.

(2) As consideration for an option acquired under paragraph (1), the Secretary may pay, from funds available to the military department under the jurisdiction of the Secretary for real property activities, an amount that is not more than 12 percent of the appraised fair market value of the property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Pub. L. 85–861, § 33(a)(14), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 109–163, div. B, title XXVIII, § 2821(a), Jan. 6, 2006, 119 Stat. 3511; Pub. L. 109–364, div. B, title XXVIII, § 2821(b), Oct. 17, 2006, 120 Stat. 2474; Pub. L. 110–181, div. B, title XXVIII, § 2822(a), Jan. 28, 2008, 122 Stat. 544; Pub. L. 111–383, div. A, title X, § 1075(g)(6), Jan. 7, 2011, 124 Stat. 4377.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2663(a)	50:171 (less provisos).	July 2, 1917, ch. 35; restated Apr. 11, 1918, ch. 51, 40 Stat. 518.
2663(b)	50:171 (last proviso).	
2663(c)	50:171 (1st proviso).	
2663(d)	50:171 (2d proviso). [50:171 is made applicable to the Navy by 50:171–1 (less 16th through 21st words)].	Oct. 25, 1951, ch. 563, § 101 (less 22d through 43d words), 65 Stat. 641.

In subsection (a), the words ''brought * * * in a court of proper jurisdiction'' are substituted for the words ''instituted * * * in any court having jurisdiction of such proceedings''. The words ''any interest in land, including temporary use'' are substituted for the words ''any land, temporary use thereof or other interest therein, or right pertaining thereto''. The words ''relating to suits for the condemnation of property'' are omitted as surplusage. The last sentence is substituted for 50:171 (words between semicolon and first proviso). The Act of July 2, 1917, ch. 35, as restated by the Act of April 11, 1918, ch. 51 (last 77 words), are not contained in 50:171. They are also omitted from the revised section as executed.

In subsection (a)(1), the word ''location'' is omitted as surplusage. The words ''operation of'' are substituted for the words ''prosecution of works for''.

In subsection (b), the words ''That when such property is acquired'' are omitted as surplusage. The words ''under subsection (a)'' are substituted for the words ''of any land, temporary use thereof or other use therein or right pertaining thereto to be acquired for any of the purposes aforesaid''. The words ''take and use'' are substituted for the words ''possession thereof may be taken * * * and used for military purposes''.

In subsection (c), the words ''as soon as the owner fixes a price for it'' are substituted for the words ''That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same''. The word ''considers'' is substituted for the words ''which in the opinion''. The words ''contract for or buy'' are substituted for the words ''purchase or enter into a contract''. The words ''without further delay'' are omitted as surplusage.

In subsection (d), the words ''a gift of any interest in land * * * for any purpose named in subsection (a)'' are substituted for 50:171 (last 15 words of 2d proviso).

1958 ACT

The deletion of the last sentence of section 2663(a) and the last sentence of section 2664(a) reflects their implied repeal by Rule 71A of the Rules of Civil Procedure for the United States District Courts (see 28 U.S.C. 2072). (See letter from Assistant Attorney General (Lands Division), Department of Justice, August 1957, to General Counsel, Department of Defense.) The other changes conform section 2664 to section 2663, both of which were based on the same source statute (sec. 8 of the Act of July 9, 1918, ch. 143, subch. XV, 40 Stat. 888) and both of which include the temporary use of the kinds of property respectively covered.

CODIFICATION

The text of section 2672, part of which was transferred to this section, redesignated subsec. (c), and amended by Pub. L. 109–163, div. B, title XXVIII, §2821(a)(2)–(5), was based on Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, §112(a), Sept. 7, 1962, 76 Stat. 511; Pub. L. 92–145, title VII, §707(2), (3), Oct. 27, 1971, 85 Stat. 411; Pub. L. 96–418, title VIII, §806(a), Oct. 10, 1980, 94 Stat. 1777; Pub. L. 99–167, title VIII, §810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989, 990; Pub. L. 99–661, div. A, title XIII, §1343(a)(16), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–456, div. B, title XXVIII, §2804, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 105–85, div. B, title XXVIII, §2811(a), (b)(1), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108–136, div. B, title XXVIII, §2811(a)–(b)(2), Nov. 24, 2003, 117 Stat. 1724, 1725; Pub. L. 108–375, div. B, title XXVIII, §2821(d)(1), Oct. 28, 2004, 118 Stat. 2130.

The text of section 2672a of this title, which was transferred to this section, redesignated subsec. (d), and amended by Pub. L. 109–163, div. B, title XXVIII, §2821(a)(6)–(9), was based on Pub. L. 94–107, title VI, §607(8), Oct. 7, 1975, 89 Stat. 566; amended Pub. L. 98–525, title XIV, §1405(39), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 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)(29), Nov. 24, 2003, 117 Stat. 1599; Pub. L. 108–375, div. A, title X, §1084(d)(23), Oct. 28, 2004, 118 Stat. 2062.

The text of section 2676(b) of this title, which was transferred to this section, redesignated subsec. (e), and amended by Pub. L. 109–163, div. B, title XXVIII, §2821(a)(10), (11), was based on Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 97–214, §5, July 12, 1982, 96 Stat. 170.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–383 made technical amendment to directory language of Pub. L. 109–364, §2821(b)(1). See 2006 Amendment note below.

2008—Subsec. (h). Pub. L. 110–181 added subsec. (h).

2006—Pub. L. 109–163, §2821(a)(1)(A), substituted ''Land acquisition authorities'' for ''Acquisition'' in section catchline.

Subsec. (a). Pub. L. 109–163, §2821(a)(1)(B), (C), inserted ''ACQUISITION OF LAND BY CONDEMNATION FOR CERTAIN MILITARY PURPOSES.—(1)'' before ''The Secretary'' in introductory provisions, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), in subpar. (C), substituted ''subparagraph (B)'' for ''clause (2)'', redesignated subsec. (b) as par. (2) and substituted ''paragraph (1)'' for ''subsection (a)''.

Subsec. (a)(1). Pub. L. 109–364, §2821(b)(1), as amended by Pub. L. 111–383, substituted ''Subject to subsection (f), the Secretary'' for ''The Secretary'' in introductory provisions.

Subsec. (b). Pub. L. 109–163, §2821(a)(1)(D), redesignated subsec. (c) as (b) and inserted heading.

Pub. L. 109–163, §2821(a)(1)(C), redesignated subsec. (b) as subsec. (a)(2).

Subsec. (c). Pub. L. 109–163, §2821(a)(2)–(5), redesignated pars. (1) and (2) of subsec. (a) and subsecs. (b) and (d) of section 2672 of this title as pars. (1), (2), (3), and (4), respectively, of subsec. (c) of this section, inserted subsec. heading, in par. (3), substituted ''This subsection'' for ''This section'', ''paragraph (1)'' for ''subsection (a)(1)'', and ''paragraph (2)'' for ''subsection (a)(2)'', in par. (4), substituted ''this subsection'' for ''this section'', and struck out headings for former subsecs. (a), (b), and (d) of section 2672.

Pub. L. 109–163, §2821(a)(1)(D), redesignated subsec. (c) as (b).

Subsec. (d). Pub. L. 109–163, §2821(a)(6)–(9), redesignated subsecs. (a), (c), and (b) of section 2672a of this title as pars. (1), (2), and (3), respectively, of subsec. (d) of this section, inserted subsec. heading, in par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in par. (2), substituted ''this subsection'' for ''this section'', and in par. (3), substituted ''this subsection'' for ''this section'' in first sentence and struck out second sentence which read as follows: ''The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise.''

Pub. L. 109–163, §2821(a)(1)(E), struck out subsec. (d) which read as follows: ''The Secretary of the military department concerned may accept for the United States a gift of any interest in land, including temporary use, for any purpose named in subsection (a).''

Subsec. (e). Pub. L. 109–163, §2821(a)(10), (11), redesignated subsec. (b) of section 2676 of this title as subsec. (e) of this section and inserted heading.

Subsecs. (f), (g). Pub. L. 109–364, §2821(b)(2), added subsecs. (f) and (g).

1958—Subsec. (a). Pub. L. 85–861 struck out provisions requiring proceedings under this subsection to be in accordance with the law of the State in which the suit is brought.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, §1075(g), Jan. 7, 2011, 124 Stat. 4376, provided that amendment by section 1075(g)(6) is effective as of Oct. 17, 2006, and as if included in Pub. L. 109–364 as enacted.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SENSE OF CONGRESS

Pub. L. 109–364, div. B, title XXVIII, §2821(a), Oct. 17, 2006, 120 Stat. 2473, provided that: ''It is the sense of Congress that the Secretary of Defense, when acquiring land for military purposes, should—

''(1) make every effort to acquire the land by means of purchases from willing sellers; and

''(2) employ condemnation, eminent domain, or seizure procedures only as a measure of last resort in cases of compelling national security requirements or at the request of the seller.''

§ 2664. Limitations on real property acquisition

(a) AUTHORIZATION FOR ACQUISITION REQUIRED.—No military department may acquire

real property not owned by the United States unless the acquisition is expressly authorized by law. The foregoing limitation shall not apply to the acceptance by a military department of real property acquired under the authority of the Administrator of General Services to acquire property by the exchange of Government property pursuant to subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(b) COMMISSIONS ON LAND PURCHASE CONTRACTS.—The maximum amount payable as a commission on a contract for the purchase of land from funds appropriated for the Department of Defense is two percent of the purchase price.

(c) COST LIMITATIONS.—(1) Except as provided in paragraph (2), the cost authorized for a land acquisition project may be increased by not more than 25 percent of the amount appropriated for the project by Congress or 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser, if the Secretary concerned determines (A) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (B) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress.

(2) Until subsection (d) is complied with, a land acquisition project may not be placed under contract if, based upon the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land—

(A) the scope of the acquisition, as approved by Congress, is proposed to be reduced by more than 25 percent; or

(B) the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land, exceeds the amount appropriated for the project by more than (i) 25 percent, or (ii) 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser.

(d) CONGRESSIONAL NOTIFICATION.—The limitations on reduction in scope or increase in cost of a land acquisition in subsection (c) do not apply if the reduction in scope or the increase in cost, as the case may be, is approved by the Secretary concerned and a written notification of the facts relating to the proposed reduced scope or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned to the congressional defense committees. A contract for the acquisition may then be awarded only after a period of 21 days elapses from the date the notification is received by the committees or, if over sooner, a period of 14 days elapses from the date on which a copy of that notification is provided in an electronic medium pursuant to section 480 of this title.

(e) PAYMENT OF JUDGEMENTS AND SETTLEMENTS.—The Secretary concerned shall promptly pay any deficiency judgment against the United States awarded by a court in an action for condemnation of any interest in land or resulting from a final settlement of an action for condemnation of any interest in land. Payments under this subsection may be made from funds available to the Secretary concerned for military construction projects and without regard to the limitations of subsections (c) and (d).

(Added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460, § 2676; amended Pub. L. 93–166, title VI, § 608(2), Nov. 29, 1973, 87 Stat. 682; Pub. L. 97–214, § 5, July 12, 1982, 96 Stat. 170; Pub. L. 98–407, title VIII, § 802, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 99–661, div. A, title XIII, § 1343(a)(17)(A), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 102–190, div. B, title XXVIII, § 2870(1), Dec. 5, 1991, 105 Stat. 1562; Pub. L. 107–217, § 3(b)(14), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title X, § 1062(a)(11), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, § 1031(a)(30), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 108–375, div. A, title X, § 1084(b)(4), Oct. 28, 2004, 118 Stat. 2061; renumbered § 2664 and amended Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(10), (b)–(d), Jan. 6, 2006, 119 Stat. 3512; Pub. L. 111–350, § 5(b)(45), Jan. 4, 2011, 124 Stat. 3846.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2676	[Uncodified].	July 27, 1954, ch. 579, § 501(b) (less provisos), 68 Stat. 560.

The word ''property'' is substituted for the word ''estate''. The words ''not owned by the United States'' are substituted for the words ''not in Federal ownership''. The words ''or shall be'' are omitted as surplusage.

CODIFICATION

The text of section 2661(c) of this title, which was transferred to this section and redesignated subsec. (b) by Pub. L. 109–163, § 2821(d), was based on Pub. L. 108–375, div. B, title XXVIII, § 2821(a)(1), Oct. 28, 2004, 118 Stat. 2129.

PRIOR PROVISIONS

A prior section 2664, acts Aug. 10, 1956, ch. 1041, 70A Stat. 148; Pub. L. 85–861, § 33(a)(15), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 96–513, title V, § 511(90), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97–31, § 12(3)(A), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–295, § 1(32), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 100–26, § 7(d)(6), Apr. 21, 1987, 101 Stat. 281, related to acquisition of property for lumber production, prior to repeal by Pub. L. 108–375, div. B, title XXVIII, § 2821(b), Oct. 28, 2004, 118 Stat. 2129.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–350, which directed substitution ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251 et seq.)'', was executed by making the substitution for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' to reflect the probable intent of Congress.

2006—Pub. L. 109–163, § 2821(c), renumbered section 2676 of this title as this section and substituted ''Limitations on real property acquisition'' for ''Acquisition: limitation'' in section catchline.

Subsec. (a). Pub. L. 109–163, § 2821(b)(1), inserted heading and struck out '', as amended'' after ''Federal Property and Administrative Services Act of 1949'' in text.

Subsec. (b). Pub. L. 109–163, § 2821(d), redesignated subsec. (c) of section 2661 of this title as subsec. (b) of this section.

Pub. L. 109–163, § 2821(a)(10), transferred subsec. (b) to section 2663 of this title.

Subsec. (c). Pub. L. 109–163, § 2821(b)(2)(A), inserted heading.

Subsec. (c)(2). Pub. L. 109–163, § 2821(b)(2)(B), substituted ''Until subsection (d) is complied with, a land'' for ''A land'' in introductory provisions and ''lesser.'' for ''lesser,'' in subpar. (B) and struck out concluding provisions which read ''until subsection (d) is complied with.''

Subsec. (d). Pub. L. 109–163, § 2821(b)(3), inserted heading.

Subsec. (e). Pub. L. 109–163, § 2821(b)(4), inserted heading.

2004—Subsec. (d). Pub. L. 108–375 substituted ''congressional defense committees'' for ''appropriate committees of Congress''.

2003—Subsec. (d). Pub. L. 108–136 inserted before period at end ''or, if over sooner, a period of 14 days elapses from the date on which a copy of that notification is provided in an electronic medium pursuant to section 480 of this title''.

2002—Subsec. (a). Pub. L. 107–314 inserted opening parenthesis before ''41 U.S.C.''.

Pub. L. 107–217 inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

1991—Subsec. (d). Pub. L. 102–190 struck out ''(1)'' after ''be awarded only'' and '', or (2) upon the approval of those committees, if before the end of that period each such committee approves the proposed reduced scope or increased cost'' before period at end.

1986—Subsec. (c)(2)(B). Pub. L. 99–661 amended generally language of subpar. (B) before ''exceeds the amount''. See 1984 Amendment note below.

1984—Subsec. (c)(2). Pub. L. 98–407, § 802(1), inserted ''or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land'' in provisions preceding subpar. (A).

Subsec. (c)(2)(B). Pub. L. 98–407, § 802(2), inserted ''or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land,''. Insertion of new language following ''the agreed price for the land'' was executed to text notwithstanding directory language of Pub. L. 98–407 that made a reference to a nonexistent comma following ''the agreed price for the land''. See 1986 Amendment note above.

Subsec. (e). Pub. L. 98–407, § 802(3), added subsec. (e).

1982—Pub. L. 97–214 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1973—Pub. L. 93–166 made limitation inapplicable to property acquired under authority of Administrator of General Services to acquire property by exchange of Government property.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title XIII, § 1343(a)(17)(B), Nov. 14, 1986, 100 Stat. 3993, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of section 802(2) of the Military Construction Authorization Act, 1985 (Public Law 98–407; 98 Stat. 1519) [amending this section].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2665. Sale of certain interests in land; logs

(a) The President, through an executive department, may sell to any person or foreign government any interest in land that is acquired for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department, may sell to any person or foreign government any forest products produced on land owned or leased by a military department or the Department in which the Coast Guard is operating.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Appropriations of the Department of Defense may be reimbursed for all costs of production of forest products pursuant to this section from amounts received as proceeds from the sale of any such property.

(e)(1) Each State in which is located a military installation or facility from which forest products are sold in a fiscal year is entitled at the end of such year to an amount equal to 40 percent of (A) the amount received by the United States during such year as proceeds from the sale of forest products produced on such installation or facility, less (B) the amount of reimbursement of appropriations of the Department of Defense under subsection (d) during such year attributable to such installation or facility.

(2) The amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated.

(3) In a case in which a military installation or facility is located in more than one State or county, the amount paid pursuant to paragraph (1) shall be distributed in a manner proportional to the area of such installation or facility in each State or county.

(f)(1) There is in the Treasury a reserve account administered by the Secretary of Defense for the purposes of this section. Balances in the account may be used for costs of the military departments—

(A) for improvements of forest lands;

(B) for unanticipated contingencies in the administration of forest lands and the production of forest products for which other sources of funds are not available in a timely manner; and

(C) for natural resources management that implements approved plans and agreements.

(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

(A) reimbursements of appropriations made under subsection (d), and

(B) payments made to States under subsection (e).

(3) The reserve account may not exceed $4,000,000 on December 31 of any calendar year. Unobligated balances exceeding $4,000,000 on that date shall be deposited into the United States Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 149; Pub. L. 95–82, title VI, § 610, Aug. 1, 1977, 91 Stat. 378; Pub. L. 96–513, title V, § 511(91), Dec. 12, 1980, 94

Stat. 2928; Pub. L. 97–31, § 12(3)(B), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–99, title IX, § 910(a), Dec. 23, 1981, 95 Stat. 1386; Pub. L. 97–295, § 1(33), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 98–407, title VIII, § 809(a), Aug. 28, 1984, 98 Stat. 1522; Pub. L. 99–561, § 4, Oct. 27, 1986, 100 Stat. 3151; Pub. L. 107–296, title XVII, § 1704(b)(4), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title X, § 1056(c)(6), Jan. 6, 2006, 119 Stat. 3439.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2665(a)	50:172 (last par., less 36th through 64th, and 73d through 109th, words).	July 9, 1918, ch. 143, subch. XV, § 8 (last par.), 40 Stat. 888.
2665(b)	50:172 (36th through 64th words of last par.).	
2665(c)	50:172 (73d through 90th words of last par.).	
2665(d)	50:172 (91st through 109th words of last par.).	

In subsection (a), the words ''an executive department or the Federal Maritime Board'' are substituted for the words ''any department or the United States Maritime Commission'' to reflect an opinion of the Judge Advocate General of the Army (JAGA 1954/1723) and to name the successor of the United States Maritime Commission. The last 18 words are inserted to reflect that opinion (see the Act of February 20, 1931 (10 U.S.C. 1354)). The words ''and dispose of'' are omitted as surplusage.

In subsection (b), the words ''an executive department or the Federal Maritime Board'' are inserted for clarity and to name the successor of the United States Maritime Commission.

In subsections (a) and (b), the word ''person'' is substituted for the words ''individuals, corporations,'' since section 1 of title 1 defines the word ''person'' to cover both individuals and corporations. The words ''States or'' are omitted as surplusage.

In subsection (c), the words ''the selling agency'' are substituted for the words ''his above representatives selling or disposing of the same''.

1982 ACT

This corrects an error in an amendment to 10:2665 made by section 12(3)(B) of the Maritime Act of 1981 (Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 153).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 struck out ''under section 2664 of this title'' after ''land that is acquired''.

2002—Subsec. (b). Pub. L. 107–296 substituted ''Department in which the Coast Guard is operating'' for ''Department of Transportation''.

1986—Subsec. (d). Pub. L. 99–561, § 4(1), struck out ''available for operation and maintenance during a fiscal year'' after ''Defense'', substituted ''costs'' for ''expenses'', and struck out ''during such fiscal year'' after ''such property''.

Subsec. (e)(1). Pub. L. 99–561, § 4(2), struck out ''for all expenses of production of forest products'' after ''subsection (d)''.

Subsec. (f)(1). Pub. L. 99–561, § 4(3)(A), (B), substituted ''costs'' for ''expenses'' in provisions preceding subpar. (A) and amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''for expenses to enable operations of forest lands and the production of forest products to continue from the end of one fiscal year through the beginning of the next fiscal year without disruption.''

Subsec. (f)(2), (3). Pub. L. 99–561, § 4(3)(C), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

''(2) Subject to paragraph (3), there shall be deposited into the reserve account not later than December 31 of each year, for credit to the preceding fiscal year, an amount equal to one-half of the amount (if any) remaining of the total amount received by the United States during that fiscal year as proceeds from the sale of forest products after (A) the reimbursement of appropriations of the Department of Defense under subsection (d) for expenses of production of forest products during that fiscal year, and (B) the payment to States under subsection (e) for that fiscal year.

''(3) The balance in the reserve account may not exceed $4,000,000. If a deposit under paragraph (2) would cause the balance in the account to exceed that amount, the deposit shall be made only to the extent the amount of the deposit would not cause the balance in the account to exceed $4,000,000.''

1984—Subsec. (b). Pub. L. 98–407, § 809(a)(1), substituted ''forest products produced on land owned or leased by a military department or the'' for ''logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, or Air Force, or''.

Subsec. (d). Pub. L. 98–407, § 809(a)(2), substituted ''forest products'' for ''lumber and timber products''.

Subsec. (e)(1). Pub. L. 98–407, § 809(a)(3), substituted ''forest products'' for ''timber and timber products'' in two places and ''40 percent'' for ''25 percent''.

Subsec. (f). Pub. L. 98–407, § 809(a)(4), added subsec. (f).

1982—Subsecs. (a), (b). Pub. L. 97–295 substituted ''executive department, may sell'' for ''executive department'' and all that followed through ''may sell'' in subsecs. (a) and (b), and substituted ''Air Force, or Department of Transportation.'' for ''Air Force'' and all that followed in subsec. (b), clarifying the ambiguity created by the conflicting language of Pub. L. 96–513 and Pub. L. 97–31.

1981—Subsecs. (a), (b). Pub. L. 97–31 struck out reference to Federal Maritime Commission in subsec. (a), and substituted ''or Department of Transportation'' for ''or Federal Maritime Commission'' and struck out ''or the Federal Maritime Commission'' after ''department'' in subsec. (b). Amendment was executed to text in accordance with the probable intent of Congress, notwithstanding amendment of section by Pub. L. 96–513 which substituted different language than language contained in amendatory provisions of Pub. L. 97–31.

Subsec. (e). Pub. L. 97–99 added subsec. (e).

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''Federal Maritime Commission'' for ''Federal Maritime Board''.

1977—Subsec. (d). Pub. L. 95–82 substituted provisions relating to reimbursement of production expenses during any fiscal year from proceeds from sales for property during such fiscal year, for provisions requiring proceeds from sales under subsecs. (a) or (b) of this section to be credited to the appropriations under which the property concerned was procured.

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.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–407, title VIII, § 809(b), Aug. 28, 1984, 98 Stat. 1523, provided that:

''(b)(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on October 1, 1984.

''(2) The amendment made by subsection (a)(2)(B) [probably should be '(a)(3)(B)', which amended subsec. (e)(1) of this section] shall apply with respect to payments to States for fiscal years beginning after September 30, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–99, title IX, § 910(b), Dec. 23, 1981, 95 Stat. 1386, provided that: ''Subsection (e) of section 2665 of title 10, United States Code, as added by subsection (a), shall apply with respect to timber and timber products sold after September 30, 1981.''

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.

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.

[§ 2666. Repealed. Pub. L. 108–375, div. B, title XXVIII, § 2821(a)(2), Oct. 28, 2004, 118 Stat. 2129]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 149, related to limitation on commission on a contract for the purchase of land payable from funds appropriated for the Department of Defense.

§ 2667. Leases: non-excess property of military departments and Defense Agencies

(a) LEASE AUTHORITY.—Whenever the Secretary concerned considers it advantageous to the United States, the Secretary concerned may lease to such lessee and upon such terms as the Secretary concerned considers will promote the national defense or to be in the public interest, real or personal property that—

(1) is under the control of the Secretary concerned;

(2) is not for the time needed for public use; and

(3) is not excess property, as defined by section 102 of title 40.

(b) CONDITIONS ON LEASES.—A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary;

(5) may provide, notwithstanding section 1302 of title 40 or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease;

(6) except as otherwise provided in subsection (d), shall require the lessee to provide the covered entities specified in paragraph (1) of that subsection the right to establish and operate a community support facility or provide community support services, or seek equitable compensation for morale, welfare, and recreation programs of the Department of Defense in lieu of the operation of such a facility or the provision of such services, if the Secretary determines that the lessee will provide merchandise or services in direct competition with covered entities through the lease; and

(7) may not provide for a leaseback by the Secretary concerned with an annual payment in excess of $500,000, or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount.

(c) TYPES OF IN-KIND CONSIDERATION.—(1) In addition to any in-kind consideration accepted under subsection (b)(5), in-kind consideration accepted with respect to a lease under this section may include the following:

(A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned.

(B) Construction of new facilities for the Secretary concerned.

(C) Provision of facilities for use by the Secretary concerned.

(D) Provision or payment of utility services for the Secretary concerned.

(E) Provision of real property maintenance services for the Secretary concerned.

(F) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.

(2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

(d) COMMUNITY SUPPORT FACILITIES AND COMMUNITY SUPPORT SERVICES UNDER LEASE; WAIVER.—(1) In this subsection and subsection (b)(6), the term ''covered entity'' means each of the following:

(A) The Army and Air Force Exchange Service.

(B) The Navy Exchange Service Command.

(C) The Marine Corps exchanges.

(D) The Defense Commissary Agency.

(E) The revenue-generating nonappropriated fund activities of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces.

(2) The Secretary concerned may waive the requirement in subsection (b)(6) with respect to a lease if—

(A) the lease is entered into under subsection (g); or

(B) the Secretary determines that the waiver is in the best interests of the Government.

(3) The Secretary concerned shall provide to the congressional defense committees written notice of each waiver under paragraph (2), including the reasons for the waiver.

(4) The covered entities shall exercise the right provided in subsection (b)(6) with respect to a lease, if at all, not later than 90 days after receiving notice from the Secretary concerned regarding the opportunity to exercise such right with respect to the lease. The Secretary may, at the discretion of the Secretary, extend the period under this paragraph for the exercise of the right with respect to a lease for such additional period as the Secretary considers appropriate.

(5) The Secretary of Defense shall prescribe in regulations uniform procedures and criteria for the evaluation of proposals for enhanced use leases involving the operation of community support facilities or the provision of community support services by either a lessee under this section or a covered entity.

(e) DEPOSIT AND USE OF PROCEEDS.—(1)(A) The Secretary concerned shall deposit in a special account in the Treasury established for that Secretary the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under section 2668 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that Secretary.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary concerned pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (3), (4), or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account established for the Secretary concerned shall be available to the Secretary, in such amounts as provided in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Payment of utility services.

(v) Real property maintenance services.

(vi) Administrative expenses incurred by the Secretary concerned under this section and for easements under section 2668 of this title.

(D) At least 50 percent of the proceeds deposited in the special account established for the Secretary concerned shall be available for activities described in subparagraph (C) only at the military installation or Defense Agency location where the proceeds were derived.

(E) If the proceeds deposited in the special account established for the Secretary concerned are derived from activities associated with a military museum described in section 489(a)[1] of this title, the proceeds shall be available for activities described in subparagraph (C) only at that museum.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

(3) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary concerned (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(4) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law before January 1, 2005, shall be deposited into the account established under section 2906(a)[1] of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(5) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law on or after January 1, 2005, shall be deposited into the account established under section 2906A(a)[1] of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(f) TREATMENT OF LESSEE INTEREST IN PROPERTY.—The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(g) SPECIAL RULES FOR BASE CLOSURE AND REALIGNMENT PROPERTY.—(1) Notwithstanding subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section, pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

[1] See References in Text note below.

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4)(A) Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would—

(i) significantly affect the quality of the human environment; or

(ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

(h) COMPETITIVE PROCEDURES FOR SELECTION OF CERTAIN LESSEES; EXCEPTION.—(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, or the fair market value of the lease interest exceeds $100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Paragraph (1) does not apply if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the use of competitive procedures for the selection of certain lessees is unobtainable or not compatible with the public benefit served under subparagraph (A).

(3) Paragraph (1) does not apply to a renewal or extension of a lease by the Secretary of the Navy with a selected institution for operation of a ship within the University National Oceanographic Laboratory System if, under the lease, each of the following applies:

(A) Use of the ship is restricted to federally supported research programs and to non-Federal uses under specific conditions with approval by the Secretary of the Navy.

(B) Because of the anticipated value to the Navy of the oceanographic research and training that will result from the ship's operation, no monetary lease payments are required from the lessee under the initial lease or under any renewal or extension.

(C) The lessee is required to maintain the ship in a good state of repair, readiness, and efficient operating condition, conform to all applicable regulatory requirements, and assume full responsibility for the safety of the ship, its crew, and scientific personnel aboard.

(4)(A) Paragraph (1) does not apply to a renewal, extension, or succeeding lease by the Secretary concerned with a financial institution selected in accordance with the Department of Defense Financial Management Regulation providing for the selection of financial institutions to operate on military installations if each of the following applies:

(i) The on-base financial institution was selected before the date of the enactment of this paragraph or competitive procedures are used for the selection of any new financial institutions.

(ii) A current and binding operating agreement is in place between the installation commander and the selected on-base financial institution.

(B) The renewal, extension, or succeeding lease shall terminate upon the termination of the operating agreement described in subparagraph (A)(ii) associated with that lease.

(i) DEFINITIONS.—In this section:

(1) The term ''administrative expenses'' means only those expenses related to assessing, negotiating, executing, and managing lease and easement transactions. The term does not include any Government personnel costs.

(2) The term ''community support facility'' includes an ancillary supporting facility (as that term is defined in section 2871(1) of this title).

(3) The term ''community support services'' includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

(4) The term ''military installation'' has the meaning given such term in section 2687 of this title.

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

(A) the Secretary of a military department, with respect to matters concerning that military department; and

(B) the Secretary of Defense, with respect to matters concerning the Defense Agencies.

(j) EXCLUSION OF CERTAIN LANDS.—This section does not apply to oil, mineral, or phosphate lands.

(k) LEASES FOR EDUCATION.—Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease, if the lease is to a local education agency or an elementary or secondary school (as those terms are defined in section 9101[1] of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 94–107, title VI, § 607(7), Oct. 7, 1975, 89 Stat. 566; Pub. L. 94–412, title V, § 501(b), Sept. 14, 1976, 90

Stat. 1258; Pub. L. 96–513, title V, § 511(92), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97–295, § 1(34), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97–321, title VIII, § 803, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 101–510, div. B, title XXVIII, § 2806, Nov. 5, 1990, 104 Stat. 1787; Pub. L. 102–190, div. B, title XXVIII, § 2862, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 102–484, div. B, title XXVIII, § 2851, Oct. 23, 1992, 106 Stat. 2625; Pub. L. 103–160, div. B, title XXIX, § 2906, Nov. 30, 1993, 107 Stat. 1920; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), div. B, title XXVIII, §§ 2831(a), 2832, 2833, Feb. 10, 1996, 110 Stat. 502, 558, 559; Pub. L. 105–85, div. A, title III, § 361(b)(2), title X, § 1061(a)–(c)(1), Nov. 18, 1997, 111 Stat. 1701, 1891; Pub. L. 105–261, div. B, title XXVIII, § 2821, Oct. 17, 1998, 112 Stat. 2208; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(a)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–416 to 1654A–418; Pub. L. 107–107, div. A, title X, § 1013, Dec. 28, 2001, 115 Stat. 1212; Pub. L. 107–217, § 3(b)(12), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title X, § 1041(a)(18), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 108–136, div. A, title X, § 1043(b)(15), (c)(3), Nov. 24, 2003, 117 Stat. 1611, 1612; Pub. L. 108–178, § 4(b)(4), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 109–364, div. A, title VI, § 662, div. B, title XXVIII, § 2831, Oct. 17, 2006, 120 Stat. 2263, 2480; Pub. L. 110–181, div. A, title X, § 1063(c)(13), div. B, title XXVIII, § 2823, Jan. 28, 2008, 122 Stat. 323, 544; Pub. L. 110–417, div. B, title XXVIII, §§ 2812(a)–(d), (f)(1), 2831, Oct. 14, 2008, 122 Stat. 4725, 4726, 4728, 4732; Pub. L. 111–84, div. A, title X, § 1073(a)(26), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–350, § 5(b)(44), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 111–383, div. A, title X, § 1075(b)(41), div. B, title XXVIII, §§ 2811(g)–2813(a), Jan. 7, 2011, 124 Stat. 4371, 4463; Pub. L. 112–239, div. B, title XXVII, § 2712(c)(2), Jan. 2, 2013, 126 Stat. 2145; Pub. L. 113–66, div. B, title XXVIII, § 2812, Dec. 26, 2013, 127 Stat. 1014; Pub. L. 113–291, div. B, title XXVIII, § 2811, Dec. 19, 2014, 128 Stat. 3700; Pub. L. 114–92, div. B, title XXVIII, § 2814, Nov. 25, 2015, 129 Stat. 1175.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2667(a)	5:626s–3 (1st sentence). 10:1270 (1st sentence). 34:522a (1st sentence).	Aug. 5, 1947, ch. 493, §§ 1, 6, 61 Stat. 774, 775; Sept. 28, 1951, ch. 434. § 605 (as applicable to Act of Aug. 5, 1947, ch. 493, § 1), 65 Stat. 366.
2667(b)	5:626s–3 (2d through 6th sentences). 10:1270 (2d through 6th sentences). 34:522a (2d through 6th sentences).	
2667(c)	5:626s–3 (last sentence). 10:1270 (last sentence). 34:522a (last sentence).	
2667(d)	5:626s–3 (less 1st 6 sentences). 10:1270 (less 1st 6 sentences). 34:522a (less 1st 6 sentences).	
2667(e)	5:626s–6. 10:1270d. 34:522e.	

In subsection (a), the words ''considers * * * United States'' are substituted for the words ''shall deem * * * Government''. The words ''and conditions'' are omitted as surplusage. The words ''he considers'' are substituted for the words ''in his judgment''.

In subsection (a)(3), the words ''excess property, as defined by section 472 of title 40'' are substituted for the words ''surplus to the needs of the Department within the meaning of the Surplus Property Act of 1944 [Act of October 3, 1944 (58 Stat. 765)]'', in 5:626s–3, 10:1270, and 34:522a, since the words ''excess property'' are so defined by the Federal Property and Administrative Services Act of 1949.

In subsection (b)(2), the words ''may give'' are substituted for the first 12 words of the third sentence of 5:626s–3, 10:1270, and 34:522a. The words ''if the lease is revoked to allow the United States to sell the property'' are substituted for the words ''in the event of the revocation of the lease in order to permit sale thereof by the Government''. The words ''under any other provision of law'' are inserted for clarity. The words ''the first right to buy'' are substituted for the words ''a right of first refusal''. The words ''but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law'' are omitted as surplusage, since the revised section deals only with leases of property.

In subsection (b)(3), the words ''must permit'' are substituted for the words ''Each such lease shall contain a provision permitting''. The words ''from the lease'' are omitted as surplusage.

In subsection (b)(5), the words ''any such lease'' and ''of such property'' are omitted as surplusage.

In subsection (c), the words ''This section does'' are substituted for the words ''The authority herein granted shall''.

In subsection (e), the words ''of property'' are inserted for clarity. The words ''leased under'' are substituted for the words ''made or created pursuant to''. The words ''may be taxed by State or local governments'' are substituted for the words ''shall be made subject to State or local taxation''. The last sentence is substituted for the last sentence of 5:626s–6, 10:1270d, and 34:522e.

REFERENCES IN TEXT

Section 489 of this title, referred to in subsec. (e)(1)(E), was repealed by Pub. L. 113–291, div. A, title III, § 331(a), Dec. 19, 2014, 128 Stat. 3344.

Sections 2906 and 2906A of the Defense Base Closure and Realignment Act of 1990, referred to in subsec. (e)(4), (5), which established, respectively, the Department of Defense Base Closure Account 1990 and the Department of Defense Base Closure Account 2005, were repealed by Pub. L. 112–239, div. B, title XXVII, § 2711(a), Jan. 2, 2013, 126 Stat. 2140. A new section 2906, establishing the Department of Defense Base Closure Account, was enacted by section 2711(a) of Pub. L. 112–239.

The National Environmental Policy Act of 1969, referred to in subsec. (g)(4)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (h)(4)(A)(i), is the date of enactment of Pub. L. 113–291, which was approved Dec. 19, 2014.

Section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), referred to in subsec. (k), was renumbered section 8101 of that Act by Pub. L. 114–95, title VIII, § 8001(a)(1), Dec. 10, 2015, 129 Stat. 2088.

AMENDMENTS

2015—Subsec. (k). Pub. L. 114–92 added subsec. (k).

2014—Subsec. (h)(4). Pub. L. 113–291 added par. (4).

2013—Subsec. (e)(1)(C)(vi). Pub. L. 113–66, § 2812(a), added cl. (vi).

Subsec. (i)(1), (2). Pub. L. 113–66, § 2812(b), added par. (1) and redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (i)(3). Pub. L. 113–66, § 2812(b), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Pub. L. 112–239 substituted ''section 2687'' for ''section 2687(e)(1)''.

Subsec. (i)(4), (5). Pub. L. 113–66, § 2812(b), redesignated pars. (3) and (4) as (4) and (5), respectively.

2011—Subsec. (b)(7). Pub. L. 111–383, § 2813(a), inserted before period at end '', or otherwise commit the Sec-

retary concerned or the Department of Defense to annual payments in excess of such amount''.

Subsec. (c)(4). Pub. L. 111–383, §2811(g)(1), struck out par. (4), which set forth reporting requirements for issuance of contract solicitations or other lease offerings with annual payments exceeding $750,000.

Subsec. (d)(6). Pub. L. 111–383, §2811(g)(2), struck out par. (6), which read as follows: ''The Secretary concerned shall provide written notification to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives regarding all leases under this section that include the operation of a community support facility or the provision of community support services, regardless of whether the facility will be operated by a covered entity or the lessee or the services will be provided by a covered entity or the lessee.''

Subsec. (e)(1)(A)(ii). Pub. L. 111–383, §1075(b)(41)(A), substituted ''section 2668'' for ''sections 2668 and 2669''.

Subsec. (e)(1)(E). Pub. L. 111–383, §§2811(g)(3), 2812, added subpar. (E) and struck out former subpar. (E), which read as follows: ''The Secretary concerned may not expend under subparagraph (C) an amount in excess of $500,000 at a single military installation or Defense Agency location until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.''

Subsec. (e)(5). Pub. L. 111–383, §1075(b)(41)(B), substituted ''subsection (g)'' for ''subsection (f)''.

Subsec. (g)(1). Pub. L. 111–350, which directed substitution of ''Notwithstanding subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section'' for ''Notwithstanding subsection (a)(3) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection)'' in subsec. (f)(1), was executed by making the substitution for ''Notwithstanding subsection (a)(2) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection)'' in subsec. (g)(1), to reflect the probable intent of Congress and the amendment by Pub. L. 109–364, §662(b)(1), (d)(6). See 2006 Amendment note below.

Subsec. (h)(3) to (5). Pub. L. 111–383, §2811(g)(4), redesignated par. (4) as (3) and struck out former pars. (3) and (5) which related to written notice to Congress describing competitive procedures for, or public benefit served by, certain proposed leases and certification requirements for energy production leases exceeding 20 years, respectively.

2009—Subsec. (g)(1). Pub. L. 111–84 substituted ''law, the Secretary concerned may'' for ''law, the Secretary of the military department concerned may''.

2008—Pub. L. 110–417, §2812(f)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Leases: non-excess property of military departments''.

Subsec. (a). Pub. L. 110–417, §2812(a)(1), amended subsec. (a) generally. Prior to amendment, text read as follows: ''Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

''(1) under the control of that department; and

''(2) not excess property, as defined by section 102 of title 40.''

Subsec. (b)(7). Pub. L. 110–417, §2812(b), added par. (7).

Subsec. (c)(1)(D) to (F). Pub. L. 110–181, §2823(a), added subpars. (D) and (E), redesignated former subpar. (E) as (F), and struck out former subpar. (D) which read as follows: ''Facilities operation support for the Secretary concerned.''

Subsec. (c)(4). Pub. L. 110–417, §2812(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''In the case of a lease for which all or part of the consideration proposed to be accepted by the Secretary concerned under this subsection is in-kind consideration with a value in excess of $500,000, the Secretary concerned may not enter into the lease until 30 days after the date on which a report on the facts of the lease is submitted to the congressional defense committees.''

Subsec. (d)(2). Pub. L. 110–417, §2812(d)(1)(A), substituted ''Secretary concerned'' for ''Secretary of a military department'' in introductory provisions.

Subsec. (d)(3), (4), (6). Pub. L. 110–417, §2812(d)(1)(B), struck out ''of the military department'' after ''Secretary'' in pars. (3) and (6) and after ''from the Secretary'' in par. (4).

Subsec. (e). Pub. L. 110–181, §1063(c)(13), amended Pub. L. 109–364, §2831. See 2006 Amendment note below.

Subsec. (e)(1)(A). Pub. L. 110–417, §2812(d)(2)(A), in introductory provisions, substituted ''Secretary concerned'' for ''Secretary of a military department'' and ''that Secretary'' for ''such military department'' and, in cl. (iii), substituted ''of that Secretary'' for ''of that military department''.

Subsec. (e)(1)(B)(i). Pub. L. 110–417, §2812(d)(2)(B), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (e)(1)(B)(ii). Pub. L. 110–181, §2823(d)(1), substituted ''paragraph (3), (4), or (5)'' for ''paragraph (4), (5), or (6)''.

Subsec. (e)(1)(C). Pub. L. 110–417, §2812(d)(2)(C), in introductory provisions, substituted ''established for the Secretary concerned shall be available to the Secretary'' for ''of a military department pursuant to subparagraph (A) shall be available to the Secretary of that military department''.

Subsec. (e)(1)(C)(ii) to (v). Pub. L. 110–181, §2823(b), realigned margins of cls. (ii) and (iii), added cls. (iv) and (v), and struck out former cl. (iv) which read as follows: ''Facilities operation support.''

Subsec. (e)(1)(D). Pub. L. 110–417, §2812(d)(2)(D), substituted ''established for the Secretary concerned'' for ''of a military department under subparagraph (A)'' and inserted ''or Defense Agency location'' after ''military installation''.

Subsec. (e)(1)(E). Pub. L. 110–417, §2812(d)(2)(E), substituted ''military installation or Defense Agency location'' for ''installation''.

Subsec. (e)(3). Pub. L. 110–417, §2812(d)(2)(F), substituted ''control of the Secretary concerned'' for ''control of the Secretary of a military department''.

Pub. L. 110–181, §2823(d)(2), redesignated par. (4) as (3).

Subsec. (e)(4) to (6). Pub. L. 110–181, §2823(d)(2), redesignated pars. (5) and (6) as (4) and (5), respectively.

Subsec. (g)(1). Pub. L. 110–417, §2812(d)(3), which directed amendment of par. (1) by substituting ''Secretary concerned'' for ''Secretary of a military department'', could not be executed because the phrase ''Secretary of a military department'' did not appear in text.

Subsec. (h)(1). Pub. L. 110–181, §2823(c)(1), substituted ''exceeds one year, or the fair market value of the lease'' for ''exceeds one year, and the fair market value of the lease''.

Subsec. (h)(2) to (4). Pub. L. 110–181, §2823(c)(2), (3), added pars. (2) and (3), redesignated former par. (3) as (4), and struck out former par. (2) which read as follows: ''Not later than 45 days before entering into a lease described in paragraph (1), the Secretary concerned shall submit to Congress written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.''

Subsec. (h)(5). Pub. L. 110–417, §2831, added par. (5).

Subsec. (i)(4). Pub. L. 110–417, §2812(a)(2), added par. (4).

2006—Subsec. (a). Pub. L. 109–364, §662(d)(1), inserted heading.

Subsec. (b). Pub. L. 109–364, §662(d)(2), inserted heading.

Subsec. (b)(6). Pub. L. 109–364, §662(a), added par. (6).

Subsec. (c). Pub. L. 109–364, §662(d)(3), inserted heading.

Subsec. (d). Pub. L. 109–364, § 662(b), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 109–364, § 2831, as amended by Pub. L. 110–181, § 1063(c)(13), substituted ''paragraph (4), (5), or (6)'' for ''paragraph (4) or (5)'' in par. (1)(B)(ii), inserted ''at a military installation approved for closure or realignment under a base closure law before January 1, 2005,'' after ''lease under subsection (f)'' in par. (5), and added par. (6) at the end.

Pub. L. 109–364, § 662(d)(4), inserted heading and substituted ''(g)'' for ''(f)'' in par. (5).

Pub. L. 109–364, § 662(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109–364, § 662(b)(1), (d)(5), redesignated subsec. (e) as (f) and inserted heading. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 109–364, § 662(b)(1), (d)(6), redesignated subsec. (f) as (g), inserted heading, and substituted ''(a)(2)'' for ''(a)(3)'' in par. (1). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109–364, § 662(b)(1), (d)(7), redesignated subsec. (g) as (h) and inserted heading. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 109–364, § 662(b)(1), (c), redesignated subsec. (h) as (i), inserted heading, and amended text of subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''In this section, the term 'military installation' has the meaning given such term in section 2687(e)(1) of this title.'' Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 109–364, § 662(b)(1), (d)(8), redesignated subsec. (i) as (j) and inserted heading.

2003—Subsec. (b)(5). Pub. L. 108–178 struck out comma after ''of title 40''.

Subsec. (h). Pub. L. 108–136 redesignated introductory provisions and par. (3) as entire subsec., substituted ''section,'' for ''section:'' and ''this term'' for ''The term'', struck out par. (1) which defined ''congressional defense committees'' to mean the Committees on Armed Services and Appropriations of the Senate and House of Representatives, and struck out par. (2) which defined ''base closure law'' to mean section 2687 of this title, the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510), and title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526).

2002—Subsec. (a)(2). Pub. L. 107–217, § 3(b)(12)(A), substituted ''section 102 of title 40'' for ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)''.

Subsec. (b)(5). Pub. L. 107–217, § 3(b)(12)(B), substituted ''section 1302 of title 40'' for ''section 321 of the Act of June 30, 1932 (40 U.S.C. 303b)''.

Subsec. (d)(3). Pub. L. 107–314 struck out par. (3) which read as follows: ''Not later than March 15 each year, the Secretary of Defense shall submit to the congressional defense committees a report which shall include—

''(A) an accounting of the receipt and use of all money rentals that were deposited and expended under this subsection during the fiscal year preceding the fiscal year in which the report is made; and

''(B) a detailed explanation of each lease entered into, and of each amendment made to existing leases, during such preceding fiscal year.''

Subsec. (f)(1). Pub. L. 107–217, § 3(b)(12)(C), inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''subtitle I and title III are'' for ''such Act is''.

2001—Subsec. (g)(3). Pub. L. 107–107 added par. (3).

2000—Subsec. (a). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(a)], inserted ''and'' at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''not for the time needed for public use; and''.

Subsec. (b)(5). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(b)(1)], substituted ''alteration, repair, or improvement,'' for ''improvement, maintenance, protection, repair, or restoration,'' and struck out '', or of the entire unit or installation where a substantial part of it is leased,'' after ''of the property leased''.

Subsec. (c). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(b)(3)], added subsec. (c). Former subsec. (c) redesignated (i).

Subsec. (d)(1). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(c)], amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1)(A) All money rentals received pursuant to leases entered into by the Secretary of a military department under this section shall be deposited in a special account in the Treasury established for such military department, except—

''(i) amounts paid for utilities and services furnished lessees by the Secretary; and

''(ii) money rentals referred to in paragraph (4) or (5).

''(B) Sums deposited in a military department's special account pursuant to subparagraph (A) shall be available to such military department, as provided in appropriation Acts, as follows:

''(i) 50 percent of such amount shall be available for facility maintenance and repair or environmental restoration at the military installation where the leased property is located.

''(ii) 50 percent of such amount shall be available for facility maintenance and repair and for environmental restoration by the military department concerned.''

Subsec. (d)(3). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(d)(1)], substituted ''Not later than March 15 each year, the Secretary of Defense shall submit to the congressional defense committees a report which'' for ''As part of the request for authorizations of appropriations submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives for each fiscal year, the Secretary of Defense'' in introductory provisions.

Subsec. (d)(3)(A). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(d)(2)], substituted ''report'' for ''request''.

Subsec. (f)(4), (5). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(b)(4)], redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''The Secretary concerned may accept under subsection (b)(5) services of a lessee for an entire installation to be closed or realigned under a base closure law, or for any part of such installation, without regard to the requirement in subsection (b)(5) that a substantial part of the installation be leased.''

Subsec. (h). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(e)], amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''In this section, the term 'base closure law' means each of the following:

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

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

''(3) Section 2687 of this title.''

Subsec. (i). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(b)(2)], redesignated subsec. (c) as (i).

1999—Subsec. (d)(3). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsec. (f)(1). Pub. L. 105–261 inserted ''or the Federal Property and Administrative Services Act of 1949 (to the extent such Act is inconsistent with this subsection)''.

1997—Pub. L. 105–85, § 1061(c)(1), inserted ''of military departments'' after ''property'' in section catchline.

Subsec. (b)(4). Pub. L. 105–85, § 1061(a), struck out '', in the case of the lease of real property,'' after ''shall provide''.

Subsec. (d)(2). Pub. L. 105–85, § 361(b)(2), inserted ''or working capital fund'' before ''from which''.

Subsecs. (g), (h). Pub. L. 105–85, § 1061(b), added subsec. (g) and redesignated former subsec. (g) as (h).

1996—Subsec. (d)(1)(A)(ii). Pub. L. 104–106, § 2831(a)(1), inserted ''or (5)'' after ''paragraph (4)''.

Subsec. (d)(3). Pub. L. 104–106, § 1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (d)(5). Pub. L. 104–106, § 2831(a)(2), added par. (5).

Subsec. (f)(4). Pub. L. 104–106, § 2832, added par. (4).

Subsec. (f)(5). Pub. L. 104–106, § 2833, added par. (5).

1993—Subsec. (f). Pub. L. 103–160, § 2906(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if—

''(1) the Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and

''(2) the Administrator of General Services concurs in the action.''

Subsec. (g). Pub. L. 103–160, § 2906(b), added subsec. (g).

1992—Subsec. (b)(4). Pub. L. 102–484 inserted '', in the case of the lease of real property,'' after ''shall provide''.

1991—Subsec. (b)(3). Pub. L. 102–190, § 2862(a)(1), substituted ''shall permit'' for ''must permit'' and struck out ''and'' at end.

Subsec. (b)(4). Pub. L. 102–190, § 2862(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(5). Pub. L. 102–190, § 2862(a)(2), (4), redesignated par. (4) as (5) and inserted ''improvement,'' before ''maintenance'' and ''the payment of'' before ''part or all''.

Subsec. (d)(3). Pub. L. 102–190, § 2862(b), redesignated subpar. (B) as par. (3), substituted ''As part of the request for authorizations of appropriations submitted to the Committees on Armed Services of the Senate and House of Representatives for each fiscal year'' for ''As part of the request for authorizations of appropriations to such Committees for each fiscal year after fiscal year 1992'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''As part of the request for authorizations of appropriations for fiscal year 1992 to the Committees on Armed Services of the Senate and of the House of Representatives, the Secretary of Defense shall include an explanation of each lease from which money rentals will be received and deposited under this subsection during fiscal year 1991, together with an estimate of the amount to be received from each such lease and an explanation of the anticipated expenditures of such receipts.''

1990—Subsec. (d). Pub. L. 101–510 added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: ''Except as provided in paragraph (2), money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.''

1982—Subsec. (b)(4). Pub. L. 97–295 substituted ''of'' for ''entitled 'An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved'' after ''section 321 of the Act''.

Subsec. (d). Pub. L. 97–321 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), money'' for ''Money'', and added par. (2).

1980—Subsec. (a)(3). Pub. L. 96–513, § 511(92)(A), substituted ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)'' for ''section 472 of title 40''.

Subsec. (b)(4). Pub. L. 96–513, § 511(92)(B), substituted ''section 321 of the Act entitled 'An act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved June 30, 1932 (40 U.S.C. 303b),'' for ''section 303b of title 40''.

Subsec. (e). Pub. L. 96–513, § 511(92)(C), substituted ''Act'' for ''act''.

Subsec. (f). Pub. L. 96–513, § 511(92)(D), substituted ''the Secretary'' for ''The Secretary'', and substituted ''the Administrator of General Services'' for ''The Administrator of the General Services Administration''.

1976—Subsec. (b)(4), (5). Pub. L. 94–412 struck out par. (4) which required leases of nonexcess property of a military department include a provision making the lease revocable during a national emergency declared by the President, and redesignated par. (5) as (4).

1975—Subsec. (f). Pub. L. 94–107 added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title X, § 1063(c), Jan. 28, 2008, 122 Stat. 322, provided that the amendment made by section 1063(c)(13) is effective as of Oct. 17, 2006, and as if included in the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109–364, as enacted.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

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.

SAVINGS PROVISION

Amendment by Pub. L. 94–412 not to affect any action taken or proceeding pending at the time of amendment, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

TRANSFERS FROM SPECIAL ACCOUNTS

Pub. L. 108–287, title VIII, § 8034, Aug. 5, 2004, 118 Stat. 978, provided that: ''Amounts deposited during the current fiscal year and hereafter to the special account established under 40 U.S.C. 572(b)(5)(A) and to the special account established under 10 U.S.C. 2667(d)(1) [now 2667(e)(1)] are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 572(b)(5)(B) and 10 U.S.C. 2667(d)(1)(B) [now 2667(e)(1)(B)], to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, § 8035, Sept. 30, 2003, 117 Stat. 1080.

Pub. L. 107–248, title VIII, § 8035, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107–117, div. A, title VIII, § 8038, Jan. 10, 2002, 115 Stat. 2255.

Pub. L. 106–259, title VIII, § 8038, Aug. 9, 2000, 114 Stat. 682.

Pub. L. 106–79, title VIII, § 8040, Oct. 25, 1999, 113 Stat. 1239.

Pub. L. 105–262, title VIII, § 8040, Oct. 17, 1998, 112 Stat. 2306.

Pub. L. 105–56, title VIII, § 8044, Oct. 8, 1997, 111 Stat. 1230.

Pub. L. 104–61, title VIII, § 8056, Dec. 1, 1995, 109 Stat. 663.

Pub. L. 103–335, title VIII, § 8063, Sept. 30, 1994, 108 Stat. 2634.

Pub. L. 103–139, title VIII, § 8074, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, § 9107, Oct. 6, 1992, 106 Stat. 1927.

LEASING OF DEFENSE PROPERTY; NOTIFICATION OF CONGRESS; WAIVER; REPORT TO CONGRESS; DEFINITION

Pub. L. 96–533, title I, § 109(a)–(e), Dec. 16, 1980, 94 Stat. 3137, provided that before the Secretary of a military department exercised his authority under section 2667 of title 10, United States Code, in order to lease defense property to a foreign government for a period of more than six months, the President had to transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, a written notification of the particulars of the proposed lease, prior to repeal by Pub. L. 97–113, title I, § 109(d)(1), Dec. 29, 1981, 95 Stat. 1526. See section 2795 et seq. of Title 22, Foreign Relations and Intercourse.

[§ 2667a. Repealed. Pub. L. 110–417, div. B, title XXVIII, § 2812(e)(1), Oct. 14, 2008, 122 Stat. 4727]

Section, added Pub. L. 105–85, div. A, title X, § 1062(a), Nov. 18, 1997, 111 Stat. 1891; amended Pub. L. 107–217, § 3(b)(13), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 108–136, div. A, title X, § 1031(a)(28), Nov. 24, 2003, 117 Stat. 1599, related to leases of non-excess property of Defense agencies.

PRIOR PROVISIONS

A prior section 2667a, added Pub. L. 98–115, title VIII, § 807(a)(1), Oct. 11, 1983, 97 Stat. 786, provided for sale and replacement of nonexcess real property, prior to repeal by Pub. L. 98–115, title VIII, § 807(c), Oct. 11, 1983, 97 Stat. 789, as amended by Pub. L. 99–167, title VIII, § 806(a), Dec. 3, 1985, 99 Stat. 988, effective Oct. 1, 1986.

SAVINGS PROVISION

Pub. L. 110–417, div. B, title XXVIII, § 2812(e)(2), (3), Oct. 14, 2008, 122 Stat. 4727, provided that:

''(2) EFFECT ON EXISTING CONTRACTS.—The repeal of section 2667a of title 10, United States Code, shall not affect the validity or terms of any lease with respect to property of a Defense Agency entered into by the Secretary of Defense under such section before the date of the enactment of this Act [Oct. 14, 2008].

''(3) TREATMENT OF MONEY RENTS.—Amounts in any special account established for a Defense Agency pursuant to subsection (d) of section 2667a of title 10, United States Code, before repeal of such section by paragraph (1), and amounts that would be deposited in such an account in connection with a lease referred to in paragraph (2), shall—

''(A) remain available until expended for the purposes specified in such subsection, notwithstanding the repeal of such section by paragraph (1); or

''(B) to the extent provided in appropriations Acts, be transferred to the special account required for the Secretary of Defense by subsection (e) of section 2667 of such title, as amended by subsection (d)(2) of this section.''

§ 2668. Easements for rights-of-way

(a) AUTHORIZED TYPES OF EASEMENTS.—If the Secretary of a military department finds that it will not be against the public interest, the Secretary may grant, upon such terms as the Secretary considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under the Secretary's control for—

(1) railroad tracks;

(2) gas, water, sewer, and oil pipe lines;

(3) substations for electric power transmission lines and pumping stations for gas, water, sewer, and oil pipe lines;

(4) canals;

(5) ditches;

(6) flumes;

(7) tunnels;

(8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;

(9) roads and streets;

(10) poles and lines for the transmission or distribution of electric power;

(11) poles and lines for the transmission or distribution of communications signals (including telephone and telegraph signals);

(12) structures and facilities for the transmission, reception, and relay of such signals; and

(13) any other purpose that the Secretary considers advisable.

(b) LIMITATION ON SIZE OF EASEMENT.—No easement granted under this section may include more land than is necessary for the easement.

(c) TERMINATION.—The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse for a two-year period; or

(3) abandonment.

(d) NOTICE TO DEPARTMENT OF THE INTERIOR.—Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior.

(e) DISPOSITION OF CONSIDERATION.—Subsections (c) and (e) of section 2667 of this title shall apply with respect to in-kind consideration and proceeds received by the Secretary of a military department in connection with an easement granted under this section in the same manner as such subsections apply to in-kind consideration and money rentals received pursuant to leases entered into by that Secretary under such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 98–525, title XIV, § 1405(38), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104–201, div. B, title XXVIII, § 2861, Sept. 23, 1996, 110 Stat. 2804; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–418; Pub. L. 108–136, div. B, title XXVIII, § 2813(a), Nov. 24, 2003, 117 Stat. 1725; Pub. L. 109–163, div. A, title X, § 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109–364, div. B, title XXVIII, § 2822(a), (b), Oct. 17, 2006, 120 Stat. 2474, 2475; Pub. L. 110–181, div. A, title X, § 1063(a)(14), Jan. 28, 2008, 122 Stat. 322.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2668(a)	43:931b (less 2d and 3d provisos of 1st sentence, and less last sentence).	July 24, 1946, ch. 596, § 7, 60 Stat. 643; Oct. 25, 1951, ch. 563, § 101 (31st through 43d words), 65 Stat. 641.
2668(b)	43:931b (2d proviso of 1st sentence).	
2668(c)	43:931b (3d proviso of 1st sentence).	
2668(d)	43:931b (last sentence) [43:931b is made applicable to the Navy by 50:171–1 (16th through 21st words)].	

In subsection (a), the word ''conditions'' is omitted as covered by the word ''terms''. The description of the persons covered in the opening paragraph and the lands covered in clauses (1)–(10) is restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 1952). The exceptions to clause (10) make express the fact that the revised section does not cover certain easements authorized by earlier law. The word ''over'' includes the word ''across''. The words ''of the United States'', ''and empowered'', ''acquired lands'', ''jurisdiction and'', and ''municipality'' are omitted as surplusage. The word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico.

In subsection (b), the words ''for the easement'' are substituted for the words ''for the purpose for which granted''.

In subsections (b) and (c), the word ''easement'' is substituted for the word ''rights-of-way''.

In subsection (c), the word ''terminate'' is substituted for the words ''annulled and forfeited''. The words ''and conditions'' are omitted as covered by the word ''terms''. The words ''two-year period'' are substituted for the words ''a period of two consecutive years''. The words ''of rights granted under authority hereof'' are omitted as surplusage.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–181 substituted ''and (e)'' for ''and (d)''.

2006—Subsec. (a). Pub. L. 109–364, § 2822(a)(1), (b)(1), inserted heading and, in introductory provisions, substituted ''the Secretary may'' for ''he may'', ''the Secretary considers'' for ''he considers'', and ''the Secretary's control'' for ''his control, to a State, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Commonwealth, or possession,''.

Pub. L. 109–163 struck out ''Territory,'' after ''a State,'' in two places in introductory provisions.

Subsec. (a)(2). Pub. L. 109–364, § 2822(a)(2), substituted ''gas, water, sewer, and oil pipe lines'' for ''oil pipe lines''.

Subsec. (a)(13). Pub. L. 109–364, § 2822(a)(3), substituted ''the Secretary considers advisable'' for ''he considers advisable, except a purpose covered by section 2669 of this title''.

Subsecs. (b) to (e). Pub. L. 109–364, § 2822(b)(2)–(5), inserted subsec. headings.

2003—Subsec. (e). Pub. L. 108–136 substituted ''Subsections (c) and (d)'' for ''Subsection (d)'' and ''subsections apply to in-kind consideration and'' for ''subsection applies to'' and inserted ''in-kind consideration and'' before ''proceeds''.

2000—Subsec. (e). Pub. L. 106–398 added subsec. (e).

1996—Subsec. (a)(3). Pub. L. 104–201, § 2861(b)(1), struck out '', telephone lines, and telegraph lines,'' after ''transmission lines''.

Subsec. (a)(9). Pub. L. 104–201, § 2861(a)(1), struck out ''and'' at end.

Subsec. (a)(10) to (12). Pub. L. 104–201, § 2861(a)(3), added pars. (10) to (12). Former par. (10) redesignated (13).

Subsec. (a)(13). Pub. L. 104–201, § 2861(a)(2), (b)(2), redesignated par. (10) as (13) and struck out ''or by the Act of March 4, 1911 (43 U.S.C. 961)'' after ''2669 of this title''.

1984—Subsec. (a)(10). Pub. L. 98–525 substituted ''the Act of March 4, 1911 (43 U.S.C. 961)'' for ''section 961 of title 43''.

§ 2668a. Easements: granting restrictive easements in connection with land conveyances

(a) AUTHORITY TO INCLUDE RESTRICTIVE EASEMENT.—In connection with the conveyance of real property by the Secretary concerned under any provision of law, the Secretary concerned may grant an easement to an entity specified in subsection (b) restricting future uses of the conveyed real property for a conservation purpose consistent with section 170(h)(4)(A)(iv) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(4)(A)(iv)).

(b) AUTHORIZED RECIPIENTS.—An easement under subsection (a) may be granted only to—

(1) a State or local government; or

(2) a qualified organization, as that term is defined in section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)).

(c) LIMITATIONS ON USE OF EASEMENT AUTHORITY.—An easement under subsection (a) may not be granted unless—

(1) the proposed recipient of the easement consents to the receipt of the easement;

(2) the Secretary concerned determines that the easement is in the public interest and the conservation purpose to be promoted by the easement cannot be effectively achieved through the application of State law by the State or a local government without the grant of restrictive easements;

(3) the jurisdiction that encompasses the property to be subject to the easement authorizes the grant of restrictive easements; and

(4) the Secretary can give or assign to a third party the responsibility for monitoring and enforcing easements granted under this section.

(d) CONSIDERATION.—Easements granted under this section shall be without consideration from the recipient.

(e) ACREAGE LIMITATION.—No easement granted under this section may include more land than is necessary for the easement.

(f) TERMS AND CONDITIONS.—The grant of an easement under this section shall be subject to such additional terms and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2823(a), Oct. 17, 2006, 120 Stat. 2475.)

[§ 2669. Repealed. Pub. L. 109–364, div. B, title XXVIII, § 2822(c), Oct. 17, 2006, 120 Stat. 2475]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 151; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(f)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–418; Pub. L. 108–136, div. B, title XXVIII, § 2813(b), Nov. 24, 2003, 117 Stat. 1725; Pub. L. 109–163, div. A, title X, § 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440, related to easements for gas, water, and sewer pipe lines.

§ 2670. Use of facilities by private organizations; use as polling places

(a) USE BY RED CROSS.—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) erect and maintain, on any military installation under his jurisdiction, buildings for the storage of supplies; or

(2) use, for the storage of supplies, buildings erected by the United States.

Supplies stored in buildings erected or used under this subsection are available to aid the civilian population in a serious national disaster.

(b) USE OF CERTAIN FACILITIES AS POLLING PLACES.—(1) Notwithstanding chapter 29 of title

18 (including sections 592 and 593 of such title) or any other provision of law, the Secretary of Defense or Secretary of a military department may not (except as provided in paragraph (3)) prohibit the designation or use of a qualifying facility under the jurisdiction of the Secretary as an official polling place for local, State, or Federal elections.

(2) A Department of Defense facility is a qualifying facility for purposes of this subsection if as of December 31, 2000—

(A) the facility is designated as an official polling place by a State or local election official; or

(B) the facility has been used as such an official polling place since January 1, 1996.

(3) The limitation in paragraph (1) may be waived by the Secretary of Defense or Secretary of the military department concerned with respect to a particular Department of Defense facility if the Secretary of Defense or Secretary concerned determines that local security conditions require prohibition of the designation or use of that facility as an official polling place for any election.

(c) USE OF SPACE AND EQUIPMENT BY VETERANS SERVICE ORGANIZATIONS.—(1) Upon certification to the Secretary concerned by the Secretary of Veterans Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of the Secretary concerned that are on land and from which persons are discharged or released from active duty.

(2) The commanding officer of a military installation allowing representatives to function on the installation under paragraph (1) shall allow the representatives to use available space and equipment at the installation.

(3) This subsection does not authorize the violation of measures of military security.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151; Pub. L. 107–107, div. A, title XVI, § 1607(a)–(b)(2), Dec. 28, 2001, 115 Stat. 1279, 1280; Pub. L. 108–375, div. B, title XXVIII, § 2821(c)(1), (e)(2), Oct. 28, 2004, 118 Stat. 2129, 2130.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2670	36:12.	June 3, 1916, ch. 134, § 127a (5th par.); added June 4, 1920, ch. 227, subch. I, § 51 (5th par.); restated July 17, 1953, ch. 222, § 3, 67 Stat. 178.

The word ''issue'' is substituted for the words ''grant permission''. The word ''use'' is substituted for the words ''occupy for that purpose''.

AMENDMENTS

2004—Pub. L. 108–375, § 2821(e)(2), substituted ''Use of facilities by private organizations; use as polling places'' for ''Military installations: use by American National Red Cross; use as polling places'' in section catchline.

Subsec. (c). Pub. L. 108–375, § 2821(c)(1), added subsec. (c).

2001—Pub. L. 107–107 substituted ''Military installations: use by American National Red Cross; use as polling places'' for ''Licenses: military installations; erection and use of buildings; American National Red Cross'' in section catchline, designated existing provisions as subsec. (a), inserted heading, substituted ''this subsection'' for ''this section'' in concluding provisions, and added subsec. (b).

REGULATIONS

Pub. L. 108–375, div. B, title XXVIII, § 2821(c)(3), Oct. 28, 2004, 118 Stat. 2129, provided that: ''The regulations prescribed to carry out [former] section 2679 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Oct. 28, 2004], shall remain in effect with regard to section 2670(c) of such title, as added by paragraph (1), until changed by joint action of the Secretary concerned (as defined in section 101(9) of such title) and the Secretary of Veterans Affairs.''

§ 2671. Military reservations and facilities: hunting, fishing, and trapping

(a) GENERAL REQUIREMENTS FOR HUNTING, FISHING, AND TRAPPING.—The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the armed forces, such a license may be required only if the State authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive or otherwise modify the fish and game laws of a State otherwise applicable under subsection (a)(1) to hunting, fishing, or trapping at a military installation or facility if the Secretary determines that the application of such laws to such hunting, fishing, or trapping without modification could result in undesirable consequences for public health or safety at the installation or facility. The authority to waive such laws includes the authority to extend, but not reduce, the specified season for certain hunting, fishing, or trapping. The Secretary may not waive the requirements under subsection (a)(2) regarding a license for such hunting, fishing, or trapping or any fee imposed by a State to obtain such a license.

(2) If the Secretary determines that a waiver of fish and game laws of a State is appropriate

under paragraph (1), the Secretary shall provide written notification to the appropriate State officials stating the reasons for, and extent of, the waiver. The notification shall be provided at least 30 days before implementation of the waiver.

(c) VIOLATIONS.—Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a)(1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) RELATION TO TREATY RIGHTS.—This section does not modify any rights granted by the treaty or otherwise to any Indian tribe or to the members thereof.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 85–337, § 4(1), Feb. 28, 1958, 72 Stat. 29; amended Pub. L. 107–107, div. B, title XXVIII, § 2811, Dec. 28, 2001, 115 Stat. 1307; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 111–383, div. A, title X, § 1075(b)(42), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces''.

2006—Subsecs. (a) to (c). Pub. L. 109–163 struck out ''or Territory'' after ''State'' wherever appearing.

2001—Subsec. (a). Pub. L. 107–107, § 2811(b)(1), inserted heading.

Subsec. (b). Pub. L. 107–107, § 2811(a)(2), added subsec. (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 107–107, § 2811(b)(2), inserted heading.

Subsec. (d). Pub. L. 107–107, § 2811(b)(3), inserted heading.

Subsec. (e). Pub. L. 107–107, § 2811(a)(1), redesignated subsec. (b) as (e), inserted heading, and transferred subsec. to end of section.

INCREASED HUNTING AND FISHING OPPORTUNITIES FOR MEMBERS OF THE ARMED FORCES, RETIRED MEMBERS, AND DISABLED VETERANS

Pub. L. 109–364, div. A, title X, § 1077(a), Oct. 17, 2006, 120 Stat. 2406, provided that: ''Consistent with section 2671 of title 10, United States Code, and using such funds as are made available for this purpose, the Secretary of Defense shall ensure that members of the Armed Forces, retired members, disabled veterans, and persons assisting disabled veterans are able to utilize lands under the jurisdiction of the Department of Defense that are available for hunting or fishing.''

§ 2672. Protection of buildings, grounds, property, and persons

(a) SECRETARY OF DEFENSE RESPONSIBILITY.—The Secretary of Defense shall protect the buildings, grounds, and property that are under the jurisdiction, custody, or control of the Department of Defense and the persons on that property.

(b) DESIGNATION OF OFFICERS AND AGENTS.—(1) The Secretary of Defense may designate military or civilian personnel of the Department of Defense as officers and agents to perform the functions of the Secretary under subsection (a), including, with regard to civilian officers and agents, duty in areas outside the property specified in that subsection to the extent necessary to protect that property and persons on that property.

(2) A designation under paragraph (1) may be made by individual, by position, by installation, or by such other category of personnel as the Secretary determines appropriate.

(3) In making a designation under paragraph (1) with respect to any category of personnel, the Secretary shall specify each of the following:

(A) The personnel or positions to be included in the category.

(B) The authorities provided for in subsection (c) that may be exercised by personnel in that category.

(C) In the case of civilian personnel in that category—

(i) the authorities provided for in subsection (c), if any, that are authorized to be exercised outside the property specified in subsection (a); and

(ii) with respect to the exercise of any such authorities outside the property specified in subsection (a), the circumstances under which coordination with law enforcement officials outside of the Department of Defense should be sought in advance.

(4) The Secretary may make a designation under paragraph (1) only if the Secretary determines, with respect to the category of personnel to be covered by that designation, that—

(A) the exercise of each specific authority provided for in subsection (c) to be delegated to that category of personnel is necessary for the performance of the duties of the personnel in that category and such duties cannot be performed as effectively without such authorities; and

(B) the necessary and proper training for the authorities to be exercised is available to the personnel in that category.

(c) AUTHORIZED ACTIVITIES.—Subject to subsection (i) and to the extent specifically authorized by the Secretary of Defense, while engaged in the performance of official duties pursuant to this section, an officer or agent designated under subsection (b) may—

(1) enforce Federal laws and regulations for the protection of persons and property;

(2) carry firearms;

(3) make arrests—

(A) without a warrant for any offense against the United States committed in the presence of the officer or agent; or

(B) for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

(4) serve warrants and subpoenas issued under the authority of the United States; and

(5) conduct investigations, on and off the property in question, of offenses that may have been committed against property under the jurisdiction, custody, or control of the Department of Defense or persons on such property.

(d) REGULATIONS.—(1) The Secretary of Defense may prescribe regulations, including traf-

fic regulations, necessary for the protection and administration of property under the jurisdiction, custody, or control of the Department of Defense and persons on that property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property to which they apply.

(2) A person violating a regulation prescribed under this subsection shall be fined under title 18, imprisoned for not more than 30 days, or both.

(e) LIMITATION ON DELEGATION OF AUTHORITY.—The authority of the Secretary of Defense under subsections (b), (c), and (d) may be exercised only by the Secretary or the Deputy Secretary of Defense.

(f) DISPOSITION OF PERSONS ARRESTED.—A person who is arrested pursuant to authority exercised under subsection (b) may not be held in a military confinement facility, other than in the case of a person who is subject to chapter 47 of this title (the Uniform Code of Military Justice).

(g) FACILITIES AND SERVICES OF OTHER AGENCIES.—In implementing this section, when the Secretary of Defense determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, Indian tribal, and local law enforcement agencies, with the consent of those agencies, and may reimburse those agencies for the use of their facilities and services. Such services of State, Indian tribal, and local law enforcement, including application of their powers of law enforcement, may be provided notwithstanding that the property is subject to the legislative jurisdiction of the United States.

(h) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property under the jurisdiction, custody, or control of the Department of Defense and persons on that property, the Secretary of Defense may enter into agreements with Federal agencies and with State, Indian tribal, and local governments to obtain authority for civilian officers and agents designated under this section to enforce Federal laws and State, Indian tribal, and local laws concurrently with other Federal law enforcement officers and with State, Indian tribal, and local law enforcement officers.

(i) ATTORNEY GENERAL APPROVAL.—The powers granted pursuant to subsection (c) to officers and agents designated under subsection (b) shall be exercised in accordance with guidelines approved by the Attorney General. Such guidelines may include specification of the geographical extent of property outside of the property specified in subsection (a) within which those powers may be exercised.

(j) LIMITATION WITH REGARD TO OTHER FEDERAL AGENCIES.—Nothing in this section shall be construed as affecting the authority of the Secretary of Homeland Security to provide for the protection of facilities (including the buildings, grounds, and properties of the General Services Administration) that are under the jurisdiction, custody, or control, in whole or in part, of a Federal agency other than the Department of Defense and that are located off of a military installation.

(k) COOPERATION WITH LOCAL LAW ENFORCEMENT AGENCIES.—Before authorizing civilian officers and agents to perform duty in areas outside the property specified in subsection (a), the Secretary of Defense shall consult with, and is encouraged to enter into agreements with, local law enforcement agencies exercising jurisdiction over such areas for the purposes of avoiding conflicts of jurisdiction, promoting notification of planned law enforcement actions, and otherwise facilitating productive working relationships.

(*l*) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

(1) to preclude or limit the authority of any Federal law enforcement agency;

(2) to restrict the authority of the Secretary of Homeland Security under the Homeland Security Act of 2002 or of the Administrator of General Services, including the authority to promulgate regulations affecting property under the custody and control of that Secretary or the Administrator, respectively;

(3) to expand or limit section 21 of the Internal Security Act of 1950 (50 U.S.C. 797);

(4) to affect chapter 47 of this title;

(5) to restrict any other authority of the Secretary of Defense or the Secretary of a military department; or

(6) to restrict the authority of the Director of the National Security Agency under section 11 of the National Security Agency Act of 1959 (50 U.S.C. 3609).

(Added Pub. L. 114–92, div. B, title XXVIII, § 2811(a), Nov. 25, 2015, 129 Stat. 1172.)

REFERENCES IN TEXT

The Homeland Security Act of 2002, referred to in subsec. (*l*)(2), is Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, which is classified principally to chapter 1 (§ 101 et seq.) of Title 6, Domestic Security. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 6 and Tables.

PRIOR PROVISIONS

A prior section 2672, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, § 112(a), Sept. 7, 1962, 76 Stat. 511; Pub. L. 92–145, title VII, § 707(2), (3), Oct. 27, 1971, 85 Stat. 411; Pub. L. 96–418, title VIII, § 806(a), Oct. 10, 1980, 94 Stat. 1777; Pub. L. 99–167, title VIII, § 810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989, 990; Pub. L. 99–661, div. A, title XIII, § 1343(a)(16), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–456, div. B, title XXVIII, § 2804, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 105–85, div. B, title XXVIII, § 2811(a), (b)(1), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108–136, div. B, title XXVIII, § 2811(a)–(b)(2), Nov. 24, 2003, 117 Stat. 1724, 1725; Pub. L. 108–375, div. B, title XXVIII, § 2821(d)(1), Oct. 28, 2004, 118 Stat. 2130; Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(2), Jan. 6, 2006, 119 Stat. 3511, related to authority to acquire low-cost interests in land, prior to repeal by Pub. L. 109–163, div. B, title XXVIII, § 2821(f), Jan. 6, 2006, 119 Stat. 3513. See section 2663(c) of this title.

ESTABLISHMENT OF PROCESS BY WHICH MEMBERS OF THE ARMED FORCES MAY CARRY AN APPROPRIATE FIREARM ON A MILITARY INSTALLATION

Pub. L. 114–92, div. A, title V, § 526, Nov. 25, 2015, 129 Stat. 813, provided that: ''Not later than December 31, 2015, the Secretary of Defense, taking into consideration the views of senior leadership of military installations in the United States, shall establish and implement a process by which the commanders of military installations in the United States, or other military commanders designated by the Secretary of Defense for

military reserve centers, Armed Services recruiting centers, and such other defense facilities as the Secretary may prescribe, may authorize a member of the Armed Forces who is assigned to duty at the installation, center or facility to carry an appropriate firearm on the installation, center, or facility if the commander determines that carrying such a firearm is necessary as a personal- or force-protection measure.''

[§ 2672a. Repealed. Pub. L. 109–163, div. B, title XXVIII, § 2821(f), Jan. 6, 2006, 119 Stat. 3513]

Section, added Pub. L. 94–107, title VI, § 607(8), Oct. 7, 1975, 89 Stat. 566; amended Pub. L. 98–525, title XIV, § 1405(39), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 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)(29), Nov. 24, 2003, 117 Stat. 1599; Pub. L. 108–375, div. A, title X, § 1084(d)(23), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(6), Jan. 6, 2006, 119 Stat. 3511, related to acquisition of interests in land when need is urgent. See section 2663(d) of this title.

[§ 2673. Repealed. Pub. L. 108–375, div. B, title XXVIII, § 2821(d)(2), Oct. 28, 2004, 118 Stat. 2130]

Section, added Pub. L. 100–370, § 1(*l*)(1), July 19, 1988, 102 Stat. 849, related to availability of funds for acquisition of certain interests in land.

A prior section 2673, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459, related to restoration or replacement of facilities damaged or destroyed, prior to repeal by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2854 of this title.

§ 2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region

(a)(1) Jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation is transferred to the Secretary of Defense.

(2) Before March 1 of each year, the Secretary of Defense shall transmit to the congressional committees specified in paragraph (3) a report on the state of the renovation of the Pentagon Reservation and a plan for the renovation work to be conducted in the fiscal year beginning in the year in which the report is transmitted.

(3) The committees referred to in paragraph (2) are—

(A) the Committee on Armed Services and the Committee on Environment and Public Works of the Senate; and

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

(b)(1) The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region. Such individuals—

(A) may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on Department of Defense property or in travel status; and

(B) shall have the same powers (other than the service of civil process) as sheriffs and constables upon the property referred to in the first sentence to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace and suppress affrays or unlawful assemblies, and to enforce any rules or regulations with respect to such property prescribed by duly authorized officials.

(2) For positions for which the permanent duty station is the Pentagon Reservation, the Secretary, in his sole and exclusive discretion, may without regard to the pay provisions of title 5, fix the rates of basic pay for such positions occupied by civilian law enforcement and security personnel appointed under the authority of this section so as to place such personnel on a comparable basis with personnel of other similar Federal law enforcement and security organizations within the vicinity of the Pentagon Reservation, not to exceed the basic pay for personnel performing similar duties in the United States Secret Service Uniformed Division or the United States Park Police.

(c)(1) The Secretary may prescribe such rules and regulations as the Secretary considers appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation, including rules and regulations necessary to govern the operation and parking of motor vehicles on the Pentagon Reservation.

(2) Any person who violates a rule or regulation prescribed under this subsection is liable to the United States for a civil penalty of not more than $1,000.

(3) Any person who willfully violates any rule or regulation prescribed pursuant to this subsection commits a Class B misdemeanor.

(d) The Secretary of Defense may establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

(e)(1) There is established in the Treasury of the United States a revolving fund to be known as the Pentagon Reservation Maintenance Revolving Fund (hereafter in this section referred to as the ''Fund''). There shall be deposited into the Fund funds collected by the Secretary for space and services and other items provided an organization or entity using any facility or land on the Pentagon Reservation pursuant to subsection (d).

(2) Subject to paragraphs (3) and (4), monies deposited into the Fund shall be available, without fiscal year limitation, for expenditure for real property management, operation, protection, construction, repair, alteration and related activities for the Pentagon Reservation.

(3) If the cost of a construction or alteration activity proposed to be financed in whole or in part using monies from the Fund will exceed the limitation specified in section 2805 of this title for a comparable unspecified minor military construction project, the activity shall be subject to authorization as provided by section 2802 of this title before monies from the Fund are obligated for the activity.

(4)(A) Except as provided in subparagraph (B), the authority of the Secretary to use monies

from the Fund to support construction or alteration activities at the Pentagon Reservation expires on September 30, 2012.

(B) Notwithstanding the date specified in subparagraph (A), the Secretary may use monies from the Fund after that date to support construction or alteration activities at the Pentagon Reservation within the limits specified in section 2805 of this title.

(f) In this section:

(1) The term ''Pentagon Reservation'' means that area of land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles.

(2) The term ''National Capital Region'' means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(g) For purposes of subsections (b), (c), (d), and (e), the terms ''Pentagon Reservation'' and ''National Capital Region'' shall be treated as including the land and physical facilities at the Raven Rock Mountain Complex.

(Added Pub. L. 101–510, div. B, title XXVIII, § 2804(a)(1), Nov. 5, 1990, 104 Stat. 1784; amended Pub. L. 102–190, div. A, title X, § 1061(a)(18), div. B, title XXVIII, § 2864, Dec. 5, 1991, 105 Stat. 1473, 1561; Pub. L. 104–106, div. A, title XV, § 1502(a)(24), Feb. 10, 1996, 110 Stat. 505; Pub. L. 104–201, div. A, title III, § 369(a), (b)(1), Sept. 23, 1996, 110 Stat. 2498; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title XI, § 1101, Dec. 28, 2001, 115 Stat. 1234; Pub. L. 108–136, div. A, title IX, § 933, Nov. 24, 2003, 117 Stat. 1581; Pub. L. 111–383, div. B, title XXVIII, § 2802, Jan. 7, 2011, 124 Stat. 4458; Pub. L. 112–81, div. B, title XXVIII, § 2811, Dec. 31, 2011, 125 Stat. 1686.)

Prior Provisions

A prior section 2674, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, § 112(b), Sept. 7, 1962, 76 Stat. 511; Pub. L. 88–174, title VI, § 608, Nov. 7, 1963, 77 Stat. 328; Pub. L. 89–188, title VI, § 613, Sept. 16, 1965, 79 Stat. 819; Pub. L. 89–568, title VI, § 608, Sept. 12, 1966, 80 Stat. 756; Pub. L. 91–511, title VI, § 607(2)–(4), Oct. 26, 1970, 84 Stat. 1224; Pub. L. 92–145, title VII, § 707(1), Oct. 27, 1971, 85 Stat. 411; Pub. L. 93–166, title VI, § 608(1), Nov. 29, 1973, 87 Stat. 682; Pub. L. 94–107, title VI, § 607(2)–(4), Oct. 7, 1975, 89 Stat. 566; Pub. L. 95–82, title VI, § 608(a), Aug. 1, 1977, 91 Stat. 377; Pub. L. 95–356, title VI, § 603(h)(1), Sept. 8, 1978, 92 Stat. 582; Pub. L. 96–125, title VIII, § 801, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97–99, title IX, § 907, Dec. 23, 1981, 95 Stat. 1385, related to minor construction projects, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2805 of this title.

Amendments

2011—Subsec. (e)(2). Pub. L. 111–383, § 2802(1), substituted ''Subject to paragraphs (3) and (4), monies'' for ''Monies''.

Subsec. (e)(3). Pub. L. 111–383, § 2802(2), added par. (3).

Subsec. (e)(4). Pub. L. 112–81 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the authority'' for ''The authority'', and added subpar. (B).

Pub. L. 111–383, § 2802(2), added par. (4).

2003—Subsec. (g). Pub. L. 108–136 added subsec. (g).

2001—Subsec. (b). Pub. L. 107–107 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

1999—Subsec. (a)(3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201, § 369(b)(1), substituted ''of Pentagon Reservation and defense facilities in National Capital Region'' for ''of the Pentagon Reservation'' in section catchline.

Subsec. (a)(2). Pub. L. 104–106, § 1502(a)(24)(A), substituted ''congressional committees specified in paragraph (3)'' for ''Committees on Armed Services of the Senate and the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives''.

Subsec. (a)(3). Pub. L. 104–106, § 1502(a)(24)(B), added par. (3).

Subsec. (b). Pub. L. 104–201, § 369(a), substituted ''in the National Capital Region'' for ''at the Pentagon Reservation''.

1991—Subsec. (b)(2). Pub. L. 102–190, § 2864, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''shall have the same powers as sheriffs and constables to enforce the laws, rules, or regulations enacted for the protection of persons and property.''

Subsec. (c)(3). Pub. L. 102–190, § 1061(a)(18), substituted ''misdemeanor'' for ''misdeameanor''.

Transfer of Functions

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 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.

Cost of Pentagon Renovation

Pub. L. 108–287, title VIII, § 8055, Aug. 5, 2004, 118 Stat. 982, provided that:

''(a) Limitation on Pentagon Renovation Costs.—Not later than the date each year on which the President submits to Congress the budget under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a certification that the total cost for the planning, design, construction, and installation of equipment for the renovation of wedges 2 through 5 of the Pentagon Reservation, cumulatively, will not exceed four times the total cost for the planning, design, construction, and installation of equipment for the renovation of wedge 1.

''(b) Annual Adjustment.—For purposes of applying the limitation in subsection (a), the Secretary shall adjust the cost for the renovation of wedge 1 by any increase or decrease in costs attributable to economic inflation, based on the most recent economic assumptions issued by the Office of Management and Budget for use in preparation of the budget of the United States under section 1104 of title 31, United States Code.

''(c) Exclusion of Certain Costs.—For purposes of calculating the limitation in subsection (a), the total cost for wedges 2 through 5 shall not include—

''(1) any repair or reconstruction cost incurred as a result of the terrorist attack on the Pentagon that occurred on September 11, 2001;

''(2) any increase in costs for wedges 2 through 5 attributable to compliance with new requirements of Federal, State, or local laws; and

''(3) any increase in costs attributable to additional security requirements that the Secretary of Defense considers essential to provide a safe and secure working environment.

''(d) CERTIFICATION COST REPORTS.—As part of the annual certification under subsection (a), the Secretary shall report the projected cost (as of the time of the certification) for—

''(1) the renovation of each wedge, including the amount adjusted or otherwise excluded for such wedge under the authority of paragraphs (2) and (3) of subsection (c) for the period covered by the certification; and

''(2) the repair and reconstruction of wedges 1 and 2 in response to the terrorist attack on the Pentagon that occurred on September 11, 2001.

''(e) DURATION OF CERTIFICATION REQUIREMENT.—The requirement to make an annual certification under subsection (a) shall apply until the Secretary certifies to Congress that the renovation of the Pentagon Reservation is completed.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, §8055, Sept. 30, 2003, 117 Stat. 1084.

Pub. L. 107–248, title VIII, §8056, Oct. 23, 2002, 116 Stat. 1549.

Pub. L. 107–117, div. A, title VIII, §8060, Jan. 10, 2002, 115 Stat. 2260.

ESTABLISHMENT OF MEMORIAL TO VICTIMS OF TERRORIST ATTACK ON PENTAGON RESERVATION AND AUTHORITY TO ACCEPT MONETARY CONTRIBUTIONS FOR MEMORIAL AND REPAIR OF PENTAGON

Pub. L. 107–107, div. B, title XXVIII, §2864, Dec. 28, 2001, 115 Stat. 1333, provided that:

''(a) MEMORIAL AUTHORIZED.—The Secretary of Defense may establish a memorial at the Pentagon Reservation dedicated to the victims of the terrorist attack on the Pentagon that occurred on September 11, 2001. The Secretary shall use necessary amounts in the Pentagon Reservation Maintenance Revolving Fund established by section 2674(e) of title 10, United States Code, including amounts deposited in the Fund under subsection (c), to plan, design, construct, and maintain the memorial.

''(b) ACCEPTANCE OF CONTRIBUTIONS.—The Secretary of Defense may accept monetary contributions made for the purpose of assisting in—

''(1) the establishment of the memorial to the victims of the terrorist attack; and

''(2) the repair of the damage caused to the Pentagon Reservation by the terrorist attack.

''(c) DEPOSIT OF CONTRIBUTIONS.—The Secretary of Defense shall deposit contributions accepted under subsection (b) in the Pentagon Reservation Maintenance Revolving Fund. The contributions shall be available for expenditure only for the purposes specified in subsection (b).''

§ 2675. Leases: foreign countries

(a) LEASE AUTHORITY; DURATION.—The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to 10 years, or 15 years in the case of a lease in Korea, and the rental for each yearly period may be paid from funds appropriated to that military department for that year.

(b) AVAILABILITY OF FUNDS.—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 91–511, title VI, §608, Oct. 26, 1970, 84 Stat. 1224; Pub. L. 94–107, title VI, §607(10), (11), Oct. 7, 1975, 89 Stat. 567; Pub. L. 95–82, title V, §505(a), Aug. 1, 1977, 91 Stat. 371; Pub. L. 95–356, title V, §503(b), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, §502(b), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, §504(b), Oct. 10, 1980, 94 Stat. 1765; Pub. L. 97–99, title VI, §604, Dec. 23, 1981, 95 Stat. 1374; Pub. L. 97–214, §8, July 12, 1982, 96 Stat. 174; Pub. L. 98–525, title XIV, §1405(40), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, §1322(a)(11), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 108–136, div. B, title XXVIII, §2804(b), Nov. 24, 2003, 117 Stat. 1719; Pub. L. 108–375, div. B, title XXVIII, §2821(d)(3), Oct. 28, 2004, 118 Stat. 2130; Pub. L. 109–364, div. B, title XXVIII, §2824, Oct. 17, 2006, 120 Stat. 2476.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2675	5:171z–3.	Aug. 3, 1956, ch. 939, §417, 70 Stat. 1018.

The words ''that are not located on a military base'' are substituted for the words ''off-base''.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 substituted ''10 years'' for ''five years''.

2004—Pub. L. 108–375 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2003—Pub. L. 108–136 inserted ''or 15 years in the case of a lease in Korea,'' after ''five years,''.

1990—Pub. L. 101–510 struck out ''(a)'' before ''The Secretary'' and struck out subsec. (b) which read as follows: ''A lease may not be entered into under this section for structures or related real property in any foreign country if the average estimated annual rental during the term of the lease if more than $250,000 until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives.''

1984—Subsec. (b). Pub. L. 98–525 substituted ''30'' for ''thirty''.

1982—Subsec. (a). Pub. L. 97–214, §8(a), substituted provisions that the Secretary of a military department may acquire by lease in foreign countries, structures and real property needed for military purposes other than for military family housing for up to a period of five years with the rental to be paid from funds appropriated to that military department for that year, for former provisions that had allowed such leases including leases for military family housing and in the latter case for a period of up to 10 years.

Subsec. (b). Pub. L. 97–214, §8(b), struck out ''or any other provision of law'' after ''into under this section'', and '', family housing facilities,'' after ''for structures''.

Subsecs. (c), (d). Pub. L. 97–214, §8(c), struck out subsec. (c) which provided that a statement in a lease that the requirements of this section have been met, or that the lease is not subject to this section is conclusive, and subsec. (d) which related to limitations on expenditures for the rental of family housing in foreign countries and limitations on the number of family housing units which may be leased in a foreign country at any one time.

1981—Subsec. (d)(1). Pub. L. 97–99, § 604(1), substituted ''250'' for ''150''.

Subsec. (d)(2). Pub. L. 97–99, § 604(2), substituted ''22,000'' for ''17,000''.

1980—Subsec. (d)(1). Pub. L. 96–418 substituted ''Expenditures for the rental of family housing in foreign countries (including the cost of utilities and maintenance and operation) may not exceed $1,115 per month for any unit'' for ''The average unit rental for Department of Defense family housing acquired by lease in foreign countries may not exceed $550 per month for the Department, and in no event shall the rental for any one unit exceed $970 per month, including the costs of operation, maintenance, and utilities''.

1979—Subsec. (d)(1). Pub. L. 96–125, § 502(b)(1), substituted ''$550'' for ''$485'' and ''$970'' for ''$850''.

Subsec. (d)(2). Pub. L. 96–125, § 502(b)(2), substituted ''17,000'' for ''18,000''.

1978—Subsec. (d)(1). Pub. L. 95–356, § 503(b)(1), substituted ''$485'' for ''$435'' and ''$850'' for ''$760''.

Subsec. (d)(2). Pub. L. 95–356, § 503(b)(2), substituted ''18,000'' for ''15,000''.

1977—Subsec. (a). Pub. L. 95–82, § 505(a)(1), inserted provisions relating to military family housing facilities and real property related thereto.

Subsec. (b). Pub. L. 95–82, § 505(a)(2), inserted ''or any other provision of law for structures, family housing facilities, or related real property in any foreign country,'' after ''section''.

Subsec. (d). Pub. L. 95–82, § 505(a)(3), added subsec. (d).

1975—Pub. L. 94–107 struck out reference to structures not on a military base in section catchline, and struck out ''that are not located on a military base and'' after ''structures and real property relating thereto'' in subsec. (a).

1970—Pub. L. 91–511 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–418, title VI, § 608, Oct. 10, 1980, 94 Stat. 1774, provided that: ''Titles I, II, III, IV, and V [enacting section 2775 of this title and section 1594h–3 of Title 42, The Public Health and Welfare, amending this section, section 2686 of this title, and sections 1594a–1 and 1594h–2 of Title 42, and repealing provisions set out as a note under section 4593 of this title] shall take effect on October 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–82, title V, § 505(c), Aug. 1, 1977, 91 Stat. 372, provided that: ''The amendments made by subsection (a) [amending this section] and the repeal made by subsection (b) [repealing section 507(b) of Pub. L. 93–166, which was not classified to the Code] shall take effect October 1, 1977.''

[§ 2676. Renumbered § 2664]

[§ 2677. Repealed. Pub. L. 110–181, div. B, title XXVIII, § 2822(b)(1), Jan. 28, 2008, 122 Stat. 544]

Section, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 87–554, title VI, § 607, July 27, 1962, 76 Stat. 242; Pub. L. 92–145, title VII, § 707(4), Oct. 27, 1971, 85 Stat. 412; Pub. L. 94–273, § 6(3), Apr. 21, 1976, 90 Stat. 377; Pub. L. 97–214, § 10(a)(5)(A), (B), July 12, 1982, 96 Stat. 175; Pub. L. 97–375, title I, § 104(b), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–407, title VIII, § 803, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 102–190, div. B, title XXVIII, § 2861, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 103–35, title II, § 201(c)(9), May 31, 1993, 107 Stat. 98; Pub. L. 107–314, div. A, title X, § 1062(a)(12), Dec. 2, 2002, 116 Stat. 2650, related to options on property required for military construction projects.

§ 2678. Feral horses and burros: removal from military installations

When feral horses or burros are found on an installation under the jurisdiction of the Secretary of a military department, the Secretary may use helicopters and motorized equipment for their removal.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(h)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9030, Nov. 21, 1989, 103 Stat. 1135, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(h)(3).

A prior section 2678, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460, related to acquisition of mortgaged housing units, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

§ 2679. Installation-support services: intergovernmental support agreements

(a) IN GENERAL.—(1) Notwithstanding any other provision of law governing the award of Federal government[1] contracts for goods and services, the Secretary concerned may enter into an intergovernmental support agreement, on a sole source basis, with a State or local government to provide, receive, or share installation-support services if the Secretary determines that the agreement will serve the best interests of the department by enhancing mission effectiveness or creating efficiencies or economies of scale, including by reducing costs.

(2) An intergovernmental support agreement under paragraph (1)—

(A) may be for a term not to exceed five years; and

(B) may use, for installation-support services provided by a State or local government, wage grades normally paid by that State or local government.

(3) An intergovernmental support agreement under paragraph (1) may only be used when the Secretary concerned or the State or local government, as the case may be, providing the installation-support services already provides such services for its own use.

(4) Any contract for the provision of installation-support services awarded by the Federal Government or a State or local government pursuant to an intergovernmental support agreement provided in subsection (a) shall be awarded on a competitive basis.

(b) EFFECT ON FIRST RESPONDER ARRANGEMENTS.—The authority provided by this section and limitations on the use of that authority are not intended to revoke, preclude, or otherwise interfere with existing or proposed mutual-aid agreements relating to police or fire protection

[1] So in original. Probably should be capitalized.

services or other similar first responder agreements or arrangements.

(c) AVAILABILITY OF FUNDS.—Funds available to the Secretary concerned for operation and maintenance may be used to pay for such installation-support services. The costs of agreements under this section for any fiscal year may be paid using annual appropriations made available for that year. Funds received by the Secretary as reimbursement for providing installation-support services pursuant to such an agreement shall be credited to the appropriation or account charged with providing installation support.

(d) EFFECT ON OMB CIRCULAR A-76.— The Secretary concerned shall ensure that intergovernmental support agreements authorized by this section are not used to circumvent the requirements of Office of Management and Budget Circular A-76 regarding public-private competitions.

(e) DEFINITIONS.—In this section:

(1) The term ''installation-support services'' means those services, supplies, resources, and support typically provided by a local government for its own needs and without regard to whether such services, supplies, resources, and support are provided to its residents generally, except that the term does not include security guard or fire-fighting functions.

(2) The term ''local government'' includes a county, parish, municipality, city, town, township, local public authority, school district, special district, and any agency or instrumentality of a local government.

(3) The term ''State'' includes the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands, and any agency or instrumentality of a State.

(4) The term ''intergovernmental support agreement'' means a legal instrument reflecting a relationship between the Secretary concerned and a State or local government that contains such terms and conditions as the Secretary concerned considers appropriate for the purposes of this section and necessary to protect the interests of the United States.

(Added Pub. L. 112–239, div. A, title III, §331(a), Jan. 2, 2013, 126 Stat. 1696, §2336; renumbered §2679 and amended Pub. L. 113–291, div. A, title III, §351(a), (b), Dec. 19, 2014, 128 Stat. 3346; Pub. L. 114–92, div. A, title X, §1081(a)(9), (b)(1), Nov. 25, 2015, 129 Stat. 1001.)

PRIOR PROVISIONS

A prior section 2679, added Pub. L. 87–651, title I, §112(c), Sept. 7, 1962, 76 Stat. 511; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(9), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 103–337, div. A, title X, §1070(e)(9), Oct. 5, 1994, 108 Stat. 2859, related to use of space and equipment by representatives of veterans' organizations, prior to repeal by Pub. L. 108–375, div. B, title XXVIII, §2821(c)(2), Oct. 28, 2004, 118 Stat. 2129.

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114–92, §1081(a)(9), struck out ''with'' before '', on a sole source''.

Subsec. (a)(4). Pub. L. 114–92, §1081(b)(1), amended directory language of Pub. L. 113–291, §351(b)(1)(C). See 2014 Amendment note below.

2014—Pub. L. 113–291, §351(a), renumbered section 2336 of this title as this section and substituted ''Installation-support services: intergovernmental support agreement'' for ''Intergovernmental support agreements with State and local governments'' in section catchline.

Subsec. (a)(1). Pub. L. 113–291, §351(b)(1)(A), substituted ''Notwithstanding any other provision of law governing the award of Federal government contracts for goods and services, the Secretary concerned'' for ''The Secretary concerned'' and '', on a sole source basis, with a State or local'' for ''a State or local''.

Subsec. (a)(2). Pub. L. 113–291, §351(b)(1)(B), substituted ''An'' for ''Notwithstanding any other provision of law, an'' in introductory provisions, redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''may be entered into on a sole-source basis;''.

Subsec. (a)(4). Pub. L. 113–291, §351(b)(1)(C), as amended by Pub. L. 114–92, §1081(b)(1), added par. (4).

Subsec. (e)(4). Pub. L. 113–291, §351(b)(2), added par. (4).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title X, §1081(b), Nov. 25, 2015, 129 Stat. 1001, provided in part that the amendment made by section 1081(b)(1) is effective as of Dec. 19, 2014, and as if included in Pub. L. 113–291 as enacted.

[§ 2680. Repealed. Pub. L. 111–383, div. B, title XXVIII, § 2814(a), Jan. 7, 2011, 124 Stat. 4464]

Section, added Pub. L. 102–190, div. B, title XXVIII, §2863(a)(1), Dec. 5, 1991, 105 Stat. 1560; amended Pub. L. 103–160, div. B, title XXVIII, §2807(a), Nov. 30, 1993, 107 Stat. 1887; Pub. L. 104–106, div. B, title XXVIII, §2820(a), (b), Feb. 10, 1996, 110 Stat. 556; Pub. L. 106–65, div. A, title X, §1067(1), div. B, title XXVIII, §2811, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 107–314, div. A, title X, §1062(a)(13), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, §1031(a)(31), Nov. 24, 2003, 117 Stat. 1600, related to leases of land for special operations activities.

PRIOR PROVISIONS

A prior section 2680, added Pub. L. 87–651, title I, §112(c), Sept. 7, 1962, 76 Stat. 511; amended Pub. L. 89–718, §20, Nov. 2, 1966, 80 Stat. 1118, authorized reimbursement of moving expenses to owners of property acquired for public works projects, prior to repeal by Pub. L. 91–646, title II, §220(a)(3), Jan. 2, 1971, 84 Stat. 1903. See section 4601 et seq. of Title 42, The Public Health and Welfare.

EFFECT OF REPEAL

Pub. L. 111–383, div. B, title XXVIII, §2814(b), Jan. 7, 2011, 124 Stat. 4464, provided that: ''The amendment made by subsection (a) [repealing this section] shall not affect the validity of any contract entered into under section 2680 of title 10, United States Code, on or before September 30, 2005.''

§ 2681. Use of test and evaluation installations by commercial entities

(a) CONTRACT AUTHORITY.—The Secretary of Defense may enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation.

(b) TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense certifies in writing that the test or evaluation activity is or would be detrimental—

(1) to the public health and safety;
(2) to property (either public or private); or
(3) to any national security interest or foreign policy interest of the United States.

(c) CONTRACT PRICE.—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) REGULATIONS AND LIMITATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) DEFINITIONS.—In this section:

(1) The term ''Major Range and Test Facility Installation'' means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term ''direct costs'' includes the cost of—

(A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

(B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(Added Pub. L. 103–160, div. A, title VIII, § 846(a), Nov. 30, 1993, 107 Stat. 1722; amended Pub. L. 105–85, div. A, title VIII, § 842, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 105–261, div. A, title VIII, § 820, Oct. 17, 1998, 112 Stat. 2090.)

PRIOR PROVISIONS

A prior section, added Pub. L. 87–651, title II, § 209(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 88–174, title V, § 508, Nov. 7, 1963, 77 Stat. 326; Pub. L. 96–513, title V, § 511(93), Dec. 12, 1980, 94 Stat. 2928, related to construction or acquisition of family housing and community facilities in foreign countries, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–261, § 820(a), struck out heading and text of subsec. (g). Text read as follows: ''The authority provided to the Secretary of Defense by subsection (a) shall terminate on September 30, 2002.''

Subsec. (h). Pub. L. 105–261, § 820(b), struck out heading and text of subsec. (h). Text read as follows: ''Not later than March 1, 1998, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report identifying existing and proposed procedures to ensure that the use of Major Range and Test Facility Installations by commercial entities does not compete with private sector test and evaluation services.''

1997—Subsec. (g). Pub. L. 105–85, § 842(a), substituted ''2002'' for ''1998''.

Subsec. (h). Pub. L. 105–85, § 842(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

''(h) REPORT.—Not later than January 1, 1998, the Secretary of Defense shall submit to Congress a report describing the number and purposes of contracts entered into under subsection (a) and evaluating the extent to which the authority under this section is exercised to open Major Range and Test Facility Installations to commercial test and evaluation activities.''

§ 2682. Facilities for defense agencies

(a) MAINTENANCE AND REPAIR.—Subject to subsection (c), the maintenance and repair of a real property facility for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense will be accomplished by or through a military department designated by the Secretary of Defense.

(b) JURISDICTION.—Subject to subsection (c), a real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense.

(c) FACILITIES FOR INTELLIGENCE COLLECTION OR FOR SPECIAL OPERATIONS ABROAD.—(1) The Secretary of Defense may waive the requirements of subsections (a) and (b) if necessary to provide security for authorized intelligence collection or special operations activities abroad undertaken by the Department of Defense.

(2) Not later than 48 hours after using the waiver authority under paragraph (1) for any facility for intelligence collection conducted under the authorities of the Department of Defense or special operations activity, the Secretary of Defense shall submit to the appropriate congressional committees written notification of the use of the authority, including the justification for the waiver and the estimated cost of the project for which the waiver applies.

(3) In this subsection, the term ''appropriate congressional committees'' means the following:

(A) With respect to a waiver regarding special operations activities, the congressional defense committees.

(B) With respect to a waiver regarding intelligence collection conducted under the authorities of the Department of Defense—

(i) the congressional defense committees; and

(ii) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) The waiver authority provided by paragraph (1) expires December 31, 2020.

(Added Pub. L. 88–174, title VI, §609(a)(1), Nov. 7, 1963, 77 Stat. 329; amended Pub. L. 97–214, §10(a)(7), July 12, 1982, 96 Stat. 175; Pub. L. 112–81, div. A, title IX, §926, Dec. 31, 2011, 125 Stat. 1541; Pub. L. 114–92, div. A, title XVI, §1632, Nov. 25, 2015, 129 Stat. 1111.)

AMENDMENTS

2015—Subsecs. (a), (b). Pub. L. 114–92, §1632(b)(2), repealed Pub. L. 112–81, §926(b). See 2011 Amendment notes below.

Subsec. (c). Pub. L. 114–92, §1632(b)(2), repealed Pub. L. 112–81, §926(b). See 2011 Amendment note below.

Pub. L. 114–92, §1632(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c)(4). Pub. L. 114–92, §1632(b)(1), added par. (4).

2011—Pub. L. 112–81, §926(a)(1), (2), designated first and second sentences as subsecs. (a) and (b), respectively, inserted headings, and realigned margins of subsec. (b).

Subsec. (a). Pub. L. 112–81, §926(b)(1), which directed the substitution of ''The maintenance and repair'' for ''Subject to subsection (c), the maintenance and repair'', subject to effective date set out in Effective Date of 2011 Amendment note below, was repealed by Pub. L. 114–92, §1632(b)(2).

Pub. L. 112–81, §926(a)(1), substituted ''Subject to subsection (c), the maintenance and repair'' for ''The maintenance and repair''.

Subsec. (b). Pub. L. 112–81, §926(b)(2), which directed the substitution of ''A real property'' for ''Subject to subsection (c), a real property'', subject to effective date set out in Effective Date of 2011 Amendment note below, was repealed by Pub. L. 114–92, §1632(b)(2).

Pub. L. 112–81, §926(a)(3), substituted ''Subject to subsection (c), a real property'' for ''A real property''.

Subsec. (c). Pub. L. 112–81, §926(b)(3), which directed the striking out of subsec. (c), subject to effective date set out in Effective Date of 2011 Amendment note below, was repealed by Pub. L. 114–92, §1632(b)(2).

Pub. L. 112–81, §926(a)(4), added subsec. (c).

1982—Pub. L. 97–214 substituted ''maintenance and repair'' for ''construction, maintenance, rehabilitation, repair, alteration, addition, expansion, or extension''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title IX, §926(b), Dec. 31, 2011, 125 Stat. 1541, as amended by Pub. L. 113–291, div. A, title XVI, §1624, Dec. 19, 2014, 128 Stat. 3633, which provided in part that the amendments made to this section by section 926(b) were to be effective on the later of Sept. 30, 2017, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2018, was repealed by Pub. L. 114–92, div. A, title XVI, §1632(b)(2), Nov. 25, 2015, 129 Stat. 1112.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations

(a) Notwithstanding any other provision of law, the Secretary concerned may, whenever he considers it desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

(b) The authority granted by subsection (a) is in addition to and not instead of that granted by any other provision of law.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned shall establish and enforce as the minimum drinking age on a military installation located in a State the age established by the law of that State as the State minimum drinking age.

(2)(A) In the case of a military installation located—

(i) in more than one State; or

(ii) in one State but within 50 miles of another State or Mexico or Canada,

the Secretary concerned may establish and enforce as the minimum drinking age on that military installation the lowest applicable age.

(B) In subparagraph (A), the term ''lowest applicable age'' means the lowest minimum drinking age established by the law—

(i) of a State in which a military installation is located; or

(ii) of a State or jurisdiction of Mexico or Canada that is within 50 miles of such military installation.

(3)(A) The commanding officer of a military installation may waive the requirement of paragraph (1) if such commanding officer determines that the exemption is justified by special circumstances.

(B) The Secretary of Defense shall define by regulations what constitute special circumstances for the purposes of this paragraph.

(4) In this subsection:

(A) The term ''State'' includes the District of Columbia.

(B) The term ''minimum drinking age'' means the minimum age or ages established for persons who may purchase, possess, or consume alcoholic beverages.

(Added Pub. L. 91–511, title VI, §613(1), Oct. 26, 1970, 84 Stat. 1226; amended Pub. L. 92–545, title VIII, §707, Oct. 25, 1972, 86 Stat. 1154; Pub. L. 93–283, §3, May 14, 1974, 88 Stat. 141; Pub. L. 99–145, title XII, §1224(a), (b)(1), (c)(1), Nov. 8, 1985, 99 Stat. 728, 729; Pub. L. 99–661, div. A, title XIII, §1343(a)(18), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–526, title I, §106(b)(2), Oct. 24, 1988, 102 Stat. 2625.)

AMENDMENTS

1988—Subsec. (c)(2)(B). Pub. L. 100–526, §106(b)(2)(A), substituted ''the term 'lowest applicable age'' for '' 'lowest age' ''.

Subsec. (c)(4)(A). Pub. L. 100–526, §106(b)(2)(B)(i), substituted ''The term 'State' '' for '' 'State' ''.

Subsec. (c)(4)(B). Pub. L. 100–526, §106(b)(2)(B)(ii), substituted ''The term 'minimum' '' for '' 'Minimum' ''.

1986—Subsec. (b). Pub. L. 99–661 struck out ''this'' before ''subsection (a)''.

1985—Pub. L. 99–145, § 1224(c)(1), inserted ''; minimum drinking age on military installations'' in section catchline.

Subsec. (b). Pub. L. 99–145, § 1224(b)(1), substituted ''subsection (a)'' for ''section''.

Subsec. (c). Pub. L. 99–145, § 1224(a), added subsec. (c).

1974—Subsec. (a). Pub. L. 93–283 substituted ''Secretary concerned'' for ''Secretary of a military department''.

1972—Subsec. (a). Pub. L. 92–545 provided for relinquishment of all or part of legislative jurisdiction of the United States over lands or interests to Commonwealths, territories, or possessions of the United States.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title XII, § 1224(d), Nov. 8, 1985, 99 Stat. 729, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 113 of this title] shall take effect 90 days after the date of the enactment of this Act [Nov. 8, 1985].''

§ 2684. Cooperative agreements for management of cultural resources

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may enter into a cooperative agreement with a State or local government or other entity for the preservation, management, maintenance, and improvement of cultural resources located on a site authorized by subsection (b) and for the conduct of research regarding the cultural resources. Activities under the cooperative agreement shall be subject to the availability of funds to carry out the cooperative agreement.

(b) AUTHORIZED CULTURAL RESOURCES SITES.—To be covered by a cooperative agreement under subsection (a), cultural resources must be located—

(1) on a military installation; or

(2) on a site outside of a military installation, but only if the cooperative agreement will directly relieve or eliminate current or anticipated restrictions that would or might restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on a military installation.

(c) APPLICATION OF OTHER LAWS.—Section 1535 and chapter 63 of title 31 shall not apply to a cooperative agreement entered into under this section.

(d) CULTURAL RESOURCE DEFINED.—In this section, the term ''cultural resource'' means any of the following:

(1) A building, structure, site, district, or object eligible for or included in the National Register of Historic Places maintained under section 302101 of title 54.

(2) Cultural items, as that term is defined in section 2(3) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(3)).

(3) An archaeological resource, as that term is defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)).

(4) An archaeological artifact collection and associated records covered by section 79 of title 36, Code of Federal Regulations.

(5) An Indian sacred site, as defined in section 1(b)(iii) of Executive Order No. 13007.

(Added Pub. L. 104–201, div. B, title XXVIII, § 2862(a), Sept. 23, 1996, 110 Stat. 2804; amended Pub. L. 105–85, div. A, title X, § 1073(a)(58), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 110–181, div. B, title XXVIII, § 2824, Jan. 28, 2008, 122 Stat. 545; Pub. L. 113–287, § 5(b), Dec. 19, 2014, 128 Stat. 3264; Pub. L. 114–92, div. A, title X, § 1081(a)(10), Nov. 25, 2015, 129 Stat. 1001.)

REFERENCES IN TEXT

Executive Order No. 13007, referred to in subsec. (d)(5), is set out under section 1996 of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 2684, added Pub. L. 93–166, title V, § 509(a), Nov. 29, 1973, 87 Stat. 677, related to construction of family quarters and limitations on space, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2826 of this title.

AMENDMENTS

2015—Subsec. (d)(1). Pub. L. 114–92 substituted ''section 302101 of title 54'' for ''section 2023.01 of title 54''.

2014—Subsec. (d)(1). Pub. L. 113–287, which directed the substitution of ''section 2023.01 of title 54'' for ''section 101(a) of the National Historic Preservation Act (16 U.S.C. 470a(a))'' in subsec. (c)(1), was executed by making the substitution in subsec. (d)(1) to reflect the probable intent of Congress and the prior redesignation of subsec. (c) as (d) by Pub. L. 110–181, § 2824(a)(2). See 2008 Amendment note below.

2008—Subsec. (a). Pub. L. 110–181, § 2824(a)(1), substituted ''located on a site authorized by subsection (b)'' for ''on military installations''.

Subsecs. (b) to (d). Pub. L. 110–181, § 2824(a)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (d)(5). Pub. L. 110–181, § 2824(b), added par. (5).

1997—Subsec. (b). Pub. L. 105–85 struck out '', United States Code,'' after ''title 31''.

§ 2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations

(a) AGREEMENTS AUTHORIZED.—The Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity or entities described in subsection (b) to address the use or development of real property in the vicinity of, or ecologically related to, a military installation or military airspace for purposes of—

(1) limiting any development or use of the property that would be incompatible with the mission of the installation;

(2) preserving habitat on the property in a manner that—

(A) is compatible with environmental requirements; and

(B) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation; or

(3) protecting Clear Zone Areas from use or encroachment that is incompatible with the mission of the installation.

(b) ELIGIBLE ENTITIES.—An agreement under this section may be entered into with any of the following:

(1) A State or political subdivision of a State.

(2) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

(c) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Notwithstanding chapter 63 of title 31, an agreement under this section that is a cooperative agreement or a grant may be used to acquire property or services for the direct benefit or use of the United States Government.

(d) ACQUISITION AND ACCEPTANCE OF PROPERTY AND INTERESTS.—(1) An agreement with an eligible entity or entities under this section shall provide for—

(A) the acquisition by the entity or entities of all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and

(B) the sharing by the United States and the entity or entities of the acquisition costs in accordance with paragraph (3).

(2) Property or interests may not be acquired pursuant to the agreement unless the owner of the property or interests consents to the acquisition.

(3) An agreement with an eligible entity under this section may provide for the management of natural resources on, and the monitoring and enforcement of any right, title, real property in which the Secretary concerned acquires any right, title, or interest in accordance with this subsection and for the payment by the United States of all or a portion of the costs of such natural resource management and monitoring and enforcement if the Secretary concerned determines that there is a demonstrated need to preserve or restore habitat for the purpose described in subsection (a)(2). Any such payment by the United States—

(A) may be paid in a lump sum and include an amount intended to cover the future costs of natural resource management and monitoring and enforcement; and

(B) may be placed by the eligible entity in an interest-bearing account, and any interest shall be applied for the same purposes as the principal.

(4)(A) The Secretary concerned shall determine the appropriate portion of the acquisition costs to be borne by the United States in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B).

(B) In lieu of or in addition to making a monetary contribution toward the cost of acquiring a parcel of real property, or an interest therein, pursuant to an agreement under this section, the Secretary concerned may convey, using the authority provided by section 2869 of this title, real property described in paragraph (2) of subsection (a) of such section, subject to the limitation in paragraph (3) of such subsection.

(C) The portion of acquisition costs borne by the United States under subparagraph (A), either through the contribution of funds or excess real property, or both, may not exceed an amount equal to, at the discretion of the Secretary concerned—

(i) the fair market value of any property or interest in property to be transferred to the United States upon the request of the Secretary concerned under paragraph (5); or

(ii) the cumulative fair market value of all properties or interests to be transferred to the United States under paragraph (5) pursuant to an agreement under subsection (a).

(D) The portion of acquisition costs borne by the United States under subparagraph (A) may exceed the amount determined under subparagraph (C), but only if—

(i) the Secretary concerned provides written notice to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives containing—

(I) a certification by the Secretary that the military value to the United States of the property or interest to be acquired justifies a payment in excess of the fair market value of the property or interest; and

(II) a description of the military value to be obtained; and

(ii) the contribution toward the acquisition costs of the property or interest is not made until at least 14 days after the date on which the notice is submitted under clause (i) or, if earlier, at least 10 days after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

(E) The contribution of an entity or entities to the acquisition costs of real property, or an interest in real property, under paragraph (1)(B) may include, with the approval of the Secretary concerned, the following or any combination of the following:

(i) The provision of funds, including funds received by such entity or entities from a Federal agency outside the Department of Defense or a State or local government in connection with a Federal, State, or local program.

(ii) The provision of in-kind services, including services related to the acquisition or maintenance of such real property or interest in real property.

(iii) The exchange or donation of real property or any interest in real property.

(5)(A) The agreement shall require the entity or entities to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property or interest acquired under the agreement or a lesser interest therein. No such requirement need be included in the agreement if the property or interest is being transferred to a State, or the agreement requires it to be subsequently transferred to a State, and the Secretary concerned determines that the laws and regulations applicable to the future use of such property or interest provide adequate assurance that the property concerned will be developed and used in a manner appro-

priate for purposes of this section. The Secretary shall limit such transfer request to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

(B) Notwithstanding subparagraph (A), if all or a portion of the property or interest acquired under the agreement is subsequently transferred to the United States and administrative jurisdiction over the property is under a Federal official other than a Secretary concerned, the Secretary concerned and that Federal official shall enter into a memorandum of agreement providing, to the satisfaction of the Secretary concerned, for the management of the property or interest concerned in a manner appropriate for purposes of this section. Such memorandum of agreement shall also provide that, should it be proposed that the property or interest concerned be developed or used in a manner not appropriate for purposes of this section, including declaring the property to be excess to the agency's needs or proposing to exchange the property for other property, the Secretary concerned may request that administrative jurisdiction over the property be transferred to the Secretary concerned at no cost, and, upon such a request being made, the administrative jurisdiction over the property shall be transferred accordingly.

(6) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under the agreement.

(7) For purposes of the acceptance of property or interests under the agreement, the Secretary concerned may accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 3111 of title 40, if the Secretary concerned finds that the appraisal or title documents substantially comply with the requirements.

(e) ACQUISITION OF WATER RIGHTS.—The authority of the Secretary concerned to enter into an agreement under this section for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

(g) ANNUAL REPORTS.—(1) Not later than March 1 each year, the Secretary of Defense shall, in coordination with the Secretaries of the military departments and the Director of the Department of Defense Test Resource Management Center, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the projects undertaken under agreements under this section.

(2) Each report under paragraph (1) shall include the following:

(A) A description of the status of the projects undertaken under agreements under this section.

(B) An assessment of the effectiveness of such projects, and other actions taken pursuant to this section, as part of a long-term strategy to ensure the sustainability of military test and training ranges, military installations, and associated airspace.

(C) An evaluation of the methodology and criteria used to select, and to establish priorities, for projects undertaken under agreements under this section.

(D) A description of any sharing of costs by the United States and eligible entities under subsection (d) during the preceding year, including a description of each agreement under this section providing for the sharing of such costs and a statement of the eligible entity or entities with which the United States is sharing such costs.

(E) Such recommendations as the Secretary of Defense considers appropriate for legislative or administrative action in order to improve the efficiency and effectiveness of actions taken pursuant to agreements under this section.

(h) INTERAGENCY COOPERATION IN CONSERVATION PROGRAMS TO AVOID OR REDUCE ADVERSE IMPACTS ON MILITARY READINESS ACTIVITIES.—In order to facilitate interagency cooperation and enhance the effectiveness of actions that will protect both the environment and military readiness, the recipient of funds provided pursuant an agreement under this section or under the Sikes Act (16 U.S.C. 670 et seq.) may, with regard to the lands and waters within the scope of the agreement, use such funds to satisfy any matching funds or cost-sharing requirement of any conservation program of the Department of Agriculture or the Department of the Interior notwithstanding any limitation of such program on the source of matching or cost-sharing funds.

(i) FUNDING.—(1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the Army, Navy, Marine Corps, Air Force, or Defense-wide activities may be used to enter into agreements under this section.

(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.

(j) DEFINITIONS.—In this section:

(1) The term ''Secretary concerned'' means the Secretary of Defense or the Secretary of a military department.

(2) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

(3) The term ''Clear Zone Area'' means an area immediately beyond the end of the runway of an airfield that is needed to ensure the safe and unrestricted passage of aircraft in and over the area.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2811(a), Dec. 2, 2002, 116 Stat. 2705; amended Pub. L. 109–163, div. B, title XXVIII, § 2822, Jan. 6, 2006, 119 Stat. 3513; Pub. L. 109–364, div. B, title XXVIII, § 2811(g), Oct. 17, 2006, 120 Stat. 2473; Pub. L. 110–181, div. B, title XXVIII, § 2825, Jan. 28, 2008, 122 Stat. 545; Pub. L. 111–84, div. A, title X, § 1073(a)(27), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–383, div. A, title X, § 1075(b)(43), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–81, div. B, title XXVIII, § 2813, Dec. 31, 2011, 125 Stat. 1687; Pub. L. 113–66, div. A, title III, § 312(a), Dec. 26, 2013, 127 Stat. 729; Pub. L. 113–291, div. A, title X, § 1071(f)(23), Dec. 19, 2014, 128 Stat. 3511.)

AMENDMENT OF SECTION

For termination of amendment by section 312(b) of Pub. L. 113–66, see Termination of 2013 Amendment note below.

REFERENCES IN TEXT

The Sikes Act, referred to in subsec. (h), is Pub. L. 86–797, Sept. 15, 1960, 74 Stat. 1052, which is classified generally to chapter 5C (§ 670 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 670 of Title 16 and Tables.

AMENDMENTS

2014—Subsec. (h). Pub. L. 113–291 inserted ''670'' after ''U.S.C.''.

2013—Subsecs. (h) to (j). Pub. L. 113–66 temporarily added subsec. (h) and temporarily redesignated former subsecs. (h) and (i) as (i) and (j), respectively. See Termination of 2013 Amendment note below.

2011—Subsec. (a)(3). Pub. L. 112–81, § 2813(1), added par. (3).

Subsec. (c). Pub. L. 112–81, § 2813(2), amended subsec. (c) generally. Prior to amendment, text read as follows: ''Chapter 63 of title 31 shall not apply to any agreement entered into under this section.''

Subsec. (d)(3). Pub. L. 112–81, § 2813(3)(A), inserted '', and the monitoring and enforcement of any right, title, or interest in,'' after ''resources on'' and ''and monitoring and enforcement'' after ''natural resource management'', and inserted at end ''Any such payment by the United States—

''(A) may be paid in a lump sum and include an amount intended to cover the future costs of natural resource management and monitoring and enforcement; and

''(B) may be placed by the eligible entity in an interest-bearing account, and any interest shall be applied for the same purposes as the principal.''

Subsec. (d)(5). Pub. L. 112–81, § 2813(3)(B), designated existing provisions as subpar. (A), inserted after first sentence ''No such requirement need be included in the agreement if the property or interest is being transferred to a State, or the agreement requires it to be subsequently transferred to a State, and the Secretary concerned determines that the laws and regulations applicable to the future use of such property or interest provide adequate assurance that the property concerned will be developed and used in a manner appropriate for purposes of this section.'', and added subpar. (B).

Subsec. (g)(1). Pub. L. 111–383 substituted ''March 1 each year'' for ''March 1, 2007, and annually thereafter''.

Subsec. (i)(3). Pub. L. 112–81, § 2813(4), added par. (3).

2009—Subsec. (g)(2). Pub. L. 111–84 substituted ''the following'' for ''the following the following'' in introductory provisions.

2008—Subsec. (d)(3), (4). Pub. L. 110–181, § 2825(a), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (d)(4)(C). Pub. L. 110–181, § 2825(b)(2), substituted ''equal to, at the discretion of the Secretary concerned—'' and cls. (i) and (ii) for ''equal to the fair market value of any property or interest to be transferred to the United States upon the request of the Secretary concerned under paragraph (4).''

Subsec. (d)(4)(D), (E). Pub. L. 110–181, § 2825(b)(1), (3), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(5) to (7). Pub. L. 110–181, § 2825(a)(1), redesignated pars. (4) to (6) as (5) to (7), respectively.

2006—Subsec. (a). Pub. L. 109–163, § 2822(a)(1), in introductory provisions, inserted ''or entities'' after ''entity'' and substituted ''in the vicinity of, or ecologically related to, a military installation or military airspace'' for ''in the vicinity of a military installation''.

Subsec. (d)(1). Pub. L. 109–163, § 2822(a)(2)(A)(i), (b)(1)(A), inserted ''or entities'' after ''eligible entity'' and substituted ''shall provide'' for ''may provide'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 109–163, § 2822(a)(2)(A)(ii), inserted ''or entities'' after ''the entity''.

Subsec. (d)(1)(B). Pub. L. 109–163, § 2822(b)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the sharing by the United States and the entity of the acquisition costs.''

Subsec. (d)(3). Pub. L. 109–364 added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), respectively, and in subpar. (C) substituted ''under subparagraph (A), either through the contribution of funds or excess real property, or both,'' for ''in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B)''.

Pub. L. 109–163, § 2822(b)(3), added par. (3). Former par. (3) redesignated (4).

Pub. L. 109–163, § 2822(a)(2)(B), inserted ''or entities'' after ''the entity''.

Subsec. (d)(4) to (6). Pub. L. 109–163, § 2822(b)(2), redesignated pars. (3) to (5) as (4) to (6), respectively.

Subsecs. (g) to (i). Pub. L. 109–163, § 2822(c), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

TERMINATION OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title III, § 312(b), Dec. 26, 2013, 127 Stat. 729, provided that: ''This section [amending this section] and subsection (h) of section 2684a of title 10, United States Code, as added by this section, shall expire on October 1, 2019, except that any agreement referred to in such subsection that is entered into on or before September 30, 2019, shall continue according to its terms and conditions as if this section has not expired.''

§ 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

(a) ADJUSTMENT OR SURCHARGE AUTHORIZED.—Notwithstanding any other provision of law, the Secretary of Defense may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

(b) USE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1) The Secretary of Defense may use the proceeds from the adjustments or surcharges authorized by subsection (a) only—

(A) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(B) to cover environmental evaluation and construction costs related to activities described in paragraph (1), including costs for

surveys, administration, overhead, planning, and design.

(2) In paragraph (1), the term ''physical infrastructure'' includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(c) ADVANCE OBLIGATION.—The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b) or (d), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b) or (d).

(d) COOPERATION WITH NONAPPROPRIATED FUND INSTRUMENTALITIES.—(1) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of adjustments or surcharges authorized by subsection (a) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(2) In paragraph (1), the term ''construction'', with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(e) OTHER SOURCES OF FUNDS FOR CONSTRUCTION AND IMPROVEMENTS.—Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in subsections (b), (c), and (d):

(1) Sale of recyclable materials.
(2) Sale of excess and surplus property.
(3) License fees.
(4) Royalties.
(5) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(Added Pub. L. 93–552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765; amended Pub. L. 95–82, title VI, § 614, Aug. 1, 1977, 91 Stat. 380; Pub. L. 97–321, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 103–337, div. B, title XXVIII, § 2851, Oct. 5, 1994, 108 Stat. 3072; Pub. L. 105–85, div. A, title III, § 374, Nov. 18, 1997, 111 Stat. 1707; Pub. L. 106–398, § 1 [[div. A], title III, § 333(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(1)], substituted ''Secretary of Defense'' for ''Secretary of a military department, under regulations established by him and approved by the Secretary of Defense,''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title III, § 333(a)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may use the proceeds from the adjustments or surcharges authorized by subsection (a) to acquire, construct, convert, expand, install, or otherwise improve commissary store facilities at defense installations and for related environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design.''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(2)], substituted ''Secretary of Defense, with the approval of'' for ''Secretary of a military department, with the approval of the Secretary of Defense and'' and ''Secretary determines'' for ''Secretary of the military department determines''.

Subsec. (d)(1). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(3)], substituted ''Secretary of Defense'' for ''Secretary of a military department''.

1997—Subsecs. (a) to (d). Pub. L. 105–85, § 374(b), inserted subsec. headings.

Subsec. (e). Pub. L. 105–85, § 374(a), added subsec. (e).

1994—Subsec. (c). Pub. L. 103–337, § 2851(b), inserted ''or (d)'' after ''subsection (b)'' in two places.

Subsec. (d). Pub. L. 103–337, § 2851(a), added subsec. (d).

1982—Subsec. (c). Pub. L. 97–321 added subsec. (c).

1977—Subsec. (b). Pub. L. 95–82 struck out ''within the United States'' after ''defense installations''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title III, § 333(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2001.''

§ 2686. Utilities and services: sale; expansion and extension of systems and facilities

(a) Under such regulations and for such periods and at such prices as he may prescribe, the Secretary concerned or his designee may sell or contract to sell to purchasers within or in the immediate vicinity of an activity of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of national defense or in the public interest:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural, manufactured, or mixed gas.
(7) Ice.
(8) Mechanical refrigeration.
(9) Telephone service.

(b) Proceeds of sales under subsection (a) shall be credited to the appropriation currently available for the supply of that utility or service.

(c) To meet local needs the Secretary concerned may make minor expansions and extensions of any distributing system or facility within an activity through which a utility or service is furnished under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2481; Pub. L. 86–156, Aug. 14, 1959, 73 Stat. 338; renumbered § 2686, Pub. L. 105–85, div. A, title III, § 371(b)(1), Nov. 18, 1997, 111 Stat. 1705.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2481(a)	5:626s. 5:626s–1 (less words between semicolon and colon). 10:1269.	July 30, 1947, ch. 394, 61 Stat. 675; Aug. 8, 1949, ch. 403, § 5, 63 Stat. 576.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	10:1269a (less words between semicolon and colon). 34:553a. 34:553b (less words between semicolon and colon).	
2481(b)	5:626s–1 (words between semicolon and colon). 10:1269a (words between semicolon and colon). 34:553b (words between semicolon and colon).	
2481(c)	5:626s–2. 10:1269b. 34:553c.	

In subsection (a), the words ''within his establishment'', ''of time'', and the opening clauses of 5:626s–1, 10:1269a, and 34:553b, are omitted as surplusage. The words ''not available from another local source'' are substituted for the words ''not otherwise available from local private or public sources''.

In subsection (b), the words ''of sales under subsection (a)'' are substituted for the words ''received for any such utilities and related services sold pursuant to the authority of said sections''. The words ''or appropriations'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 2686, added Pub. L. 95–82, title V, § 504(a)(1), Aug. 1, 1977, 91 Stat. 371; amended Pub. L. 95–356, title V, § 503(a), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, § 502(a), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, § 504(a), Oct. 10, 1980, 94 Stat. 1765, related to military family housing leases, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2828(a), (b) of this title.

AMENDMENTS

1997—Pub. L. 105–85 renumbered section 2481 of this title as this section.

1959—Subsec. (a). Pub. L. 86–156, § 1(1), substituted ''concerned'' for ''of a military department'' and inserted ''or Coast Guard,'' after ''Marine Corps,''.

Subsec. (c). Pub. L. 86–156, § 1(2), struck out ''of the military department'' after ''Secretary''.

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.

§ 2687. Base closures and realignments

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement—

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies,

unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation referred to in such subsection may be taken unless and until—

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, as part of an annual request for authorization of appropriations to such Committees, of the proposed closing or realignment and submits with the notification—

(A) an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment; and

(B) the criteria used to consider and recommend military installations for such closure or realignment, which shall include at a minimum consideration of—

(i) the ability of the infrastructure (including transportation infrastructure) of both the existing and receiving communities to support forces, missions, and personnel as a result of such closure or realignment; and

(ii) the costs associated with community transportation infrastructure improvements as part of the evaluation of cost savings or return on investment of such closure or realignment; and

(2) a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation referred to in clause (1) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) No action described in subsection (a) with respect to the closure of, or realignment with respect to, any military installation referred to in such subsection may be taken within five years after the date on which a decision is made to reduce the civilian personnel thresholds below the levels prescribed in such subsection.

(d) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

(e)(1) After the expiration of the period of time provided for in subsection (b)(2) with respect to the closure or realignment of a military installation, funds which would otherwise be available to the Secretary to effect the closure or realignment of that installation may be used by him for such purpose.

(2) Nothing in this section restricts the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title.

(f) If the Secretary of Defense or the Secretary of the military department concerned determines, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), that a significant transportation impact will occur as a result of an action described in subsection (a), the action may not be taken unless and until the Secretary of Defense or the Secretary of the military department concerned—

(1) analyzes the adequacy of transportation infrastructure at and in the vicinity of each military installation that would be impacted by the action;

(2) concludes consultation with the Secretary of Transportation with regard to such impact;

(3) analyzes the impact of the action on local businesses, neighborhoods, and local governments; and

(4) includes in the notification required by subsection (b)(1) a description of how the Secretary intends to remediate the significant transportation impact.

(g) In this section:

(1) The term ''military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(2) The term ''civilian personnel'' means direct-hire, permanent civilian employees of the Department of Defense.

(3) The term ''realignment'' includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

(4) The term ''legislative day'' means a day on which either House of Congress is in session.

(Added Pub. L. 95–82, title VI, § 612(a), Aug. 1, 1977, 91 Stat. 379; amended Pub. L. 95–356, title VIII, § 805, Sept. 8, 1978, 92 Stat. 586; Pub. L. 97–214, § 10(a)(8), July 12, 1982, 96 Stat. 175; Pub. L. 98–525, title XIV, § 1405(41), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99–145, title XII, § 1202(a), Nov. 8, 1985, 99 Stat. 716; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. B, title XXIX, § 2911, Nov. 5, 1990, 104 Stat. 1819; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 110–417, div. B, title XXVIII, § 2823(a), Oct. 14, 2008, 122 Stat. 4730; Pub. L. 112–81, div. B, title XXVII, § 2704, Dec. 31, 2011, 125 Stat. 1682; Pub. L. 112–239, div. A, title X, § 1076(f)(33), div. B, title XXVII, § 2712(a), Jan. 2, 2013, 126 Stat. 1954, 2144.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (f), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2013—Subsecs. (c) to (e). Pub. L. 112–239, § 2712(a)(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 112–239, § 1076(f)(33), substituted ''as a result'' for ''at a result'' in introductory provisions.

Subsec. (g). Pub. L. 112–239, § 2712(a)(1), redesignated subsec. (e) as (g).

2011—Subsec. (b)(1). Pub. L. 112–81, § 2704(a), substituted ''notification—'' for ''notification'', inserted subpar. (A) designation before ''an evaluation'', and added subpar. (B).

Subsec. (f). Pub. L. 112–81, § 2704(b), added subsec. (f).

2008—Subsec. (e)(1). Pub. L. 110–417 inserted ''the Commonwealth of the Northern Mariana Islands,'' after ''Virgin Islands,''.

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(1). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1990—Subsec. (e)(1). Pub. L. 101–510 inserted ''homeport facility for any ship,'' after ''center,'' and substituted ''under the jurisdiction of the Department of Defense, including any leased facility,'' for ''under the jurisdiction of the Secretary of a military department''.

1987—Subsec. (e). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1985—Pub. L. 99–145 amended section generally, thereby applying the section only to closure of bases with more than 300 civilian personnel authorized to be employed and to realignments involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at bases with more than 300 authorized civilian employees, striking out advance public notice required by the Secretary of Defense or the Secretary of the military department concerned when an installation is a candidate for closure or realignment, requiring that all base closure or realignment proposals be submitted to the Committee on Armed Services of the Senate and of the House of Representatives as part of the annual budget request and that such proposals contain an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such action, providing that no irrevocable action to implement the closure to realignment could be taken until the expiration of 30 legislative days or 60 calendar days, whichever is longer, and making explicit the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title and to use funds that would otherwise be available to effect the closure or realignment after expiration of the notice period.

1984—Subsec. (a)(2). Pub. L. 98–525, § 1405(41)(A), substituted ''1,000'' for ''one thousand''.

Subsec. (b)(2). Pub. L. 98–525, § 1405(41)(B), inserted ''(42 U.S.C. 4321 et seq.)''.

Subsec. (b)(4). Pub. L. 98–525, § 1405(41)(C), substituted ''60'' for ''sixty''.

Subsec. (d)(1)(B). Pub. L. 98–525, §1405(41)(D), substituted ''300'' for ''three hundred''.

1982—Subsec. (d)(1). Pub. L. 97–214 substituted ''a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department'' for ''any camp, post, station, base, yard, or other facility under the authority of the Department of Defense''.

1978—Subsec. (d)(1)(B). Pub. L. 95–356 substituted ''three hundred'' for ''five hundred''.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title XII, §1202(b), Nov. 8, 1985, 99 Stat. 718, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to closures and realignments completed on or after the date of the enactment of this Act [Nov. 8, 1985], except that any action taken to effect or implement any closure or realignment for which a public announcement was made pursuant to section 2687(b)(1) of title 10, United States Code, after April 1, 1985, and before the date of enactment of this Act shall be subject to the provisions of section 2687 of such title as in effect on the day before such date of enactment.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–526, §1, Oct. 24, 1988, 102 Stat. 2623, provided that: ''This Act [amending sections 1095a, 2324, 2683, and 4415 of this title, enacting provisions set out as notes under this section and sections 154 and 2306 of this title, and amending provisions set out as notes under section 2324 of this title] may be cited as the 'Defense Authorization Amendments and Base Closure and Realignment Act'.''

EFFECTIVE DATE OF 1994 AMENDMENTS BY SECTION 2813(d)(1) AND (2) OF PUB. L. 103–337

Pub. L. 103–337, div. B, title XXVIII, §2813(d)(3), Oct. 5, 1994, 108 Stat. 3055, provided that: ''The amendments made by paragraphs (1) and (2) [amending section 209(10) of Pub. L. 100–526 and section 2910(9) of Pub. L. 101–510, set out below] shall take effect as if included in the amendments made by section 2918 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1927).''

EFFECTIVE DATE OF 1991 AMENDMENTS BY SECTION 344 OF PUB. L. 102–190

Pub. L. 102–190, div. A, title III, §344(c), Dec. 5, 1991, 105 Stat. 1346, provided that: ''The amendments made by this section [amending provisions set out as notes below] shall apply with regard to the transfer or disposal of any real property or facility pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, set out below] or the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below] occurring on or after the date of the enactment of this Act [Dec. 5, 1991].''

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.

CLOSURE OF EXISTING CURRENT ACCOUNTS; TRANSFER OF FUNDS

Pub. L. 112–239, div. B, title XXVII, §2711(b), Jan. 2, 2013, 126 Stat. 2143, provided that:

''(1) CLOSURE.—Subject to paragraph (2), the Secretary of the Treasury shall close, pursuant to section 1555 of title 31, United States Code, the following accounts on the books of the Treasury:

''(A) The Department of Defense Base Closure Account 2005 established by section 2906A of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as in effect on the effective date of this section.

''(B) The Department of Defense Base Closure Account 1990 established by section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as in effect on the effective date of this section.

''(C) The Department of Defense Base Closure Account established by section 207 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note), as in effect on the effective date of this section.

''(2) TRANSFER OF FUNDS.—All amounts remaining in the three accounts specified in paragraph (1) as of the effective date of this section, shall be transferred, effective on that date, to the Department of Defense Base Closure Account established by section 2906 of the Defense Base Closure and Realignment Act of 1990, as added by subsection (a).

''(3) CROSS REFERENCES.—Except as provided in this subsection or the context requires otherwise, any reference in a law, regulation, document, paper, or other record of the United States to an account specified in paragraph (1) shall be deemed to be a reference to the Department of Defense Base Closure Account established by section 2906 of the Defense Base Closure and Realignment Act of 1990, as added by subsection (a).''

[Section 2711(b) of Pub. L. 112–239, set out above, effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113–76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2701 of this title.]

AUTHORITY TO COMPLETE SPECIFIC BASE CLOSURE AND REALIGNMENT RECOMMENDATIONS

Pub. L. 112–81, div. B, title XXVII, §2703, Dec. 31, 2011, 125 Stat. 1681, provided that:

''(a) LIMITED AUTHORITY TO EXTEND IMPLEMENTATION PERIOD.—The Secretary of Defense shall—

''(1) complete all closures and realignments recommended in the report of the Base Closure and Realignment Commission transmitted by the President to Congress in accordance with section 2914(e) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as expeditiously as possible; and

''(2) complete the closure of the Umatilla Chemical Depot, Oregon, as recommended in the report of the Base Closure and Realignment Commission transmitted by the President to Congress in accordance with section 2914(e) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note)—

''(A) without regard to any condition contained in that recommendation; and

''(B) not later than one year after the completion of the chemical demilitarization mission in accordance with the Chemical Weapons Convention Treaty.

''(b) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Defense shall carry out the authority provided under subsection (a), and any related property management and disposal activities, in accordance with the procedures and authorities under the Defense Base Closure and Realignment Act of

1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

SUPPORT FOR REALIGNMENT OF MILITARY INSTALLATIONS AND RELOCATION OF MILITARY PERSONNEL ON GUAM

Pub. L. 114–92, div. B, title XXVIII, § 2822(a), (b), Nov. 25, 2015, 129 Stat. 1177, 1178, provided that:

''(a) REPORT REQUIRED.—Not later than the date of the submission of the budget of the President for each of fiscal years 2017 through 2026 under section 1105 of title 31, United States Code, 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 that specifies each of the following:

''(1) The total amount contributed by the Government of Japan during the most recently concluded Japanese fiscal year under section 2350k of title 10, United States Code, for deposit in the Support for United States Relocation to Guam Account.

''(2) The anticipated contributions to be made by the Government of Japan under such section during the current and next Japanese fiscal years.

''(3) The projects carried out on Guam or the Commonwealth of the Northern Mariana Islands during the previous fiscal year using amounts in the Support for United States Relocation to Guam Account.

''(4) The anticipated projects that will be carried out on Guam or the Commonwealth of the Northern Mariana Islands during the fiscal year covered by the budget submission using amounts in such Account.

''(b) FORM OF REPORT.—Each report required by subsection (a) shall be submitted in unclassified form, but may contain a classified annex as necessary.''

Pub. L. 113–291, div. B, title XXVIII, § 2821, Dec. 19, 2014, 128 Stat. 3701, provided that:

''(a) LIMITATION BASED ON COST ESTIMATES.—

''(1) LIMITATION AMOUNT.—Pursuant to the Supplemental Environmental Impact Statement for the 'Guam and Commonwealth of the Northern Mariana Islands Military Relocation (2012 Roadmap Adjustments)', the total amount obligated or expended from funds appropriated or otherwise made available for military construction for implementation of the Record of Decision for the relocation of Marine Corps forces to Guam associated with such Supplemental Environmental Impact Statement may not exceed $8,725,000,000, subject to such adjustment as may be made under paragraph (2).

''(2) ADJUSTMENT OF LIMITATION AMOUNT.—The Secretary of the Navy may adjust the amount specified in paragraph (1) by the following:

''(A) The amounts of increases or decreases in costs attributable to economic inflation after September 30, 2014.

''(B) The amounts of increases or decreases in costs attributable to compliance with changes in Federal, Guam or Commonwealth of the Northern Mariana Islands, or local laws enacted after September 30, 2014.

''(3) WRITTEN NOTICE OF ADJUSTMENT.—At the same time that the budget for a fiscal year is submitted to Congress under section 1105(a) of title 31, United States Code, the Secretary of the Navy shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written notice of any adjustment to the amount specified in paragraph (1) made by the Secretary during the preceding fiscal year pursuant to the authority provided by paragraph (2).

''(b) RESTRICTION ON DEVELOPMENT OF PUBLIC INFRASTRUCTURE.—

''(1) RESTRICTION.—If the Secretary of Defense determines that any grant, cooperative agreement, transfer of funds to another Federal agency, or supplement of funds available under Federal programs administered by agencies other than the Department of Defense will result in the development (including repair, replacement, renovation, conversion, improvement, expansion, acquisition, or construction) of public infrastructure on Guam, the Secretary of Defense may not carry out such grant, transfer, cooperative agreement, or supplemental funding unless such grant, transfer, cooperative agreement, or supplemental funding—

''(A) is specifically authorized by law; and

''(B) will be used to carry out a public infrastructure project included in the report prepared by the Secretary of Defense under section 2822(d)(2) of the Military Construction Authorization Act for Fiscal Year 2014 (division B of Public Law 113–66; 127 Stat. 1017), as in effect on the day before the date of the enactment of this Act [Dec. 19, 2014].

''(2) PUBLIC INFRASTRUCTURE DEFINED.—In this subsection, the term 'public infrastructure' means any utility, method of transportation, item of equipment, or facility under the control of a public entity or State or local government that is used by, or constructed for the benefit of, the general public.

''(c) REPEAL OF SUPERSEDED LAW.—Section 2822 of the Military Construction Authorization Act for Fiscal Year 2014 (division B of Public Law 113–66; 127 Stat. 1016) is repealed. The repeal of such section does not affect the validity of the amendment made by subsection (f) of such section or the responsibilities of the Economic Adjustment Committee and the Secretary of Defense under subsection (d) of such section, as in effect on the day before the date of the enactment of this Act.''

Pub. L. 112–81, div. B, title XXVIII, § 2841, Dec. 31, 2011, 125 Stat. 1696, provided that:

''(a) MANAGEMENT OF WORKFORCE HEALTH CARE.—Subject to subsection (b), the Secretary of the Navy may not award any additional Navy or Marine Corps construction project or associated task order on Guam associated with the Record of Decision for the Guam and CNMI Military Relocation dated September 2010 if the aggregate of the number of employees holding a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b); known as 'H–2B workers') to support such relocation exceeds 2,000 until the Secretary of the Navy certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that a system of health care for the H–2B workers is available.

''(b) SYSTEM OF HEALTH CARE.—The health care system required to be certified in subsection (a) shall—

''(1) include a comprehensive medical plan for the H–2B workers;

''(2) include comprehensive planning and coordination with contractor-provided healthcare services and with Guam's civilian and military healthcare community; and

''(3) access local healthcare assets to help meet the health care needs of the H–2B workers.

''(c) ELEMENTS OF MEDICAL PLAN.—The comprehensive medical plan referred to in subsection (b)(1) shall—

''(1) address significant health issues, injury, or series of injuries in addition to basic first responder medical services for H–2B workers;

''(2) provide pre-deployment health screening at the country of origin of H–2B workers, ensuring—

''(A) all major or chronic disease conditions of concern are identified;

''(B) proper immunizations are administered;

''(C) screening for tuberculosis and communicable diseases are conducted; and

''(D) all H–2B workers are fit and healthy for work prior to deployment;

''(3) provide that an arrival health screening process is developed to ensure the H–2B workers are fit to work and that the risk of spreading communicable diseases to the resident population is minimized; and

''(4) provide comprehensive on-site medical services, including emergency medical care for the H–2B workers, primary health care to include care for chronic diseases, preventive services and acute care

delivery, and accessible prescription services maintaining oversight, authorization access, and delivery of prescription medications to the workforce.

''(d) SAVINGS CLAUSE.—Nothing in this section shall be construed as requiring the Secretary of the Navy to establish a United States Government-sponsored or funded health care system required to be certified in subsection (a) or to be responsible in any way for the administration of a health care system or plan or the provision of health care services for the H–2B workers identified in subsection (a).''

Pub. L. 111–84, div. B, title XXVIII, §2832(a)–(c), Oct. 28, 2009, 123 Stat. 2669, 2670, provided that:

''(a) SPECIAL PURPOSE ENTITY DEFINED.—In this section, the term 'special purpose entity' means any private person, corporation, firm, partnership, company, State or local government, or authority or instrumentality of a State or local government that the Secretary of Defense determines is capable of producing military family housing or providing utilities to support the realignment of military installations and the relocation of military personnel on Guam.

''(b) REPORT ON INTENDED USE SPECIAL PURPOSE ENTITIES.—

''(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], 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 describing the intended use of special purpose entities to provide military family housing or utilities to support the realignment of military installations and the relocation of military personnel on Guam.

''(2) NOTICE AND WAIT.—The Secretary of Defense may not authorize the use of special use entities as described in paragraph (1) until the end of the 30-day period (15-day period if the report is submitted electronically) beginning on the date on which the report required by such paragraph is submitted.

''(c) APPLICABILITY OF UNIFIED FACILITIES CRITERIA.—

''(1) APPLICABILITY TO SECTION 2350K CONTRIBUTIONS.—[Amended section 2824(c)(4) of Pub. L. 110–417, set out as a note below]

''(2) APPLICABILITY TO SPECIAL PURPOSE ENTITY CONTRIBUTIONS.—The unified facilities criteria promulgated by the Under Secretary of Defense for Acquisition, Technology, and Logistics and dated May 29, 2002, and any successor to such criteria shall be the minimum standard applicable to projects funded using contributions provided by a special purpose entity.

''(3) REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], 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 containing an evaluation of various options, including a preferred option, that the Secretary could utilize to comply with the unified facilities criteria referred to in paragraph (2) in the acquisition of military housing on Guam in connection with the realignment of military installations and the relocation of military personnel on Guam. In preparing the report, the Secretary shall consider the impact of—

''(A) increasing the overseas housing allowance for members of the Armed Forces serving on Guam; and

''(B) providing a direct Federal subsidy to public-private ventures.''

Pub. L. 111–84, div. B, title XXVIII, §2835, Oct. 28, 2009, 123 Stat. 2674, as amended by Pub. L. 111–383, div. A, title X, §1075(d)(24), Jan. 7, 2011, 124 Stat. 4374; Pub. L. 113–66, div. B, title XXVIII, §2821, Dec. 26, 2013, 127 Stat. 1015, provided that:

''(a) INTERAGENCY COORDINATION GROUP.—There is hereby established the Interagency Coordination Group of Inspectors General for Guam Realignment (in this section referred to as the 'Interagency Coordination Group')—

''(1) to provide for the objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam in connection with the realignment of military installations and the relocation of military personnel on Guam; and

''(2) to provide for coordination of, and recommendations on, policies designed—

''(A) to promote economic efficiency and effectiveness in the administration of the programs and operations described in paragraph (1); and

''(B) to prevent and detect waste, fraud, and abuse in such programs and operations.

''(b) MEMBERSHIP.—

''(1) CHAIRPERSON.—The Inspector General of the Department of Defense shall serve as chairperson of the Interagency Coordination Group.

''(2) ADDITIONAL MEMBERS.—Additional members of the Interagency Coordination Group shall include the Inspector General of the Department of Interior and the Inspector General of such other Federal agencies as the chairperson considers appropriate to carry out the duties of the Interagency Coordination Group.

''(c) DUTIES.—

''(1) OVERSIGHT OF GUAM CONSTRUCTION.—It shall be the duty of the Interagency Coordination Group to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of amounts appropriated or otherwise made available for military construction on Guam and of the programs, operations, and contracts carried out utilizing such funds, including—

''(A) the oversight and accounting of the obligation and expenditure of such funds;

''(B) the monitoring and review of construction activities funded by such funds;

''(C) the monitoring and review of contracts funded by such funds;

''(D) the monitoring and review of the transfer of such funds and associated information between and among departments, agencies, and entities of the United States and private and nongovernmental entities;

''(E) the maintenance of records on the use of such funds to facilitate future audits and investigations of the use of such fund; and

''(F) the monitoring and review of the implementation of the Defense Posture Review Initiative relating to the realignment of military installations and the relocation of military personnel on Guam.

''(2) OTHER DUTIES RELATED TO OVERSIGHT.—The Interagency Coordination Group shall establish, maintain, and oversee such systems, procedures, and controls as the Interagency Coordination Group considers appropriate to discharge the duties under paragraph (1).

''(3) OVERSIGHT PLAN.—The chairperson of the Interagency Coordination Group shall prepare an annual oversight plan detailing planned audits and reviews related to the Guam realignment.

''(d) ASSISTANCE FROM FEDERAL AGENCIES.—

''(1) PROVISION OF ASSISTANCE.—Upon request of the Interagency Coordination Group for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Interagency Coordination Group.

''(2) REPORTING OF REFUSED ASSISTANCE.—Whenever information or assistance requested by the Interagency Coordination Group is, in the judgment of the chairperson of the Interagency Coordination Group, unreasonably refused or not provided, the chairperson shall report the circumstances to the Secretary of Defense and to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] without delay.

''(e) REPORTS.—

''(1) ANNUAL REPORTS.—Not later than February 1 of each year, the chairperson of the Interagency Coordination Group shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Secretary of Defense, and the Secretary of the Interior a report summarizing, for the preceding fiscal year, the activities of the Interagency Coordination Group during such year and the activities under programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Each report shall include, for the year covered by the report, a detailed statement of all obligations, expenditures, and revenues associated with such construction, including the following:

''(A) Obligations and expenditures of appropriated funds.

''(B) A project-by-project and program-by-program accounting of the costs incurred to date for military construction in connection with the realignment of military installations and the relocation of military personnel on Guam, together with the estimate of the Department of Defense and the Department of the Interior, as applicable, of the costs to complete each project and each program.

''(C) Revenues attributable to or consisting of funds contributed by the Government of Japan in connection with the realignment of military installations and the relocation of military personnel on Guam and any obligations or expenditures of such revenues.

''(D) Operating expenses of agencies or entities receiving amounts appropriated or otherwise made available for military construction on Guam.

''(E) In the case of any contract, grant, agreement, or other funding mechanism described in paragraph (2)—

''(i) the amount of the contract, grant, agreement, or other funding mechanism;

''(ii) a brief discussion of the scope of the contract, grant, agreement, or other funding mechanism;

''(iii) a discussion of how the department or agency of the United States Government involved in the contract, grant, agreement, or other funding mechanism identified, and solicited offers from, potential individuals or entities to perform the contract, grant, agreement, or other funding mechanism, together with a list of the potential individuals or entities that were issued solicitations for the offers; and

''(iv) the justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

''(2) COVERED CONTRACTS, GRANTS, AGREEMENTS, AND FUNDING MECHANISMS.—A contract, grant, agreement, or other funding mechanism described in this paragraph is any major contract, grant, agreement, or other funding mechanism that—

''(A) is entered into by any department or agency of the United States Government with any public or private sector entity; and

''(B) involves the use of amounts appropriated or otherwise made available for military construction on Guam.

''(3) FORM.—Each report required under this subsection shall be submitted in unclassified form, but may include a classified annex if the Interagency Coordination Group considers it necessary.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

''(A) specifically prohibited from disclosure by any other provision of law;

''(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

''(C) a part of an ongoing criminal investigation.

''(5) SUBMISSION OF COMMENTS.—Not later than 30 days after receipt of a report under paragraph (1), the Secretary of Defense or the Secretary of the Interior may submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] any comments on the matters covered by the report as the Secretary concerned considers appropriate. Any comments on the matters covered by the report shall be submitted in unclassified form, but may include a classified annex if the Secretary concerned considers it necessary.

''(f) PUBLIC AVAILABILITY; WAIVER.—

''(1) PUBLIC AVAILABILITY.—The Interagency Coordination Group shall publish on a publicly available Internet website each report prepared under subsection (e). Any comments on the report submitted under paragraph (5) of such subsection shall also be published on such website.

''(2) WAIVER AUTHORITY.—The President may waive the requirement under paragraph (1) with respect to availability to the public of any element in a report under subsection (e), or any comment with respect to a report, if the President determines that the waiver is justified for national security reasons.

''(3) NOTICE OF WAIVER.—The President shall publish a notice of each waiver made under this subsection in the Federal Register no later than the date on which a report required under subsection (e), or any comment under paragraph (5) of such subsection, is submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]. The report and comments shall specify whether waivers under this subsection were made and with respect to which elements in the report or which comments, as appropriate.

''(g) DEFINITIONS.—In this section:

''(1) AMOUNTS APPROPRIATED OR OTHERWISE MADE AVAILABLE.—The term 'amounts appropriated or otherwise made available for military construction on Guam' includes amounts derived from the Support for United States Relocation to Guam Account.

''(2) GUAM.—The term 'Guam' includes any island in the Northern Mariana Islands.

''(h) TERMINATION.—

''(1) IN GENERAL.—The Interagency Coordination Group shall terminate upon the expenditure of 90 percent of all funds appropriated or otherwise made available for Guam realignment.

''(2) FINAL REPORT.—Before the termination of the Interagency Coordination Group pursuant to paragraph (1), the chairperson of the Interagency Coordination Group shall prepare and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a final report containing—

''(A) notice that the termination condition in paragraph (1) has occurred; and

''(B) a final forensic audit on programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam.''

Pub. L. 110–417, div. B, title XXVIII, § 2824, Oct. 14, 2008, 122 Stat. 4730, as amended by Pub. L. 111–84, div. B, title XXVIII, §§ 2832(c)(1), 2833, 2834(a), Oct. 28, 2009, 123 Stat. 2670–2672; Pub. L. 114–92, div. B, title XXVIII, § 2822(c), Nov. 25, 2015, 129 Stat. 1178, provided that:

''(a) ESTABLISHMENT OF ACCOUNT.—There is established on the books of the Treasury an account to be known as the 'Support for United States Relocation to Guam Account' (in this section referred to as the 'Account').

''(b) CREDITS TO ACCOUNT.—

''(1) AMOUNTS IN FUND.—There shall be credited to the Account all contributions received during fiscal year 2009 and subsequent fiscal years under section 2350k of title 10, United States Code, for the realign-

ment of military installations and the relocation of military personnel on Guam.

''(2) NOTICE OF RECEIPT OF CONTRIBUTIONS.—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] written notice of the receipt of contributions referred to in paragraph (1), including the amount of the contributions, not later than 30 days after receiving the contributions.

''(c) USE OF ACCOUNT.—

''(1) AUTHORIZED USES.—Subject to paragraph (2), amounts in the Account may be used as follows:

''(A) To carry out or facilitate the carrying out of a transaction authorized by this section in connection with the realignment of military installations and the relocation of military personnel on Guam, including military construction, military family housing, unaccompanied housing, general facilities constructions for military forces, and utilities improvements.

''(B) To carry out improvements of property or facilities on Guam as part of such a transaction.

''(C) To obtain property support services for property or facilities on Guam resulting from such a transaction.

''(D) To develop military facilities or training ranges in the Commonwealth of the Northern Mariana Islands.

''(2) COMPLIANCE WITH GUAM MASTER PLAN.—Transactions authorized by paragraph (1) shall be consistent with the Guam Master Plan, as incorporated in decisions made in the manner provided in section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

''(3) LIMITATION REGARDING MILITARY HOUSING.—To extent that the authorities provided under subchapter IV of chapter 169 of title 10, United States Code, are available to the Secretary of Defense, the Secretary shall use such authorities to acquire, construct, or improve family housing units or ancillary supporting facilities in connection with the relocation of military personnel on Guam.

''(4) SPECIAL REQUIREMENTS REGARDING USE OF CONTRIBUTIONS.—

''(A) TREATMENT OF CONTRIBUTIONS.—Except as provided in subparagraph (C), the use of contributions referred to in subsection (b)(1) shall not be subject to conditions imposed on the use of appropriated funds by chapter 169 of title 10, United States Code, or contained in annual military construction appropriations Acts.

''(B) NOTICE OF OBLIGATION.—Contributions referred to in subsection (b)(1) may not be obligated for a transaction authorized by paragraph (1) until the Secretary of Defense submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notice of the transaction, including a detailed cost estimate, and a period of 21 days has elapsed after the date on which the notification is received by the committees or, if earlier, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium.

''(C) COST AND SCOPE OF WORK VARIATIONS.—Section 2853 of title 10, United States Code, shall apply to the use of contributions referred to in subsection (b)(1).

''(D) APPLICABILITY OF UNIFIED FACILITIES CRITERIA.—The unified facilities criteria promulgated by the Under Secretary of Defense for Acquisition, Technology, and Logistics and dated May 29, 2002, and any successor to such criteria shall be the minimum standard applicable to projects funded using contributions referred to in subsection (b)(1) for a transaction authorized by paragraph (1).

''(5) APPLICATION OF PREVAILING WAGE REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of subchapter IV of chapter 31 of title 40, United States Code, shall apply to any military construction project or other transaction authorized by paragraph (1) that is carried out on Guam using contributions referred to in subsection (b)(1) or appropriated funds.

''(B) SECRETARY OF LABOR AUTHORITIES.—In order to carry out the requirements of subparagraph (A) and paragraph (6) (relating to composition of workforce for construction projects), the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Number 14 of 1950 [set out in Appendix to Title 5, Government Organization and Employees] and section 3145 of title 40, United States Code.

''(C) WAGE RATE DETERMINATION.—In making wage rate determinations pursuant to subparagraph (A), the Secretary of Labor shall not include in the wage survey any persons who hold a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

''(D) ADDITION TO WEEKLY STATEMENT ON THE WAGES PAID.—In the case of projects and other transactions covered by subparagraph (A), the weekly statement required by section 3145 of title 40, United States Code, shall also identify each employee working on the project or transaction who holds a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

''(E) DURATION OF REQUIREMENTS.—The Secretary of Labor shall make and issue a wage rate determination for Guam annually until 90 percent of the funds in the Account and other funds made available for the realignment of military installations and the relocation of military personnel on Guam have been expended.

''(6) COMPOSITION OF WORKFORCE FOR CONSTRUCTION PROJECTS.—

''(A) LIMITATION.—With respect to each construction project that is carried out using amounts described in subparagraph (B), no work may be performed by a person holding a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) unless—

''(i) the application for that visa has been approved pursuant to the issuance of a temporary labor certification by the Governor of Guam as provided under section 214.2 of title 8, Code of Federal Regulations; and

''(ii) the Governor of Guam, in consultation with the Secretary of Labor, makes the certification described in subparagraph (C) to the Secretary of Defense.

''(B) SOURCE OF FUNDS.—Subparagraph (A) applies to—

''(i) amounts in the Account used for projects associated with the realignment of military installations and the relocation of military personnel on Guam;

''(ii) funds associated with activities under section 2821 of this Act [amending section 2688 of this title]; and

''(iii) funds for authorized military construction projects.

''(C) CERTIFICATION.—The certification referred to in subparagraph (A) is a certification, in addition to the certifications required by section 214.2 of title 8, Code of Federal Regulations, that—

''(i) there are not sufficient United States workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the persons holding visas described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) are to perform such skilled or unskilled labor; and

''(ii) the employment of such persons holding visas described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) will not adversely affect the

wages and working conditions of workers in Guam similarly employed.

''(D) SOLICITATION OF WORKERS.—In order to ensure compliance with subparagraph (A), as a condition of a contract covered by such subparagraph, the contractor shall be required to advertise and solicit for construction workers in the United States, including Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico, in accordance with a recruitment plan approved by the Secretary of Labor. The contractor shall submit a copy of the employment offer, including a description of wages and other terms and conditions of employment, to the Secretary of Labor at least 60 days before the start date of the workers under a contract. The contractor shall authorize the Secretary of Labor to post a notice of the employment offer on a website, with State, territorial, and local job banks, with State and territorial workforce agencies, and with any other referral and recruitment sources the Secretary of Labor determines may be pertinent to the employment opportunity.

''(E) RECRUITMENT PERIOD.—The Secretary of Labor shall ensure that a contractor's recruitment of construction workers complies with the recruitment plan required by subparagraph (D) for a period beginning 60 days before the start date of workers under a contract and continuing for the next 28 days. During the recruitment period, the contractor shall interview all qualified and available United States construction workers who have applied for the employment opportunity, and, at the close of the recruitment period, the contractor shall provide the Secretary of Labor with a recruitment report providing any reasons for which the contractor did not hire an applicant who is a qualified United States construction worker. Not later than 21 days before the start date of the workers under a contract, the Secretary of Labor shall certify to the Governor of Guam whether the contractor has satisfied the recruitment plan created under subparagraph (D).

''(F) LIMITATION.—An employer, its attorney or agent, the Secretary of Labor, the Governor of Guam, and any designee thereof, may not seek or receive payment of any kind from any worker for any activity related to obtaining an H-2B labor certification with respect to any construction project that is carried out using amounts described in subparagraph (B).

''(d) TRANSFER AUTHORITY.—

''(1) TRANSFER TO HOUSING FUNDS.—The Secretary of Defense may transfer funds from the Account to the Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of title 10, United States Code.

''(2) TREATMENT OF TRANSFERRED AMOUNTS.—Amounts transferred under paragraph (1) to a fund referred to in that paragraph shall be available in accordance with the provisions of section 2883 of title 10, United States Code for activities on Guam authorized under subchapter IV of chapter 169 of such title.

''[(e) Repealed. Pub. L. 114–92, div. B, title XXVIII, § 2822(c), Nov. 25, 2015, 129 Stat. 1178.]

''(f) SENSE OF CONGRESS.—It is the sense of Congress that the use of the Account to facilitate construction projects associated with the realignment of military installations and the relocation of military personnel on Guam, as authorized by subsection (c)(1), provides a great opportunity for business enterprises of the United States and its territories to contribute to the United States strategic presence in the western Pacific by competing for contracts awarded for such construction. Congress urges the Secretary of Defense to ensure maximum participation by business enterprises of the United States and its territories in such construction.''

REQUIRED CONSULTATION WITH STATE AND LOCAL ENTITIES ON ISSUES RELATED TO INCREASE IN NUMBER OF MILITARY PERSONNEL AT MILITARY INSTALLATIONS

Pub. L. 109–163, div. B, title XXVIII, § 2835, Jan. 6, 2006, 119 Stat. 3521, provided that: ''If the base closure and realignment decisions of the 2005 round of base closures and realignments under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) or the Integrated Global Presence and Basing Strategy would result in an increase in the number of members of the Armed Forces assigned to a military installation, the Secretary of Defense, during the development of the plans to implement the decisions or strategy with respect to that installation, shall consult with appropriate State and local entities to ensure that matters affecting the local community, including requirements for transportation, utility infrastructure, housing, education, and family support activities, are considered.''

CONSIDERATION OF SURGE REQUIREMENTS IN 2005 ROUND OF BASE REALIGNMENTS AND CLOSURES

Pub. L. 108–136, div. B, title XXVIII, § 2822, Nov. 24, 2003, 117 Stat. 1726, provided that:

''(a) DETERMINATION OF SURGE REQUIREMENTS.—The Secretary of Defense shall assess the probable threats to national security and, as part of such assessment, determine the potential, prudent, surge requirements to meet those threats.

''(b) USE OF DETERMINATION.—The Secretary shall use the surge requirements determination made under subsection (a) in the base realignment and closure process under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as amended by title XXX of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1342).''

REPORT ON CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 105–85, div. B, title XXVIII, § 2824, Nov. 18, 1997, 111 Stat. 1998, as amended by Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(9), (f)(8)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430, required the Secretary of Defense to prepare and submit to the Committees on Armed Services and Appropriations of Senate and House of Representatives, not later than the date on which the President submitted to Congress the budget for fiscal year 2000, a report on the costs and savings attributable to the rounds of base closures and realignments conducted under the base closure laws and on the need, if any, for additional rounds of base closures and realignments.

RETENTION OF CIVILIAN EMPLOYEE POSITIONS AT MILITARY TRAINING BASES TRANSFERRED TO NATIONAL GUARD

Pub. L. 104–201, div. A, title XVI, § 1602, Sept. 23, 1996, 110 Stat. 2734, provided that:

''(a) RETENTION OF EMPLOYEE POSITIONS.—In the case of a military training installation described in subsection (b), the Secretary of Defense shall retain civilian employee positions of the Department of Defense at the installation after transfer to the National Guard to facilitate active and reserve component training at the installation. The Secretary shall determine the extent to which positions at the installation are to be retained as positions of the Department of Defense in consultation with the Adjutant General of the National Guard of the State in which the installation is located.

''(b) MILITARY TRAINING INSTALLATIONS AFFECTED.—This section applies with respect to each military training installation that—

''(1) was approved for closure in 1995 under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note);

''(2) is scheduled for transfer to National Guard operation and control; and

''(3) will continue to be used, after such transfer, to provide training support to active and reserve components of the Armed Forces.

''(c) MAXIMUM POSITIONS RETAINED.—The number of civilian employee positions retained at an installation under this section may not exceed 20 percent of the Federal civilian workforce employed at the installation as of September 8, 1995.

''(d) REMOVAL OF POSITION.—The requirement to maintain a civilian employee position at an installation under this section terminates upon the later of the following:

''(1) The date of the departure or retirement from that position by the civilian employee initially employed or retained in the position as a result of this section.

''(2) The date on which the Secretary certifies to Congress that the position is no longer required to ensure that effective support is provided at the installation for active and reserve component training.''

USE OF FUNDS TO IMPROVE LEASED PROPERTY

Pub. L. 104–106, div. B, title XXVIII, §2837(b), Feb. 10, 1996, 110 Stat. 561, provided that: ''Notwithstanding any other provision of law, a department or agency of the Federal Government that enters into a lease of property under section 2905(b)(4)(C) [now 2905(b)(4)(E)] of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as amended by subsection (a), may improve the leased property using funds appropriated or otherwise available to the department or agency for such purpose.''

REGULATIONS TO CARRY OUT SECTION 204(e) OF PUB. L. 100–526 AND SECTION 2905(f) OF PUB. L. 101–510

Pub. L. 104–106, div. B, title XXVIII, §2840(c), Feb. 10, 1996, 110 Stat. 566, provided that not later than nine months after Feb. 10, 1996, the Secretary of Defense was to prescribe any regulations necessary to carry out section 204(e) of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526) and section 2905(f) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510), set out in notes below.

PROHIBITION ON OBLIGATION OF FUNDS FOR PROJECTS ON INSTALLATIONS CITED FOR REALIGNMENT

Pub. L. 104–6, title I, §112, Apr. 10, 1995, 109 Stat. 82, provided that: ''None of the funds made available to the Department of Defense for any fiscal year for military construction or family housing may be obligated to initiate construction projects upon enactment of this Act [Apr. 10, 1995] for any project on an installation that—

''(1) was included in the closure and realignment recommendations submitted by the Secretary of Defense to the Base Closure and Realignment Commission on February 28, 1995, unless removed by the Base Closure and Realignment Commission, or

''(2) is included in the closure and realignment recommendation as submitted to Congress in 1995 in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101–510) [part A of title XXIX of div. B of Pub. L. 101–510, set out below]:

Provided, That the prohibition on obligation of funds for projects located on an installation cited for realignment are only to be in effect if the function or activity with which the project is associated will be transferred from the installation as a result of the realignment: *Provided further*, That this provision will remain in effect unless the Congress enacts a Joint Resolution of Disapproval in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101–510).''

APPLICABILITY TO INSTALLATIONS APPROVED FOR CLOSURE BEFORE ENACTMENT OF PUB. L. 103–421

Pub. L. 103–421, §2(e), Oct. 25, 1994, 108 Stat. 4352, as amended by Pub. L. 104–106, div. A, title XV, §1505(f), Feb. 10, 1996, 110 Stat. 515; Pub. L. 107–107, div. A, title X, §1048(d)(5), Dec. 28, 2001, 115 Stat. 1227, provided that:

''(1)(A) Notwithstanding any provision of the 1988 base closure Act or the 1990 base closure Act, as such provision was in effect on the day before the date of the enactment of this Act [Oct. 25, 1994], and subject to subparagraphs (B) and (C), the use to assist the homeless of building and property at military installations approved for closure under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before such date shall be determined in accordance with the provisions of paragraph (7) of section 2905(b) of the 1990 base closure Act, as amended by subsection (a), in lieu of the provisions of the 1988 base closure Act or the 1990 base closure Act that would otherwise apply to the installations.

''(B)(i) The provisions of such paragraph (7) shall apply to an installation referred to in subparagraph (A) only if the redevelopment authority for the installation submits a request to the Secretary of Defense not later than 60 days after the date of the enactment of this Act.

''(ii) In the case of an installation for which no redevelopment authority exists on the date of the enactment of this Act, the chief executive officer of the State in which the installation is located shall submit the request referred to in clause (i) and act as the redevelopment authority for the installation.

''(C) The provisions of such paragraph (7) shall not apply to any buildings or property at an installation referred to in subparagraph (A) for which the redevelopment authority submits a request referred to in subparagraph (B) within the time specified in such subparagraph (B) if the buildings or property, as the case may be, have been transferred or leased for use to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act.

''(2) For purposes of the application of such paragraph (7) to the buildings and property at an installation, the date on which the Secretary receives a request with respect to the installation under paragraph (1) shall be treated as the date on which the Secretary of Defense completes the final determination referred to in subparagraph (B) of such paragraph (7).

''(3) Upon receipt under paragraph (1)(B) of a timely request with respect to an installation, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information describing the redevelopment authority for the installation.

''(4)(A) The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall not, during the 60-day period beginning on the date of the enactment of this Act [Oct. 25, 1994], carry out with respect to any military installation approved for closure under the 1988 base closure Act or the 1990 base closure Act before such date any action required of such Secretaries under the 1988 base closure Act or the 1990 base closure Act, as the case may be, or under section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

''(B)(i) Upon receipt under paragraph (1)(A) of a timely request with respect to an installation, the Secretary of Defense shall notify the Secretary of Housing and Urban Development and the Secretary of Health and Human Services that the disposal of buildings and property at the installation shall be determined under such paragraph (7) in accordance with this subsection.

''(ii) Upon receipt of a notice with respect to an installation under this subparagraph, the requirements, if any, of the Secretary of Housing and Urban Development and the Secretary of Health and Human Services with respect to the installation under the provisions of law referred to in subparagraph (A) shall terminate.

''(iii) Upon receipt of a notice with respect to an installation under this subparagraph, the Secretary of Health and Human Services shall notify each representative of the homeless that submitted to that Secretary an application to use buildings or property at the installation to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, that the use of buildings and property at the installation to assist the homeless shall be determined under such paragraph (7) in accordance with this subsection.

''(5) In preparing a redevelopment plan for buildings and property at an installation covered by such paragraph (7) by reason of this subsection, the redevelopment authority concerned shall—

''(A) consider and address specifically any applications for use of such buildings and property to assist the homeless that were received by the Secretary of Health and Human Services under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act [Oct. 25, 1994] and are pending with that Secretary on that date; and

''(B) in the case of any application by representatives of the homeless that was approved by the Secretary of Health and Human Services before the date of enactment of this Act, ensure that the plan adequately addresses the needs of the homeless identified in the application by providing such representatives of the homeless with—

''(i) properties, on or off the installation, that are substantially equivalent to the properties covered by the application;

''(ii) sufficient funding to secure such substantially equivalent properties;

''(iii) services and activities that meet the needs identified in the application; or

''(iv) a combination of the properties, funding, and services and activities described in clauses (i), (ii), and (iii).

''(6) In the case of an installation to which the provisions of such paragraph (7) apply by reason of this subsection, the date specified by the redevelopment authority for the installation under subparagraph (D) of such paragraph (7) shall be not less than 1 month and not more than 6 months after the date of the submittal of the request with respect to the installation under paragraph (1)(B).

''(7) For purposes of this subsection:

''(A) The term '1988 base closure Act' means title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

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

Preference for Local Residents

Pub. L. 103–337, div. A, title VIII, §817, Oct. 5, 1994, 108 Stat. 2820, provided that:

''(a) Preference Allowed.—In entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law, the Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

''(b) Definition.—In this section, the term 'base closure law' means the following:

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

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

''(c) Applicability.—Any preference given under subsection (a) shall apply only with respect to contracts entered into after the date of the enactment of this Act [Oct. 5, 1994].

''(d) Termination.—This section shall cease to be effective on September 30, 1997.''

Government Rental of Facilities Located on Closed Military Installations

Pub. L. 103–337, div. B, title XXVIII, §2814, Oct. 5, 1994, 108 Stat. 3056, as amended by Pub. L. 107–314, div. A, title X, §1062(*l*), Dec. 2, 2002, 116 Stat. 2652; Pub. L. 109–163, div. A, title X, §1056(a)(3), Jan. 6, 2006, 119 Stat. 3439, provided that:

''(a) Authorization To Rent Base Closure Properties.—To promote the rapid conversion of military installations that are closed pursuant to a base closure law, the Administrator of the General Services may give priority consideration, when leasing space in accordance with chapter 5 or 33 of title 40, United States Code, to facilities of such an installation that have been acquired by a non-Federal entity.

''(b) Base Closure Law Defined.—In this section, the term 'base closure law' has the meaning given such term in section 101(a)(17) of title 10, United States Code.''

Report of Effect of Base Closures on Future Mobilization Options

Pub. L. 103–337, div. B, title XXVIII, §2815, Oct. 5, 1994, 108 Stat. 3056, required the Secretary of Defense to prepare and submit to the congressional defense committees, not later than Jan. 31, 1996, a report evaluating the effect of base closures and realignments conducted since Jan. 1, 1987, on the ability of the Armed Forces to remobilize to the end strength levels authorized for fiscal year 1987 by sections 401, 403, 411, and 421 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99–661; 100 Stat. 3859).

Congressional Findings With Respect to Base Closure Community Assistance

Pub. L. 103–160, div. B, title XXIX, §2901, Nov. 30, 1993, 107 Stat. 1909, provided that: ''Congress makes the following findings:

''(1) The closure and realignment of military installations within the United States is a necessary consequence of the end of the Cold War and of changed United States national security requirements.

''(2) A military installation is a significant source of employment for many communities, and the closure or realignment of an installation may cause economic hardship for such communities.

''(3) It is in the interest of the United States that the Federal Government facilitate the economic recovery of communities that experience adverse economic circumstances as a result of the closure or realignment of a military installation.

''(4) It is in the interest of the United States that the Federal Government assist communities that experience adverse economic circumstances as a result of the closure of military installations by working with such communities to identify and implement means of reutilizing or redeveloping such installations in a beneficial manner or of otherwise revitalizing such communities and the economies of such communities.

''(5) The Federal Government may best identify and implement such means by requiring that the head of each department or agency of the Federal Government having jurisdiction over a matter arising out of the closure of a military installation under a base

closure law, or the reutilization and redevelopment of such an installation, designate for each installation to be closed an individual in such department or agency who shall provide information and assistance to the transition coordinator for the installation designated under section 2915 [set out below] on the assistance, programs, or other activities of such department or agency with respect to the closure or reutilization and redevelopment of the installation.

''(6) The Federal Government may also provide such assistance by accelerating environmental restoration at military installations to be closed, and by closing such installations, in a manner that best ensures the beneficial reutilization and redevelopment of such installations by such communities.

''(7) The Federal Government may best contribute to such reutilization and redevelopment by making available real and personal property at military installations to be closed to communities affected by such closures on a timely basis, and, if appropriate, at less than fair market value.''

CONSIDERATION OF ECONOMIC NEEDS AND COOPERATION WITH STATE AND LOCAL AUTHORITIES IN DISPOSING OF PROPERTY

Pub. L. 103–160, div. B, title XXIX, §2903(c), (d), Nov. 30, 1993, 107 Stat. 1915, provided that:

''(c) CONSIDERATION OF ECONOMIC NEEDS.—In order to maximize the local and regional benefit from the reutilization and redevelopment of military installations that are closed, or approved for closure, pursuant to the operation of a base closure law, the Secretary of Defense shall consider locally and regionally delineated economic development needs and priorities into the process by which the Secretary disposes of real property and personal property as part of the closure of a military installation under a base closure law. In determining such needs and priorities, the Secretary shall take into account the redevelopment plan developed for the military installation involved. The Secretary shall ensure that the needs of the homeless in the communities affected by the closure of such installations are taken into consideration in the redevelopment plan with respect to such installations.

''(d) COOPERATION.—The Secretary of Defense shall cooperate with the State in which a military installation referred to in subsection (c) is located, with the redevelopment authority with respect to the installation, and with local governments and other interested persons in communities located near the installation in implementing the entire process of disposal of the real property and personal property at the installation.''

REGULATIONS TO CARRY OUT SECTION 204 OF PUB. L. 100–526 AND SECTION 2905 OF PUB. L. 101–510

Pub. L. 103–160, div. B, title XXIX, §2908(c), Nov. 30, 1993, 107 Stat. 1924, provided that: ''Not later than nine months after the date of the enactment of this Act [Nov. 30, 1993], the Secretary of Defense, in consultation with the Administrator of the Environmental Protection Agency, shall prescribe any regulations necessary to carry out subsection (d) of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100–526; 10 U.S.C. 2687 note), as added by subsection (a), and subsection (e) of section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by subsection (b).''

COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS

Pub. L. 103–160, div. B, title XXIX, §2911, Nov. 30, 1993, 107 Stat. 1924, provided that: ''Not later than 12 months after the date of the submittal to the Secretary of Defense of a redevelopment plan for an installation approved for closure under a base closure law, the Secretary of Defense shall, to the extent practicable, complete any environmental impact analyses required with respect to the installation, and with respect to the redevelopment plan, if any, for the installation, pursuant to the base closure law under which the installation is closed, and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''

PREFERENCE FOR LOCAL AND SMALL BUSINESSES IN CONTRACTING

Pub. L. 103–160, div. B, title XXIX, §2912, Nov. 30, 1993, 107 Stat. 1925, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(14), Oct. 5, 1994, 108 Stat. 2857, provided that:

''(a) PREFERENCE REQUIRED.—In entering into contracts with private entities as part of the closure or realignment of a military installation under a base closure law, the Secretary of Defense shall give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business concerns and small disadvantaged business concerns. Contracts for which this preference shall be given shall include contracts to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

''(b) DEFINITIONS.—In this section:

''(1) The term 'small business concern' means a business concern meeting the requirements of section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'small disadvantaged business concern' means the business concerns referred to in section 8(d)(1) of such Act (15 U.S.C. 637(d)(1)).

''(3) The term 'base closure law' includes section 2687 of title 10, United States Code.''

TRANSITION COORDINATORS FOR ASSISTANCE TO COMMUNITIES AFFECTED BY CLOSURE OF INSTALLATIONS

Pub. L. 103–160, div. B, title XXIX, §2915, Nov. 30, 1993, 107 Stat. 1926, as amended by Pub. L. 107–107, div. A, title X, §1048(d)(4), Dec. 28, 2001, 115 Stat. 1227, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall designate a transition coordinator for each military installation to be closed under a base closure law. The transition coordinator shall carry out the activities for such coordinator set forth in subsection (c).

''(b) TIMING OF DESIGNATION.—A transition coordinator shall be designated for an installation under subsection (a) as follows:

''(1) Not later than 15 days after the date of approval of closure of the installation.

''(2) In the case of installations approved for closure under a base closure law before the date of the enactment of this Act [Nov. 30, 1993], not later than 15 days after such date of enactment.

''(c) RESPONSIBILITIES.—A transition coordinator designated with respect to an installation shall—

''(1) encourage, after consultation with officials of Federal and State departments and agencies concerned, the development of strategies for the expeditious environmental cleanup and restoration of the installation by the Department of Defense;

''(2) assist the Secretary of the military department concerned in designating real property at the installation that has the potential for rapid and beneficial reuse or redevelopment in accordance with the redevelopment plan for the installation;

''(3) assist such Secretary in identifying strategies for accelerating completion of environmental cleanup and restoration of the real property designated under paragraph (2);

''(4) assist such Secretary in developing plans for the closure of the installation that take into account the goals set forth in the redevelopment plan for the installation;

''(5) assist such Secretary in developing plans for ensuring that, to the maximum extent practicable, the Department of Defense carries out any activities at the installation after the closure of the installation in a manner that takes into account, and supports, the redevelopment plan for the installation;

''(6) assist the Secretary of Defense in making determinations with respect to the transferability of property at the installation under section 204(b)(5) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100–526; 10 U.S.C. 2687 note), as added by section 2904(a) of this Act, and under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by section 2904(b) of this Act, as the case may be;

''(7) assist the local redevelopment authority with respect to the installation in identifying real property or personal property at the installation that may have significant potential for reuse or redevelopment in accordance with the redevelopment plan for the installation;

''(8) assist the Office of Economic Adjustment of the Department of Defense and other departments and agencies of the Federal Government in coordinating the provision of assistance under transition assistance and transition mitigation programs with community redevelopment activities with respect to the installation;

''(9) assist the Secretary of the military department concerned in identifying property located at the installation that may be leased in a manner consistent with the redevelopment plan for the installation; and

''(10) assist the Secretary of Defense in identifying real property or personal property at the installation that may be utilized to meet the needs of the homeless by consulting with the Secretary of Housing and Urban Development and the local lead agency of the homeless, if any, referred to in section 210(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11320(b)) for the State in which the installation is located.''

DEFINITIONS FOR SUBTITLE A OF TITLE XXIX OF PUB. L. 103–160

Pub. L. 103–160, div. B, title XXIX, §2918(a), Nov. 30, 1993, 107 Stat. 1927, provided that: ''In this subtitle [subtitle A (§§2901 to 2918) of title XXIX of div. B of Pub. L. 103–160, amending sections 2391 and 2667 of this title, enacting provisions set out as notes under this section and section 9620 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under this section]:

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

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

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

''(2) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under the applicable base closure law expires.

''(3) The term 'redevelopment authority', in the case of an installation to be closed under a base closure law, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

''(4) The term 'redevelopment plan', in the case of an installation to be closed under a base closure law, means a plan that—

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.''

LIMITATION ON EXPENDITURES FROM DEFENSE BASE CLOSURE ACCOUNT 1990 FOR MILITARY CONSTRUCTION IN SUPPORT OF TRANSFERS OF FUNCTIONS

Pub. L. 103–160, div. B, title XXIX, §2922, Nov. 30, 1993, 107 Stat. 1930, as amended by Pub. L. 104–106, div. A, title XV, §1502(c)(1), Feb. 10, 1996, 110 Stat. 506; Pub. L. 106–65, div. A, title X, §1067(7), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) LIMITATION.—If the Secretary of Defense recommends to the Defense Base Closure and Realignment Commission pursuant to section 2903(c) of the 1990 base closure Act [set out below] that an installation be closed or realigned, the Secretary identifies in documents submitted to the Commission one or more installations to which a function performed at the recommended installation would be transferred, and the recommended installation is closed or realigned pursuant to such Act, then, except as provided in subsection (b), funds in the Defense Base Closure Account 1990 may not be used for military construction in support of the transfer of that function to any installation other than an installation so identified in such documents.

''(b) EXCEPTION.—The limitation in subsection (a) ceases to be applicable to military construction in support of the transfer of a function to an installation on the 60th day following the date on which the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a notification of the proposed transfer that—

''(1) identifies the installation to which the function is to be transferred; and

''(2) includes the justification for the transfer to such installation.

''(c) DEFINITIONS.—In this section:

''(1) The term '1990 base closure Act' means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'Defense Base Closure Account 1990' means the account established under section 2906 of the 1990 base closure Act [set out below].''

SENSE OF CONGRESS ON DEVELOPMENT OF BASE CLOSURE CRITERIA

Pub. L. 103–160, div. B, title XXIX, §2925, Nov. 30, 1993, 107 Stat. 1932, as amended by Pub. L. 104–106, div. A, title XV, §1502(c)(1), Feb. 10, 1996, 110 Stat. 506, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense consider, in developing in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510; 10 U.S.C. 2687 note) amended criteria, whether such criteria should include the direct costs of such closures and realignments to other Federal departments and agencies.

''(b) REPORT ON AMENDMENT.—(1) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives] a report on any amended criteria developed by the Secretary under section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 after the date of the enactment of this Act [Nov. 30, 1993]. Such report shall include a discussion of the amended criteria and include a justification for any decision not to propose a criterion regarding the direct costs of base closures and realignments to other Federal agencies and departments.

''(2) The Secretary shall submit the report upon publication of the amended criteria in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990.''

MILITARY BASE CLOSURE REPORT

Pub. L. 102–581, title I, §107(d), Oct. 31, 1992, 106 Stat. 4879, provided that within 30 days after the date on

which the Secretary of Defense recommended a list of military bases for closure or realignment pursuant to section 2903(c) of the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, set out below), the Administrator of the Federal Aviation Administration was to submit to Congress and the Defense Base Closure and Realignment Commission a report on the effects of all those recommendations involving military airbases, including the effect on civilian airports and airways in the local community and region; potential modifications and costs necessary to convert such bases to civilian aviation use; and in the case of air traffic control or radar coverage currently provided by the Department of Defense, potential installations or adjustments of equipment and costs necessary for the Federal Aviation Administration to maintain existing levels of service for the local community and region.

INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY

Pub. L. 102–484, div. A, title III, §330, Oct. 23, 1992, 106 Stat. 2371, as amended by Pub. L. 103–160, div. A, title X, §1002, Nov. 30, 1993, 107 Stat. 1745, provided that:

''(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

''(2) The persons and entities described in this paragraph are the following:

''(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

''(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

''(C) Any other person or entity that acquires such ownership or control.

''(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

''(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

''(b) CONDITIONS.—No indemnification may be afforded under this section unless the person or entity making a claim for indemnification—

''(1) notifies the Department of Defense in writing within two years after such claim accrues or begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Department of Defense;

''(2) furnishes to the Department of Defense copies of pertinent papers the entity receives;

''(3) furnishes evidence or proof of any claim, loss, or damage covered by this section; and

''(4) provides, upon request by the Department of Defense, access to the records and personnel of the entity for purposes of defending or settling the claim or action.

''(c) AUTHORITY OF SECRETARY OF DEFENSE.—(1) In any case in which the Secretary of Defense determines that the Department of Defense may be required to make indemnification payments to a person under this section for any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage referred to in subsection (a)(1), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

''(2) In any case described in paragraph (1), if the person to whom the Department of Defense may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this section.

''(d) ACCRUAL OF ACTION.—For purposes of subsection (b)(1), the date on which a claim accrues is the date on which the plaintiff knew (or reasonably should have known) that the personal injury or property damage referred to in subsection (a) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) described in subsection (a)(1).

''(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

''(f) DEFINITIONS.—In this section:

''(1) The terms 'facility', 'hazardous substance', 'release', and 'pollutant or contaminant' have the meanings given such terms under paragraphs (9), (14), (22), and (33) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, respectively (42 U.S.C. 9601(9), (14), (22), and (33)).

''(2) The term 'military installation' has the meaning given such term under section 2687(e)(1) [now 2687(g)(1)] of title 10, United States Code.

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

''(A) The Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510] (10 U.S.C. 2687 note).

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 note).

''(C) Section 2687 of title 10, United States Code.

''(D) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of the enactment of this Act [Oct. 23, 1992].''

DEMONSTRATION PROJECT FOR USE OF NATIONAL RELOCATION CONTRACTOR TO ASSIST DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. B, title XXVIII, §2822, Oct. 23, 1992, 106 Stat. 2608, provided that, subject to the availability of appropriations therefor, the Secretary of Defense was to enter into a one-year contract, not later than 30 days after Oct. 23, 1992, with a private relocation contractor operating on a nationwide basis to test the cost-effectiveness of using national relocation contractors to administer the Homeowners Assistance Program and that, not later than one year after the date on which the Secretary of Defense entered into the contract, the Comptroller General was to submit to Congress a report containing the Comptroller General's evaluation of the effectiveness of using the national contractor for administering the program.

ENVIRONMENTAL RESTORATION REQUIREMENTS AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102–190, div. A, title III, §334, Dec. 5, 1991, 105 Stat. 1340, prescribed requirements for certain installations to be closed under 1989 or 1991 base closure lists by requiring that all draft final remedial investigations and feasibility studies related to environmental restoration activities at each such military installation be submitted to Environmental Protection Agency not later than 24 months after Dec. 5, 1991, for bases on 1989 closure list and not later than 36 months after such date for bases on 1991 closure list, prior to repeal by Pub. L. 104–201, div. A, title III, §328, Sept. 23, 1996, 110 Stat. 2483.

WITHHOLDING INFORMATION FROM CONGRESS OR COMPTROLLER GENERAL

Pub. L. 102–190, div. B, title XXVIII, § 2821(i), Dec. 5, 1991, 105 Stat. 1546, provided that: ''Nothing in this section [enacting and amending provisions set out below] or in the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below] shall be construed to authorize the withholding of information from Congress, any committee or subcommittee of Congress, or the Comptroller General of the United States.''

CONSISTENCY IN BUDGET DATA

Pub. L. 102–190, div. B, title XXVIII, § 2822, Dec. 5, 1991, 105 Stat. 1546, as amended by Pub. L. 102–484, div. B, title XXVIII, § 2825, Oct. 23, 1992, 106 Stat. 2609, provided that:

''(a) MILITARY CONSTRUCTION FUNDING REQUESTS.—In the case of each military installation considered for closure or realignment or for comparative purposes by the Defense Base Closure and Realignment Commission, the Secretary of Defense shall ensure, subject to subsection (b), that the amount of the authorization requested by the Department of Defense for military construction relating to the closure or realignment of the installation in each of the fiscal years 1992 through 1999 for the following fiscal year does not exceed the estimate of the cost of such construction (adjusted as appropriate for inflation) that was provided to the Commission by the Department of Defense.

''(b) EXPLANATION FOR INCONSISTENCIES.—The Secretary may submit to Congress for a fiscal year a request for the authorization of military construction referred to in subsection (a) in an amount greater than the estimate of the cost of the construction (adjusted as appropriate for inflation) that was provided to the Commission if the Secretary determines that the greater amount is necessary and submits with the request a complete explanation of the reasons for the difference between the requested amount and the estimate.

''(c) INVESTIGATION.—(1) The Inspector General of the Department of Defense shall investigate the military construction for which the Secretary is required to submit an explanation to Congress under subsection (b) if the Inspector General determines (under standards prescribed by the Inspector General) that the difference between the requested amount and the estimate for such construction is significant.

''(2) The Inspector General shall submit to the congressional defense committees a report describing the results of each investigation conducted under paragraph (1).''

DISPOSITION OF FACILITIES OF DEPOSITORY INSTITUTIONS ON MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102–190, div. B, title XXVIII, § 2825, Dec. 5, 1991, 105 Stat. 1549, as amended by Pub. L. 103–160, div. B, title XXIX, § 2928(a), (b)(1), (c), Nov. 30, 1993, 107 Stat. 1934, 1935, provided that:

''(a) AUTHORITY TO CONVEY FACILITIES.—(1) Subject to subsection (c) and notwithstanding any other provision of law, the Secretary of the military department having jurisdiction over a military installation being closed pursuant to a base closure law may convey all right, title, and interest of the United States in a facility located on that installation to a depository institution that—

''(A) conducts business in the facility; and

''(B) constructed or substantially renovated the facility using funds of the depository institution.

''(2) In the case of the conveyance under paragraph (1) of a facility that was not constructed by the depository institution but was substantially renovated by the depository institution, the Secretary shall require the depository institution to pay an amount determined by the Secretary to be equal to the value of the facility in the absence of the renovations.

''(b) AUTHORITY TO CONVEY LAND.—As part of the conveyance of a facility to a depository institution under subsection (a), the Secretary of the military department concerned shall permit the depository institution to purchase the land upon which that facility is located. The Secretary shall offer the land to the depository institution before offering such land for sale or other disposition to any other entity. The purchase price shall be not less than the fair market value of the land, as determined by the Secretary.

''(c) LIMITATION.—The Secretary of a military department may not convey a facility to a depository institution under subsection (a) if the Secretary determines that the operation of a depository institution at such facility is inconsistent with the redevelopment plan with respect to the installation.

''(d) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term 'base closure law' means the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 104 Stat. 1808; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.

''(4) Any other similar law enacted after the date of the enactment of this Act [Dec. 5, 1991].

''(e) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term 'depository institution' has the meaning given that term in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).''

REPORT ON ENVIRONMENTAL RESTORATION COSTS FOR INSTALLATIONS TO BE CLOSED UNDER 1990 BASE CLOSURE LAW

Pub. L. 102–190, div. B, title XXVIII, § 2827(b), Dec. 5, 1991, 105 Stat. 1551, directed the Secretary of Defense to submit an annual report to Congress on the funding needed for environmental restoration activities at certain designated military installations for the fiscal year for which a budget was submitted and for each of the four following fiscal years, prior to repeal by Pub. L. 104–106, div. A, title X, § 1061(m), Feb. 10, 1996, 110 Stat. 443.

SENSE OF CONGRESS REGARDING JOINT RESOLUTION OF DISAPPROVAL OF 1991 BASE CLOSURE COMMISSION RECOMMENDATION

Pub. L. 102–172, title VIII, § 8131, Nov. 26, 1991, 105 Stat. 1208, provided that: ''It is the sense of the Congress that in acting on the Joint Resolution of Disapproval of the 1991 Base Closure Commission's recommendation, the Congress takes no position on whether there has been compliance by the Base Closure Commission, and the Department of Defense with the requirements of the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below]. Further, the vote on the resolution of disapproval shall not be interpreted to imply Congressional approval of all actions taken by the Base Closure Commission and the Department of Defense in fulfillment of the responsibilities and duties conferred upon them by the Defense Base Closure and Realignment Act of 1990, but only the approval of the recommendations issued by the Base Closure Commission.''

REQUIREMENTS FOR BASE CLOSURE AND REALIGNMENT PLANS

Pub. L. 103–335, title VIII, § 8040, Sept. 30, 1994, 108 Stat. 2626, which directed Secretary of Defense to include in any base closure and realignment plan submitted to Congress after Sept. 30, 1994, a complete review of expectations for the five-year period beginning on Oct. 1, 1994, including force structure and levels, installation requirements, a budget plan, cost savings to be realized through realignments and closures of military installations, and the economic impact on local areas affected, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–139, title VIII, § 8045, Nov. 11, 1993, 107 Stat. 1450.

Pub. L. 102–396, title IX, § 9060, Oct. 6, 1992, 106 Stat. 1915.

Pub. L. 102–172, title VIII, § 8063, Nov. 26, 1991, 105 Stat. 1185.

Pub. L. 101–511, title VIII, § 8081, Nov. 5, 1990, 104 Stat. 1894.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Pub. L. 101–510, div. B, title XXIX, part A, Nov. 5, 1990, 104 Stat. 1808, as amended by Pub. L. 102–190, div. A, title III, § 344(b)(1), div. B, title XXVIII, §§ 2821(a)–(h)(1), 2827(a)(1), (2), Dec. 5, 1991, 105 Stat. 1345, 1544–1546, 1551; Pub. L. 102–484, div. A, title X, § 1054(b), div. B, title XXVIII, §§ 2821(b), 2823, Oct. 23, 1992, 106 Stat. 2502, 2607, 2608; Pub. L. 103–160, div. B, title XXIX, §§ 2902(b), 2903(b), 2904(b), 2905(b), 2907(b), 2908(b), 2918(c), 2921(b), (c), 2923, 2926, 2930(a), Nov. 30, 1993, 107 Stat. 1911, 1914, 1916, 1918, 1921, 1923, 1928–1930, 1932, 1935; Pub. L. 103–337, div. A, title X, § 1070(b)(15), (d)(2), div. B, title XXVIII, §§ 2811, 2812(b), 2813(c)(2), (d)(2), (e)(2), Oct. 5, 1994, 108 Stat. 2857, 2858, 3053–3056; Pub. L. 103–421, § 2(a)–(c), (f)(2), Oct. 25, 1994, 108 Stat. 4346–4352, 4354; Pub. L. 104–106, div. A, title XV, §§ 1502(d), 1504(a)(9), 1505(e)(1), div. B, title XXVIII, §§ 2831(b)(2), 2835, 2836, 2837(a), 2838, 2839(b), 2840(b), Feb. 10, 1996, 110 Stat. 508, 513, 514, 558, 560, 561, 564, 565; Pub. L. 104–201, div. B, title XXVIII, §§ 2812(b), 2813(b), Sept. 23, 1996, 110 Stat. 2789; Pub. L. 105–85, div. A, title X, § 1073(d)(4)(B), div. B, title XXVIII, § 2821(b), Nov. 18, 1997, 111 Stat. 1905, 1997; Pub. L. 106–65, div. A, title X, § 1067(10), div. B, title XVIII, §§ 2821(a), 2822, Oct. 5, 1999, 113 Stat. 774, 853, 856; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(g)(2), div. B, title XXVIII, § 2821(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293, 1654A–419; Pub. L. 107–107, div. A, title X, § 1048(d)(2), div. B, title XXVIII, § 2821(b), title XXX, §§ 3001–3007, Dec. 28, 2001, 115 Stat. 1227, 1312, 1342–1351; Pub. L. 107–314, div. A, title X, § 1062(f)(4), (m)(1)–(3), div. B, title XXVIII, §§ 2814(b), 2854, Dec. 2, 2002, 116 Stat. 2651, 2652, 2710, 2728; Pub. L. 108–136, div. A, title VI, § 655(b), div. B, title XXVIII, §§ 2805(d)(2), 2821, Nov. 24, 2003, 117 Stat. 1523, 1721, 1726; Pub. L. 108–375, div. A, title X, § 1084(i), div. B, title XXVIII, §§ 2831–2834, Oct. 28, 2004, 118 Stat. 2064, 2132–2134; Pub. L. 109–163, div. B, title XXVIII, § 2831, Jan. 6, 2006, 119 Stat. 3518; Pub. L. 110–181, div. B, title XXVII, § 2704(a), Jan. 28, 2008, 122 Stat. 532; Pub. L. 110–417, div. B, title XXVII, §§ 2711, 2712(a)(1)(A), (b), Oct. 14, 2008, 122 Stat. 4715, 4716; Pub. L. 111–84, div. B, title XXVII, § 2715(a), Oct. 28, 2009, 123 Stat. 2658; Pub. L. 112–239, div. B, title XXVII, § 2711(a), (c)(2), (3)(A), Jan. 2, 2013, 126 Stat. 2140, 2143; Pub. L. 113–291, div. B, title XXVII, § 2721, Dec. 19, 2014, 128 Stat. 3693, provided that:

''SEC. 2901. SHORT TITLE AND PURPOSE

''(a) SHORT TITLE.—This part may be cited as the 'Defense Base Closure and Realignment Act of 1990'.

''(b) PURPOSE.—The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

''SEC. 2902. THE COMMISSION

''(a) ESTABLISHMENT.—There is established an independent commission to be known as the 'Defense Base Closure and Realignment Commission'.

''(b) DUTIES.—The Commission shall carry out the duties specified for it in this part.

''(c) APPOINTMENT.—(1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise [advice] and consent of the Senate.

''(B) The President shall transmit to the Senate the nominations for appointment to the Commission—

''(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

''(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

''(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

''(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with—

''(A) the Speaker of the House of Representatives concerning the appointment of two members;

''(B) the majority leader of the Senate concerning the appointment of two members;

''(C) the minority leader of the House of Representatives concerning the appointment of one member; and

''(D) the minority leader of the Senate concerning the appointment of one member.

''(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

''(d) TERMS.—(1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

''(2) The Chairman of the Commission shall serve until the confirmation of a successor.

''(e) MEETINGS.—(1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

''(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

''(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

''(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness and Management Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(ii) The Chairman and the ranking minority party member of the Subcommittee on Readiness of the Committee on Armed Services of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

''(f) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

''(g) PAY AND TRAVEL EXPENSES.—(1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

''(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(h) DIRECTOR OF STAFF.—(1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

''(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(i) STAFF.—(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

''(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

''(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

''(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

''(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

''(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

''(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may—

''(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

''(ii) review the preparation of such a report; or

''(iii) approve or disapprove such a report.

''(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

''(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

''(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

''(A) There may not be more than 15 persons on the staff at any one time.

''(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

''(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

''(j) OTHER AUTHORITY.—(1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

''(2) The Commission may lease space and acquire personal property to the extent funds are available.

''(k) FUNDING.—(1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

''(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100–526 [set out below]. Such funds shall remain available until expended.

''(3)(A) The Secretary may transfer not more than $300,000 from unobligated funds in the account referred to in subparagraph (B) for the purpose of assisting the Commission in carrying out its duties under this part during October, November, and December 1995. Funds transferred under the preceding sentence shall remain available until December 31, 1995.

''(B) The account referred to in subparagraph (A) is the Department of Defense Base Closure Account established under [former] section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(*l*) TERMINATION.—The Commission shall terminate on December 31, 1995.

''(m) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS.—Section 1034 of title 10, United States Code, shall apply with respect to communications with the Commission.

''SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS

''(a) FORCE-STRUCTURE PLAN.—(1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

''(2) Such plan shall include, without any reference (directly or indirectly) to military installations inside the United States that may be closed or realigned under such plan—

''(A) a description of the assessment referred to in paragraph (1);

''(B) a description (i) of the anticipated force structure during and at the end of each such period for each military department (with specifications of the number and type of units in the active and reserve forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

''(C) a description of the anticipated implementation of such force-structure plan.

''(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

''(b) SELECTION CRITERIA.—(1) The Secretary shall, by no later than December 31, 1990, publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

''(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

''(B) The Secretary may amend such criteria, but such amendments may not become effective until they

have been published in the Federal Register, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

''(c) DOD RECOMMENDATIONS.—(1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 1, 1995, publish in the Federal Register and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

''(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

''(3)(A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

''(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

''(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning—

''(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

''(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

''(4) In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

''(5)(A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

''(B) Subparagraph (A) applies to the following persons:

''(i) The Secretaries of the military departments.

''(ii) The heads of the Defense Agencies.

''(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

''(6) Any information provided to the Commission by a person described in paragraph (5)(B) shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 24 hours after the submission of the information to the Commission.

''(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.—(1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath.

''(2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

''(B) Subject to subparagraph (C), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

''(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission—

''(i) makes the determination required by subparagraph (B);

''(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

''(iii) publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and

''(iv) conducts public hearings on the proposed change.

''(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would—

''(i) add a military installation to the list of military installations recommended by the Secretary for closure;

''(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

''(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

''(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

''(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

''(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly

provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

''(5) The Comptroller General of the United States shall—

''(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (c); and

''(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

''(e) REVIEW BY THE PRESIDENT.—(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

''(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

''(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

''(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

''(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''(a) IN GENERAL.—Subject to subsection (b), the Secretary shall—

''(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

''(2) realign all military installations recommended for realignment by such Commission in each such report;

''(3) carry out the privatization in place of a military installation recommended for closure or realignment by the Commission in the 2005 report only if privatization in place is a method of closure or realignment of the military installation specified in the recommendations of the Commission in such report and is determined by the Commission to be the most cost-effective method of implementation of the recommendation;

''(4) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

''(5) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

''(b) CONGRESSIONAL DISAPPROVAL.—(1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908, disapproving such recommendations of the Commission before the earlier of—

''(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

''(B) the adjournment of Congress sine die for the session during which such report is transmitted.

''(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of a period.

''SEC. 2905. IMPLEMENTATION

''(a) IN GENERAL.—(1) In closing or realigning any military installation under this part, the Secretary may—

''(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

''(B) provide—

''(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

''(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation,

if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

''(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account;

''(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

''(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

''(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

''(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part—

''(A) the authority of the Administrator to utilize excess property under subchapter II of chapter 5 of title 40, United States Code;

''(B) the authority of the Administrator to dispose of surplus property under subchapter III of chapter 5 of title 40, United States Code;

''(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code; and

''(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

''(2)(A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

''(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949 [see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works and division C (except sections 3302, 3306(f), 3307(e), 3501(b), 3509, 3906, 4104, 4710, and 4711) of subtitle I of Title 41, Public Contracts]; and

''(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)) [now 40 U.S.C. 545 note].

''(B) The Secretary may, with the concurrence of the Administrator of General Services—

''(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

''(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

''(C) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

''(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

''(E) If a military installation to be closed, realigned, or placed in an inactive status under this part includes a road used for public access through, into, or around the installation, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering the continued availability of the road for public use after the installation is closed, realigned, or placed in an inactive status.

''(3)(A) Not later than 6 months after the date of approval of the closure or realignment of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall—

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date of approval of the closure or realignment of the installation; or

''(IV) ninety days before the date of the closure or realignment of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure or realignment of an installation to be closed or realigned under this part as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed or realigned under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any personal property located at an installation to be closed or realigned under this part if the property—

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this part to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

''(B) The transfer of property located at a military installation under subparagraph (A) may be for consideration at or below the estimated fair market value or without consideration. The determination of such consideration may account for the economic conditions of the local affected community and the estimated costs to redevelop the property. The Secretary may accept, as consideration, a share of the revenues that the redevelopment authority receives from third-party buyers or lessees from sales and long-term leases of the conveyed property, consideration in kind (including goods and services), real property and improvements, or such

other consideration as the Secretary considers appropriate. The transfer of property located at a military installation under subparagraph (A) may be made for consideration below the estimated fair market value or without consideration only if the redevelopment authority with respect to the installation—

''(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of property under subparagraph (A) shall be used to support the economic redevelopment of, or related to, the installation; and

''(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) For purposes of subparagraph (B)(i), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

''(i) Road construction.

''(ii) Transportation management facilities.

''(iii) Storm and sanitary sewer construction.

''(iv) Police and fire protection facilities and other public facilities.

''(v) Utility construction.

''(vi) Building rehabilitation.

''(vii) Historic property preservation.

''(viii) Pollution prevention equipment or facilities.

''(ix) Demolition.

''(x) Disposal of hazardous materials generated by demolition.

''(xi) Landscaping, grading, and other site or public improvements.

''(xii) Planning for or the marketing of the development and reuse of the installation.

''(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

''(E)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this part (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

''(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

''(iii) A lease under clause (i) may not require rental payments by the United States.

''(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

''(v) Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the installation, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

''(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

''(II) firefighting or security-guard functions.

''(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of subchapters II and III of chapter 5 of title 40, United States Code, if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

''(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(H)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

''(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

''(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

''(III) the terms of the modification do not compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

''(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, 10 U.S.C. 2687 note], with the depreciated value of the investment made with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with section 2906(d).

''(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

''(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

''(I) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000 [Oct. 5, 1999], at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

''(J) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Sec-

retary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed or realigned under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure or realignment of that installation.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure or realignment of the installation.

''(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this part as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

''(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

''(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 [Nov. 18, 1997] and ending on July 31, 2001.

''(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence [Oct. 25, 1994], see paragraph (7).

''(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act [42 U.S.C. 11411(c)(1)(B)]; and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services—

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this

subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act [42 U.S.C. 11411] while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) The disposal of buildings and property located at installations approved for closure or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).

''(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall—

''(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

''(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

''(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

''(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

''(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

''(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

''(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

''(iii) In providing assistance under clause (ii), a redevelopment authority shall—

''(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

''(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

''(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure or realignment of the installation.

''(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

''(ii) The date specified under clause (i) shall be—

''(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after the date of publication of such determination in a newspaper of general circulation in the communities in the vicinity of the installation under subparagraph (B)(i)(IV); and

''(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

''(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall—

''(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

''(II) notify the Secretary of Defense of the date.

''(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

''(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

''(II) An assessment of the need for the program.

''(III) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation.

''(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

''(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

''(VI) An assessment of the time required in order to commence carrying out the program.

''(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

''(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

''(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent upon the decision regarding the disposal of the buildings and property covered by the agreements by the Secretary of Defense under subparagraph (K) or (L).

''(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist

the homeless in the event that such buildings and property cease being used for that purpose.

''(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

''(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

''(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall include in an application under clause (i) the following:

''(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

''(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

''(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

''(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

''(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

''(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

''(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless—

''(I) takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the plan for the use and needs of the homeless in such communities;

''(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

''(III) balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities;

''(IV) was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation; and

''(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

''(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

''(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

''(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

''(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include—

''(I) an explanation of that determination; and

''(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

''(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to—

''(I) revise the plan in order to address the determination; and

''(II) submit the revised plan to the Secretary of Defense and the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall submit a revised plan under this subparagraph to such Secretaries, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

''(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

''(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

''(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

''(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

''(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

''(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit

under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter [probably means subchapter II (§47151 et seq.) of chapter 471 of Title 49, Transportation] (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

''(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall—

''(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

''(II) consult with the representatives referred to in subclause (I), if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

''(III) request that each such representative submit to that Secretary the items described in clause (ii); and

''(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

''(I) A description of the program of such representative to assist the homeless.

''(II) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless.

''(III) Such information as that Secretary requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination.

''(IV) A certification that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

''(iii) Not later than 90 days after the date of the receipt of a revised plan for an installation under subparagraph (J), the Secretary of Housing and Urban Development shall—

''(I) notify the Secretary of Defense and the redevelopment authority concerned of the buildings and property at an installation under clause (i)(IV) that the Secretary of Housing and Urban Development determines are suitable for use to assist the homeless; and

''(II) notify the Secretary of Defense of the extent to which the revised plan meets the criteria set forth in subparagraph (H)(i).

''(iv)(I) Upon notice from the Secretary of Housing and Urban Development with respect to an installation under clause (iii), the Secretary of Defense shall dispose of buildings and property at the installation in consultation with the Secretary of Housing and Urban Development and the redevelopment authority concerned.

''(II) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan submitted by the redevelopment authority for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation. The Secretary of Defense shall incorporate the notification of the Secretary of Housing and Urban Development under clause (iii)(I) as part of the proposed Federal action for the installation only to the extent, if any, that the Secretary of Defense considers such incorporation to be appropriate and consistent with the best and highest use of the installation as a whole, taking into consideration the redevelopment plan submitted by the redevelopment authority.

''(III) The Secretary of Defense shall dispose of buildings and property under subclause (I) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give deference to the redevelopment plan submitted by the redevelopment authority for the installation.

''(IV) The disposal under subclause (I) of buildings and property to assist the homeless shall be without consideration.

''(V) In the case of a request for a conveyance under subclause (I) of buildings and property for public benefit under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter [probably means subchapter II (§47151 et seq.) of Title 49, Transportation] (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

''(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K) or (L), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

''(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

''(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure or realignment of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

''(O) For purposes of this paragraph, the term 'communities in the vicinity of the installation', in the case of an installation, means the communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

''(P) For purposes of this paragraph, the term 'other interested parties', in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.

''(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, coop-

erative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

''(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

''(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider—

''(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;

''(ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or

''(iii) military installations alternative to those recommended or selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

''(d) WAIVER.—The Secretary of Defense may close or realign military installations under this part without regard to—

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and

''(2) sections 2662 and 2687 of title 10, United States Code.

''(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed, or realigned or to be realigned, under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection. The real property and facilities referred to in subparagraph (A) are also the real property and facilities located at an installation approved for closure or realignment under this part after 2001 that are available for purposes other than to assist the homeless.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

''(A) the costs of all environmental restoration, waste management, and environmental compliance activities otherwise to be paid by the Secretary with respect to the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) In the case of property or facilities covered by a certification under paragraph (2)(A), the Secretary may pay the recipient of such property or facilities an amount equal to the lesser of—

''(A) the amount by which the costs incurred by the recipient of such property or facilities for all environmental restoration, waste, management, and environmental compliance activities with respect to such property or facilities exceed the fair market value of such property or facilities as specified in such certification; or

''(B) the amount by which the costs (as determined by the Secretary) that would otherwise have been incurred by the Secretary for such restoration, management, and activities with respect to such property or facilities exceed the fair market value of such property or facilities as so specified.

''(4) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(5) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(6) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330, except in the case of releases or threatened releases not disclosed pursuant to paragraph (4).

''(f) REPORT ON DESIGNATION OF PROPERTY AS EXCESS INSTEAD OF SURPLUS.—(1) Not later than 180 days after the date on which real property located at a military installation closed or realigned under this part is declared excess, but not surplus, the Secretary of Defense shall submit to the congressional defense committees a report identifying the property and including the information required by paragraph (2). The Secretary shall update the report every 180 days thereafter until the property is either declared surplus or transferred to another Federal agency.

''(2) Each report under paragraph (1) shall include the following elements:

''(A) The reason for the excess designation.

''(B) The nature of the contemplated transfer.

''(C) The proposed timeline for the transfer.

''(D) Any impediments to completing the Federal agency screening process.

''(g) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this part, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this part, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

''(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

''(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

''(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

''(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

''SEC. 2906. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT

''(a) ESTABLISHMENT.—There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account' which shall be administered by the Secretary as a single account.

''(b) CREDITS TO ACCOUNT.—There shall be credited to the Account the following:

''(1) Funds authorized for and appropriated to the Account.

''(2) Funds transferred to the Account pursuant to section 2711(b) of the Military Construction Authorization Act for Fiscal Year 2013 [div. B of Pub. L. 112–239].

''(3) Funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that funds may be transferred under the authority of this paragraph only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees.

''(4) Proceeds received from the lease, transfer, or disposal of any property at a military installation closed or realigned under this part or the 1988 BRAC law.

''(c) USE OF ACCOUNT.—

''(1) AUTHORIZED PURPOSES.—The Secretary may use the funds in the Account only for the following purposes:

''(A) To carry out the Defense Environmental Restoration Program under section 2701 of title 10, United States Code, and other environmental restoration and mitigation activities at military installations closed or realigned under this part or the 1988 BRAC law.

''(B) To cover property management, disposal, and caretaker costs incurred at military installations closed or realigned under this part or the 1988 BRAC law.

''(C) To cover costs associated with supervision, inspection, overhead, engineering, and design of military construction projects undertaken under this part or the 1988 BRAC law before September 30, 2013, and subsequent claims, if any, related to such activities.

''(D) To record, adjust, and liquidate obligations properly chargeable to the following accounts:

''(i) The Department of Defense Base Closure Account 2005 established by section 2906A of this part, as in effect on September 30, 2013.

''(ii) The Department of Defense Base Closure Account 1990 established by this section, as in effect on September 30, 2013.

''(iii) The Department of Defense Base Closure Account established by section 207 of the 1988 BRAC law, as in effect on September 30, 2013.

''(2) SOLE SOURCE OF FUNDS.—The Account shall be the sole source of Federal funds for the activities specified in paragraph (1) at a military installation closed or realigned under this part or the 1988 BRAC law.

''(3) PROHIBITION ON USE OF ACCOUNT FOR NEW MILITARY CONSTRUCTION.—Except as provided in paragraph (1), funds in the Account may not be used, directly or by transfer to another appropriations account, to carry out a military construction project, including a minor military construction project, under section 2905(a) or any other provision of law at a military installation closed or realigned under this part or the 1988 BRAC law.

''(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—

''(1) DEPOSIT OF PROCEEDS IN RESERVE ACCOUNT.—If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the 1988 BRAC law.

''(2) The amount so deposited under paragraph (1) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary.

''(3) USE OF RESERVE FUNDS.—Subject to the limitation contained in section 204(b)(7)(C)(iii) of the 1988 BRAC law, amounts in the reserve account are hereby made available to the Secretary, without appropriation and until expended, for the purpose of acquiring, constructing, and improving—

''(A) commissary stores; and

''(B) real property and facilities for nonappropriated fund instrumentalities.

''(e) CONSOLIDATED BUDGET JUSTIFICATION DISPLAY FOR ACCOUNT.—

''(1) CONSOLIDATED BUDGET INFORMATION REQUIRED.—The Secretary shall establish a consolidated budget justification display in support of the Account that for each fiscal year—

''(A) details the amount and nature of credits to, and expenditures from, the Account during the preceding fiscal year;

''(B) separately details the caretaker and environmental remediation costs associated with each military installation for which a budget request is made;

''(C) specifies the transfers into the Account and the purposes for which these transferred funds will be further obligated, to include caretaker and environment remediation costs associated with each military installation;

''(D) specifies the closure or realignment recommendation, and the base closure round in which the recommendation was made, that precipitated the inclusion of the military installation; and

''(E) details any intra-budget activity transfers within the Account that exceeded $1,000,000 during

the preceding fiscal year or that are proposed for the next fiscal year and will exceed $1,000,000.

''(2) SUBMISSION.—The Secretary shall include the information required by paragraph (1) in the materials that the Secretary submits to Congress in support of the budget for a fiscal year submitted by the President pursuant to section 1105 of title 31, United States Code.

''(f) CLOSURE OF ACCOUNT; TREATMENT OF REMAINING FUNDS.—

''(1) CLOSURE.—The Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code, except that unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred by law after the congressional defense committees receive the final report transmitted under paragraph (2).

''(2) FINAL REPORT.—No later than 60 days after the closure of the Account under paragraph (1), the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

''(A) all the funds credited to and expended from the Account or otherwise expended under this part or the 1988 BRAC law; and

''(B) any funds remaining in the Account.

''(g) DEFINITIONS.—In this section:

''(1) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

''(2) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

''(3) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(4) The term '1988 BRAC law' means title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''[SEC. 2906A. Repealed. Pub. L. 112–239, div. B, title XXVII, § 2711(a), Jan. 2, 2013, 126 Stat. 2140.]

''[SEC. 2907. Repealed. Pub. L. 112–239, div. B, title XXVII, § 2711(c)(2), Jan. 2, 2013, 126 Stat. 2143.]

''SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

''(a) TERMS OF THE RESOLUTION.—For purposes of section 2904(b), the term 'joint resolution' means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on ———', the blank space being filled in with the appropriate date; and

''(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.'.

''(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

''(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

''(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

''(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of 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.

''SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

''(a) IN GENERAL.—Except as provided in subsection (c), during the period beginning on November 5, 1990, and ending on April 15, 2006, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

''(b) RESTRICTION.—Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)—

''(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

''(2) to carry out any closure or realignment of a military installation inside the United States.

''(c) EXCEPTION.—Nothing in this part affects the authority of the Secretary to carry out—

''(1) closures and realignments under title II of Public Law 100–526 [set out below]; and

''(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

''SEC. 2910. DEFINITIONS

''As used in this part:

''(1) The term 'Account' means the Department of Defense Base Closure Account established by section 2906(a).

''(2) The term 'congressional defense committees' means 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.

''(3) The term 'Commission' means the Commission established by section 2902.

''(4) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

''(5) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

''(6) The term 'Secretary' means the Secretary of Defense.

''(7) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

''(8) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires.

''(9)(A) The term 'redevelopment authority', in the case of an installation to be closed or realigned under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to a military installation, the term shall include the following:

''(i) The local government in whose jurisdiction the military installation is wholly located.

''(ii) A local government agency or State government agency designated by the chief executive officer of the State in which the military installation is located under subparagraph (B) of section 2905(b)(3) for the purpose of the consultation required by subparagraph (A) of such section.

''(10) The term 'redevelopment plan' in the case of an installation to be closed or realigned under this part, means a plan that—

''(A) is agreed to by the local redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure or realignment of the installation.

''(11) The term 'representative of the homeless' has the meaning given such term in section 501(i)(4) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

''SEC. 2911. CLARIFYING AMENDMENT

''[Amended this section.]

''SEC. 2912. 2005 ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS.

''(a) FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY.—

''(1) PREPARATION AND SUBMISSION.—As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for fiscal year 2005, the Secretary shall include the following:

''(A) A force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the 20-year period beginning with fiscal year 2005, the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period.

''(B) A comprehensive inventory of military installations world-wide for each military department, with specifications of the number and type of facilities in the active and reserve forces of each military department.

''(2) RELATIONSHIP OF PLAN AND INVENTORY.—Using the force-structure plan and infrastructure inventory prepared under paragraph (1), the Secretary shall prepare (and include as part of the submission of such plan and inventory) the following:

''(A) A description of the infrastructure necessary to support the force structure described in the force-structure plan.

''(B) A discussion of categories of excess infrastructure and infrastructure capacity.

''(C) An economic analysis of the effect of the closure or realignment of military installations to reduce excess infrastructure.

''(3) SPECIAL CONSIDERATIONS.—In determining the level of necessary versus excess infrastructure under paragraph (2), the Secretary shall consider the following:

''(A) The anticipated continuing need for and availability of military installations outside the United States, taking into account current restrictions on the use of military installations outside the United States and the potential for future prohibitions or restrictions on the use of such military installations.

''(B) Any efficiencies that may be gained from joint tenancy by more than one branch of the Armed Forces at a military installation.

''(4) REVISION.—The Secretary may revise the force-structure plan and infrastructure inventory. If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress not later than March 15, 2005. For purposes of selecting military installations for closure or realignment under this part in 2005, no revision of the force-structure plan or infrastructure inventory is authorized after that date.

''(b) CERTIFICATION OF NEED FOR FURTHER CLOSURES AND REALIGNMENTS.—

''(1) CERTIFICATION REQUIRED.—On the basis of the force-structure plan and infrastructure inventory prepared under subsection (a) and the descriptions and economic analysis prepared under such subsection, the Secretary shall include as part of the submission of the plan and inventory—

''(A) a certification regarding whether the need exists for the closure or realignment of additional military installations; and

''(B) if such need exists, a certification that the additional round of closures and realignments would result in annual net savings for each of the military departments beginning not later than fiscal year 2011.

''(2) EFFECT OF FAILURE TO CERTIFY.—If the Secretary does not include the certifications referred to in paragraph (1), the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(c) COMPTROLLER GENERAL EVALUATION.—

''(1) EVALUATION REQUIRED.—If the certification is provided under subsection (b), the Comptroller General shall prepare an evaluation of the following:

''(A) The force-structure plan and infrastructure inventory prepared under subsection (a) and the final selection criteria specified in section 2913, including an evaluation of the accuracy and analytical sufficiency of such plan, inventory, and criteria.

''(B) The need for the closure or realignment of additional military installations.

''(2) SUBMISSION.—The Comptroller General shall submit the evaluation to Congress not later than 60 days after the date on which the force-structure plan and infrastructure inventory are submitted to Congress.

''(d) AUTHORIZATION OF ADDITIONAL ROUND; COMMISSION.—

''(1) APPOINTMENT OF COMMISSION.—Subject to the certifications required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this part in 2005 by transmitting to the Senate, not later than March 15, 2005, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Closure and Realignment Commission.

''(2) EFFECT OF FAILURE TO NOMINATE.—If the President does not transmit to the Senate the nominations for the Commission by March 15, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(3) MEMBERS.—Notwithstanding section 2902(c)(1), the Commission appointed under the authority of this subsection shall consist of nine members.

''(4) TERMS; MEETINGS; TERMINATION.—Notwithstanding subsections (d), (e)(1), and (*l*) of section 2902, the Commission appointed under the authority of this subsection shall meet during calendar year 2005 and shall terminate on April 15, 2006.

''(5) FUNDING.—If no funds are appropriated to the Commission by the end of the second session of the 108th Congress for the activities of the Commission in 2005, the Secretary may transfer to the Commission for purposes of its activities under this part in that year such funds as the Commission may require to carry out such activities. The Secretary may transfer funds under the preceding sentence from any funds available to the Secretary. Funds so transferred shall remain available to the Commission for such purposes until expended.

''SEC. 2913. FINAL SELECTION CRITERIA FOR ADDITIONAL ROUND OF BASE CLOSURES AND REALIGNMENTS.

''(a) FINAL SELECTION CRITERIA.—The final criteria to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 shall be the military value and other criteria specified in subsections (b) and (c).

''(b) MILITARY VALUE CRITERIA.—The military value criteria are as follows:

''(1) The current and future mission capabilities and the impact on operational readiness of the total force of the Department of Defense, including the impact on joint warfighting, training, and readiness.

''(2) The availability and condition of land, facilities, and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.

''(3) The ability to accommodate contingency, mobilization, surge, and future total force requirements at both existing and potential receiving locations to support operations and training.

''(4) The cost of operations and the manpower implications.

''(c) OTHER CRITERIA.—The other criteria that the Secretary shall use in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 are as follows:

''(1) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

''(2) The economic impact on existing communities in the vicinity of military installations.

''(3) The ability of the infrastructure of both the existing and potential receiving communities to support forces, missions, and personnel.

''(4) The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

''(d) PRIORITY GIVEN TO MILITARY VALUE.—The Secretary shall give priority consideration to the military value criteria specified in subsection (b) in the making of recommendations for the closure or realignment of military installations.

''(e) EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS.—The selection criteria relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations.

''(f) RELATION TO OTHER MATERIALS.—The final selection criteria specified in this section shall be the only criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

''(g) RELATION TO CRITERIA FOR EARLIER ROUNDS.—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.

''SEC. 2914. SPECIAL PROCEDURES FOR MAKING RECOMMENDATIONS FOR REALIGNMENTS AND CLOSURES FOR 2005 ROUND; COMMISSION CONSIDERATION OF RECOMMENDATIONS.

''(a) RECOMMENDATIONS REGARDING CLOSURE OR REALIGNMENT OF MILITARY INSTALLATIONS.—If the Secretary makes the certifications required under section 2912(b), the Secretary shall publish in the Federal Register and transmit to the congressional defense committees and the Commission, not later than May 16, 2005, a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary under section 2912 and the final selection criteria specified in section 2913.

''(b) PREPARATION OF RECOMMENDATIONS.—

''(1) IN GENERAL.—The Secretary shall comply with paragraphs (2) through (6) of section 2903(c) in preparing and transmitting the recommendations under this section. However, paragraph (6) of section 2903(c) relating to submission of information to Congress shall be deemed to require such submission within 48 hours.

''(2) CONSIDERATION OF LOCAL GOVERNMENT VIEWS.—(A) In making recommendations to the Commission in 2005, the Secretary shall consider any notice received from a local government in the vicinity of a military installation that the government would approve of the closure or realignment of the installation.

''(B) Notwithstanding the requirement in subparagraph (A), the Secretary shall make the recommendations referred to in that subparagraph based on the force-structure plan, infrastructure inventory, and final selection criteria otherwise applicable to such recommendations.

''(C) The recommendations shall include a statement of the result of the consideration of any notice described in subparagraph (A) that is received with respect to a military installation covered by such recommendations. The statement shall set forth the reasons for the result.

''[(c) Repealed. Pub. L. 108–375, div. B, title XXVIII, § 2833, Oct. 28, 2004, 118 Stat. 2134.]

''(d) COMMISSION REVIEW AND RECOMMENDATIONS.—

''(1) IN GENERAL.—Except as provided in this subsection, section 2903(d) shall apply to the consideration by the Commission of the recommendations transmitted by the Secretary in 2005. The Commission's report containing its findings and conclusions, based on a review and analysis of the Secretary's recommendations, shall be transmitted to the President not later than September 8, 2005.

''(2) AVAILABILITY OF RECOMMENDATIONS TO CONGRESS.—After September 8, 2005, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

''(3) LIMITATIONS ON AUTHORITY TO CONSIDER ADDITIONS TO CLOSURE OR REALIGNMENT LISTS.—The Commission may not consider making a change in the recommendations of the Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless, in addition to the requirements of section 2903(d)(2)(C)—

''(A) the Commission provides the Secretary with at least a 15-day period, before making the change, in which to submit an explanation of the reasons why the installation was not included on the closure or realignment list by the Secretary; and

''(B) the decision to add the installation for Commission consideration is supported by at least seven members of the Commission.

''(4) TESTIMONY BY SECRETARY.—The Commission shall invite the Secretary to testify at a public hearing, or a closed hearing if classified information is involved, on any proposed change by the Commission to the Secretary's recommendations.

''(5) REQUIREMENTS TO EXPAND CLOSURE OR REALIGNMENT RECOMMENDATIONS.—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless—

''(A) at least two members of the Commission visit the military installation before the date of the transmittal of the report; and

''(B) the decision of the Commission to make the change to recommend the closure of the military installation, the realignment of the installation, or the expanded realignment of the installation is supported by at least seven members of the Commission.

''(6) COMPTROLLER GENERAL REPORT.—The Comptroller General report required by section 2903(d)(5)(B) analyzing the recommendations of the Secretary and the selection process in 2005 shall be transmitted to the congressional defense committees not later than July 1, 2005.

''(e) REVIEW BY THE PRESIDENT.—

''(1) IN GENERAL.—Except as provided in this subsection, section 2903(e) shall apply to the review by the President of the recommendations of the Commission under this section, and the actions, if any, of the Commission in response to such review, in 2005. The President shall review the recommendations of the Secretary and the recommendations contained in the report of the Commission under subsection (d) and prepare a report, not later than September 23, 2005, containing the President's approval or disapproval of the Commission's recommendations.

''(2) COMMISSION RECONSIDERATION.—If the Commission prepares a revised list of recommendations under section 2903(e)(3) in 2005 in response to the review of the President in that year under paragraph (1), the Commission shall transmit the revised list to the President not later than October 20, 2005.

''(3) EFFECT OF FAILURE TO TRANSMIT.—If the President does not transmit to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) by November 7, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(4) EFFECT OF TRANSMITTAL.—A report of the President under this subsection containing the President's approval of the Commission's recommendations is deemed to be a report under section 2903(e) for purposes of sections 2904 and 2908.''

[For effective date of amendments by section 2711(a), (c)(2), (3)(A) of Pub. L. 112–239 to sections 2906 to 2907 and 2910 of Pub. L. 101–510, set out above, see section 2711(d) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2701 of this title.]

[Pub. L. 110–417, div. B, title XXVII, § 2712(a)(2), Oct. 14, 2008, 122 Stat. 4716, provided that: ''The amendments made by paragraph (1) [amending Pub. L. 110–181, § 2704(a), set out above] shall take effect on January 28, 2008, as if included in the enactment of section 2704 of the Military Construction Authorization Act for Fiscal Year 2008 [Pub. L. 110–181].'']

[Pub. L. 110–417, div. B, § 2003, Oct. 14, 2008, 122 Stat. 4658, provided that: ''Titles XXI, XXII, XXIII, XXIV, XXV, XXVI [122 Stat. 4658, 4669, 4675, 4687, 4698], XXVII [enacting Pub. L. 110–417, § 2712(a)(2), set out above, and amending Pub. L. 110–510, div. B, title XXIX, part A,

and Pub. L. 110–181, §2704, which amended Pub. L. 110–510, div. B, title XXIX, part A, set out above], and XXIX [122 Stat. 4741] shall take effect on the later of—

[''(1) October 1, 2008; or

[''(2) the date of the enactment of this Act [Oct. 14, 2008].'']

[Pub. L. 107–314, div. A, title X, §1062(f), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(f)(4) is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.]

[For effective date of amendment by section 2813(d)(2) of Pub. L. 103–337 to section 2910 of Pub. L. 101–510, set out above, see Effective Date of 1994 Amendments by Section 2813(d)(1) and (2) of Pub. L. 103–337 note set out above.]

[Pub. L. 103–160, div. B, title XXIX, §2902(c), Nov. 30, 1993, 107 Stat. 1912, provided that: ''For the purposes of section 2905(b)(3) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, set out above], as added by subsection (b), the date of approval of closure of any installation approved for closure before the date of the enactment of this Act [Nov. 30, 1993] shall be deemed to be the date of the enactment of this Act.'']

[Pub. L. 103–160, div. B, title XXIX, §2904(c), Nov. 30, 1993, 107 Stat. 1916, provided that: ''The Secretary of Defense shall make the determinations required under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, set out above], as added by subsection (b), in the case of installations approved for closure under such Act [part A of title XXIX of div. B of Pub. L. 101–510, set out above] before the date of the enactment of this Act [Nov. 30, 1993], not later than 6 months after the date of the enactment of this Act.'']

[Pub. L. 103–160, div. B, title XXIX, §2930(b), Nov. 30, 1993, 107 Stat. 1935, provided that: ''The amendment made by this section [amending section 2903(d)(1) of Pub. L. 101–510 set out above] shall apply with respect to all public hearings conducted by the Defense Base Closure and Realignment Commission after the date of the enactment of this Act [Nov. 30, 1993].'']

[For effective date of amendments by section 344(b)(1) of Pub. L. 102–190 to section 2906 of Pub. L. 101–510, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

[Pub. L. 102–190, div. B, title XXVIII, §2821(h)(2), Dec. 5, 1991, 105 Stat. 1546, provided that: ''The amendment made by paragraph (1) [amending section 2910 of Pub. L. 101–510 set out above] shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 [section 2910 of Pub. L. 101–510] on that date.'']

[Pub. L. 102–190, div. B, title XXVIII, §2827(a)(3), Dec. 5, 1991, 105 Stat. 1551, provided that: ''The amendments made by this subsection [amending sections 2905 and 2906 of Pub. L. 101–510 set out above] shall take effect on the date of the enactment of this Act [Dec. 5, 1991].'']

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

CLOSURE OF FOREIGN MILITARY INSTALLATIONS

Pub. L. 108–287, title VIII, §8018, Aug. 5, 2004, 118 Stat. 974, provided that: ''Notwithstanding any other provision of law, during the current fiscal year and hereafter, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: *Provided*, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: *Provided further*, That the Department of Defense's budget submission for subsequent fiscal years shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: *Provided further*, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: *Provided further*, That each such executive agreement with a NATO member host nation shall be reported to the congressional defense committees [Committees on Armed Services of the Senate and House of Representatives and Subcommittees on Defense of the Committees on Appropriations of the Senate and House of Representatives], the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of any such agreement established under this provision.''

Similar provisions for specified fiscal years were contained in the following appropriation acts:

Pub. L. 108–87, title VIII, §8018, Sept. 30, 2003, 117 Stat. 1075.

Pub. L. 107–248, title VIII, §8018, Oct. 23, 2002, 116 Stat. 1540.

Pub. L. 107–117, div. A, title VIII, §8019, Jan. 10, 2002, 115 Stat. 2251.

Pub. L. 106–259, title VIII, §8019, Aug. 9, 2000, 114 Stat. 678.

Pub. L. 106–79, title VIII, §8019, Oct. 25, 1999, 113 Stat. 1235.

Pub. L. 105–262, title VIII, §8019, Oct. 17, 1998, 112 Stat. 2301.

Pub. L. 105–56, title VIII, §8019, Oct. 8, 1997, 111 Stat. 1224.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8020], Sept. 30, 1996, 110 Stat. 3009–71, 3009–92.

Pub. L. 104–61, title VIII, §8027, Dec. 1, 1995, 109 Stat. 657.

Pub. L. 103–335, title VIII, §8033, Sept. 30, 1994, 108 Stat. 2625.

Pub. L. 103–139, title VIII, §8036, Nov. 11, 1993, 107 Stat. 1448.

Pub. L. 102–396, title IX, §9047A, Oct. 6, 1992, 106 Stat. 1913, as amended by Pub. L. 104–106, div. A, title XV, §1502(f)(2), Feb. 10, 1996, 110 Stat. 509.

Pub. L. 101–510, div. B, title XXIX, §2921, Nov. 5, 1990, 104 Stat. 1819, as amended by Pub. L. 102–190, div. A, title III, §344(b)(2), Dec. 5, 1991, 105 Stat. 1345; Pub. L. 102–484, div. B, title XXVIII, §§2821(c), 2827, Oct. 23, 1992, 106 Stat. 2608, 2609; Pub. L. 103–160, div. B, title XXIX, §2924(b), Nov. 30, 1993, 107 Stat. 1931; Pub. L. 103–337, div. A, title XIII, §1305(c), div. B, title XXVIII, §2817, Oct. 5, 1994, 108 Stat. 2891, 3057; Pub. L. 104–106, div. A, title X, §1063(b), title XV, §§1502(c)(4)(D), 1505(e)(2), Feb. 10, 1996, 110 Stat. 444, 508, 515; Pub. L. 105–85, div. A, title X, §1073(d)(4)(C), Nov. 18, 1997, 111 Stat. 1905; Pub. L. 106–65, div. A, title X, §1067(10), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §1031(b), Nov. 24, 2003, 117 Stat. 1603; Pub. L. 113–66, div. B, title XXVIII, §2807(b)(1), Dec. 26, 2013, 127 Stat. 1011, provided that: ''It is the sense of the Congress that—

''(1) the termination of military operations by the United States at military installations outside the United States should be accomplished at the discretion of the Secretary of Defense at the earliest opportunity;

''(2) in providing for such termination, the Secretary of Defense should take steps to ensure that the United States receives, through direct payment or otherwise, consideration equal to the fair market value of the improvements made by the United States at facilities that will be released to host countries;

''(3) the Secretary of Defense, acting through the military component commands or the sub-unified

commands to the combatant commands, should be the lead official in negotiations relating to determining and receiving such consideration; and

''(4) the determination of the fair market value of such improvements released to host countries in whole or in part by the United States should be handled on a facility-by-facility basis.''

[Pub. L. 113–66, div. B, title XXVIII, § 2807(b)(2), Dec. 26, 2013, 127 Stat. 1011, provided that: ''The repeal of subsection (c) of section 2921 of the National Defense Authorization Act for Fiscal Year 1991 [subsec. (c) of section 2921 of Pub. L. 101–510, formerly set out above] by paragraph (1)(B) shall not affect the Department of Defense Overseas Military Facility Investment Recovery Account established by such subsection, amounts in such account, or the continued use of such account as provided in section 2687a of title 10, United States Code, as amended by subsection (a) of this section.'']

[For effective date of amendment by section 344(b)(2) of Pub. L. 102–190 to section 2921 of Pub. L. 101–510, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

Task Force Report

Pub. L. 102–380, § 125, Oct. 5, 1992, 106 Stat. 1372, provided that:

''(a) The environmental response task force established in section 2923(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1821) [set out below] shall reconvene and shall, until the date (as determined by the Secretary of Defense) on which all base closure activities required under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below] are completed—

''(1) monitor the progress of relevant Federal and State agencies in implementing the recommendations of the task force contained in the report submitted under paragraph (1) of such section; and

''(2) annually submit to the Congress a report containing—

''(A) recommendations concerning ways to expedite and improve environmental response actions at military installations (or portions of installations) that are being closed or subject to closure under such title;

''(B) any additional recommendations that the task force considers appropriate; and

''(C) a summary of the progress made by relevant Federal and State agencies in implementing the recommendations of the task force.

''(b) The task force shall consist of—

''(1) the individuals (or their designees) described in section 2923(c)(2) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1821); and

''(2) a representative of the Urban Land Institute (or such representative's designee), appointed by the Speaker of the House of Representatives and the Majority Leader of the Senate.''

Pub. L. 101–510, div. B, title XXIX, § 2923(c), Nov. 5, 1990, 104 Stat. 1821, provided that:

''(1) Not later than 12 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall submit to Congress a report containing the findings and recommendations of the task force established under paragraph (2) concerning—

''(A) ways to improve interagency coordination, within existing laws, regulations, and administrative policies, of environmental response actions at military installations (or portions of installations) that are being closed, or are scheduled to be closed, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) [set out below]; and

''(B) ways to consolidate and streamline, within existing laws and regulations, the practices, policies, and administrative procedures of relevant Federal and State agencies with respect to such environmental response actions so as to enable those actions to be carried out more expeditiously.

''(2) There is hereby established an environmental response task force to make the findings and recommendations, and to prepare the report, required by paragraph (1). The task force shall consist of the following (or their designees):

''(A) The Secretary of Defense, who shall be chairman of the task force.

''(B) The Attorney General.

''(C) The Administrator of the General Services Administration.

''(D) The Administrator of the Environmental Protection Agency.

''(E) The Chief of Engineers, Department of the Army.

''(F) A representative of a State environmental protection agency, appointed by the head of the National Governors Association.

''(G) A representative of a State attorney general's office, appointed by the head of the National Association of Attorney Generals.

''(H) A representative of a public-interest environmental organization, appointed by the Speaker of the House of Representatives.''

Community Preference Consideration in Closure and Realignment of Military Installations

Pub. L. 101–510, div. B, title XXIX, § 2924, Nov. 5, 1990, 104 Stat. 1822, provided that: ''In any process of selecting any military installation inside the United States for closure or realignment, the Secretary of Defense shall take such steps as are necessary to assure that special consideration and emphasis is given to any official statement from a unit of general local government adjacent to or within a military installation requesting the closure or realignment of such installation.''

Contracts for Certain Environmental Restoration Activities

Pub. L. 101–510, div. B, title XXIX, § 2926, Nov. 5, 1990, 104 Stat. 1822, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 107–314, div. A, title X, § 1062(m)(4), Dec. 2, 2002, 116 Stat. 2652, provided for a model program for base closure environmental restoration, prior to repeal by Pub. L. 108–136, div. A, title III, § 316, Nov. 24, 2003, 117 Stat. 1432.

Consideration of Department of Defense Housing for Coast Guard

Pub. L. 101–225, title II, § 216, Dec. 12, 1989, 103 Stat. 1915, provided that: ''Notwithstanding any other provision of law, the Coast Guard is deemed to be an instrumentality within the Department of Defense for the purposes of section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 [note]).''

Five-Year Plan for Environmental Restoration at Bases To Be Closed

Pub. L. 101–189, div. A, title III, § 353, Nov. 29, 1989, 103 Stat. 1423, directed Secretary of Defense to develop a comprehensive five-year plan for environmental restoration at military installations that would be closed or realigned during fiscal years 1991 through 1995, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act, Pub. L. 100–526, set out below, and, at same time President submits to Congress budget for fiscal year 1991 pursuant to 31 U.S.C. 1105, to submit to Congress a report on the five-year plan.

Prohibition on Reducing End Strength Levels for Medical Personnel as a Result of Base Closures and Realignments

Pub. L. 101–189, div. A, title VII, § 723, Nov. 29, 1989, 103 Stat. 1478, provided that:

''(a) PROHIBITION.—The end strength levels for medical personnel for each component of the Armed Forces, and the number of civilian personnel of the Department of Defense assigned to military medical facilities, may not be reduced as a result of the closure or realignment of a military installation under section 2687 of title 10, United States Code, or title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(b) MEDICAL PERSONNEL DEFINED.—For purposes of subsection (a), the term 'medical personnel' has the meaning given that term in subparagraph (D) of section 115(b)(1) of title 10, United States Code.''

USE OF CLOSED BASES FOR PRISONS AND DRUG TREATMENT FACILITIES

Pub. L. 101–189, div. B, title XXVIII, §2832, Nov. 29, 1989, 103 Stat. 1660, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the war on drugs is one of the highest priorities of the Federal Government;

''(2) to effectively wage the war on drugs, adequate penal and correctional facilities and a substantial increase in the number and capacity of drug treatment facilities are needed;

''(3) under the base closure process, authorized by title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below], 86 military bases are scheduled for closure; and

''(4) facilities rendered excess by the base closure process should be seriously considered for use as prisons and drug treatment facilities, as appropriate.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should, pursuant to the provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act, give priority to making real property (including the improvements thereon) of the Department of Defense rendered excess or surplus as a result of the recommendations of the Commission on Base Realignment and Closure available to another Federal agency or a State or local government for use as a penal or correctional facility or as a drug abuse prevention, treatment, or rehabilitation center.''

NOTICE TO LOCAL AND STATE EDUCATIONAL AGENCIES OF ENROLLMENT CHANGES DUE TO BASE CLOSURES AND REALIGNMENTS

Pub. L. 101–189, div. B, title XXVIII, §2833, Nov. 29, 1989, 103 Stat. 1661, provided that:

''(a) IDENTIFICATION OF ENROLLMENT CHANGES.—(1) Not later than January 1 of each year in which any activities necessary to close or realign a military installation under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below] are conducted, the Secretary of Defense shall identify, to the extent practicable, each local educational agency that will experience at least a 5-percent increase or at least a 10-percent reduction in the number of dependent children of members of the Armed Forces and of civilian employees of the Department of Defense enrolled in schools under the jurisdiction of such agency during the next academic year (compared with the number of such children enrolled in such schools during the preceding year) as a result of the closure or realignment of a military installation under that Act [Pub. L. 100–526, see Short Title of 1988 Amendment note above].

''(2) The Secretary shall carry out this subsection in consultation with the Secretary of Education.

''(b) NOTICE REQUIRED.—Not later than 30 days after the date on which the Secretary of Defense identifies a local educational agency under subsection (a), the Secretary shall transmit a written notice of the schedule for the closure or realignment of the military installation affecting that local educational agency to that local educational agency and to the State government education agency responsible for administering State government education programs involving that local educational agency.''

CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 100–526, title II, Oct. 24, 1988, 102 Stat. 2627, as amended by Pub. L. 101–510, div. B, title XXIX, §2923(b)(1), Nov. 5, 1990, 104 Stat. 1821; Pub. L. 102–190, div. A, title III, §344(a), Dec. 5, 1991, 105 Stat. 1344; Pub. L. 102–484, div. B, title XXVIII, §2821(a), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 103–160, div. B, title XXIX, §§2902(a), 2903(a), 2904(a), 2905(a), 2907(a), 2908(a), 2918(b), 2921(a), Nov. 30, 1993, 107 Stat. 1909, 1912, 1915, 1916, 1921, 1922, 1928, 1929; Pub. L. 103–337, div. A, title X, §1070(b)(13), div. B, title XXVIII, §§2812(a), 2813(a)–(c)(1), (d)(1), (e)(1), Oct. 5, 1994, 108 Stat. 2857, 3054, 3055; Pub. L. 103–421, §2(f)(1), Oct. 25, 1994, 108 Stat. 4354; Pub. L. 104–106, div. A, title XV, §§1504(a)(9), 1505(e)(3), div. B, title XXVIII, §§2831(b)(1), 2839(a), 2840(a), Feb. 10, 1996, 110 Stat. 513, 515, 558, 563, 564; Pub. L. 104–201, div. B, title XXVIII, §§2811, 2812(a), 2813(a), Sept. 23, 1996, 110 Stat. 2788, 2789; Pub. L. 105–85, div. A, title X, §1073(d)(6), div. B, title XXVIII, §2821(a), Nov. 18, 1997, 111 Stat. 1906, 1996; Pub. L. 106–65, div. B, title XXVIII, §2821(b), Oct. 5, 1999, 113 Stat. 855; Pub. L. 106–398, §1 [div. B, title XXVIII, §2821(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–419; Pub. L. 107–107, div. A, title X, §1048(d)(3), div. B, title XXVIII, §2821(a), Dec. 28, 2001, 115 Stat. 1227, 1311; Pub. L. 107–314, div. A, title X, §1062(n), div. B, title XXVIII, §2814(a), Dec. 2, 2002, 116 Stat. 2652, 2710; Pub. L. 108–136, div. A, title VI, §655(a), div. B, title XXVIII, §2805(d)(1), Nov. 24, 2003, 117 Stat. 1523, 1721; Pub. L. 112–239, div. B, title XXVII, §2711(c)(1), (3)(B), Jan. 2, 2013, 126 Stat. 2143, provided that:

''SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''The Secretary shall—

''(1) close all military installations recommended for closure by the Commission on Base Realignment and Closure in the report transmitted to the Secretary pursuant to the charter establishing such Commission;

''(2) realign all military installations recommended for realignment by such Commission in such report; and

''(3) initiate all such closures and realignments no later than September 30, 1991, and complete all such closures and realignments no later than September 30, 1995, except that no such closure or realignment may be initiated before January 1, 1990.

''SEC. 202. CONDITIONS

''(a) IN GENERAL.—The Secretary may not carry out any closure or realignment of a military installation under this title unless—

''(1) no later than January 16, 1989, the Secretary transmits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Defense will implement, all of the military installation closures and realignments recommended by the Commission in the report referred to in section 201(1);

''(2) the Commission has recommended, in the report referred to in section 201(1), the closure or realignment, as the case may be, of the installation, and has transmitted to the Committees on Armed Services of the Senate and the House of Representatives a copy of such report and the statement required by section 203(b)(2); and

''(3) the Secretary of Defense has transmitted to the Commission the study required by section 206(b).

''(b) JOINT RESOLUTION.—The Secretary may not carry out any closure or realignment under this title if, within the 45-day period beginning on March 1, 1989, a joint resolution is enacted, in accordance with the provisions of section 208, disapproving the recommendations of the Commission. The days on which either

House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of such 45-day period.

''(c) TERMINATION OF AUTHORITY.—(1) Except as provided in paragraph (2), the authority of the Secretary to carry out any closure or realignment under this title shall terminate on October 1, 1995.

''(2) The termination of authority set forth in paragraph (1) shall not apply to the authority of the Secretary to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

''SEC. 203. THE COMMISSION

''(a) MEMBERSHIP.—The Commission shall consist of 12 members appointed by the Secretary of Defense.

''(b) DUTIES.—The Commission shall—

''(1) transmit the report referred to in section 201(1) to the Secretary no later than December 31, 1988, and shall include in such report a description of the Commission's recommendations of the military installations to which functions will be transferred as a result of the closures and realignments recommended by the Commission; and

''(2) on the same date on which the Commission transmits such report to the Secretary, transmit to Committees on Armed Services of the Senate and the House of Representatives—

''(A) a copy of such report; and

''(B) a statement certifying that the Commission has identified the military installations to be closed or realigned by reviewing all military installations inside the United States, including all military installations under construction and all those planned for construction.

''(c) STAFF.—Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988 in any capacity other than as an employee of the Commission.

''SEC. 204. IMPLEMENTATION

''(a) IN GENERAL.—In closing or realigning a military installation under this title, the Secretary—

''(1) subject to the availability of funds authorized for and appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance and the availability of funds in the Account, may carry out actions necessary to implement such closure or realignment, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such military installation to another military installation;

''(2) subject to the availability of funds authorized for and appropriated to the Department of Defense for economic adjustment assistance or community planning assistance and the availability of funds in the Account, shall provide—

''(A) economic adjustment assistance to any community located near a military installation being closed or realigned; and

''(B) community planning assistance to any community located near a military installation to which functions will be transferred as a result of such closure or realignment,

if the Secretary determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate; and

''(3) subject to the availability of funds authorized for and appropriated to the Department of Defense for environmental restoration and the availability of funds in the Account, may carry out activities for the purpose of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

''(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this title—

''(A) the authority of the Administrator to utilize excess property under subchapter II of chapter 5 of title 40, United States Code;

''(B) the authority of the Administrator to dispose of surplus property under subchapter III of chapter 5 of title 40, United States Code; and

''(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code.

''(2)(A) Subject to subparagraph (B), the Secretary shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

''(i) all regulations in effect on the date of the enactment of this title [Oct. 24, 1988] governing utilization of excess property and disposal of surplus property under the Federal Property and Administrative Services Act of 1949 [see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and division C (except sections 3302, 3306(f), 3307(e), 3501(b), 3509, 3906, 4104, 4710, and 4711) of subtitle I of Title 41, Public Contracts]; and

''(ii) all regulations in effect on the date of the enactment of this title governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

''(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

''(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

''(D) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this title, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

''(E) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this title, the Secretary shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

''(F) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) through (6).

''(3)(A) Not later than 6 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], the Secretary, in consultation with the redevelopment authority with respect to each military installation to be closed under this title after such date of enactment, shall—

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date referred to in subparagraph (A); or

''(IV) ninety days before the date of the closure of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this title as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this title to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any related personal property located at an installation to be closed under this title if the property—

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this title to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

''(B) The transfer of property of a military installation under subparagraph (A) shall be without consideration if the redevelopment authority with respect to the installation—

''(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of property under subparagraph (A) shall be used to support the economic redevelopment of, or related to, the installation; and

''(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) For purposes of subparagraph (B), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

''(i) Road construction.

''(ii) Transportation management facilities.

''(iii) Storm and sanitary sewer construction.

''(iv) Police and fire protection facilities and other public facilities.

''(v) Utility construction.

''(vi) Building rehabilitation.

''(vii) Historic property preservation.

''(viii) Pollution prevention equipment or facilities.

''(ix) Demolition.

''(x) Disposal of hazardous materials generated by demolition.

''(xi) Landscaping, grading, and other site or public improvements.

''(xii) Planning for or the marketing of the development and reuse of the installation.

''(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

''(E)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this title (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

''(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

''(iii) A lease under clause (i) may not require rental payments by the United States.

''(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

''(v) Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the installation, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

''(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

''(II) firefighting or security-guard functions.

''(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of subchapters II and III of chapter 5 of title 40, United States Code, if the Secretary determines that the transfer of such property is necessary for the effective implemen-

tation of a redevelopment plan with respect to the installation at which such property is located.

''(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(H)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

''(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

''(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

''(III) the terms of the modification do not compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

''(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under paragraph (7)(C), with the depreciated value of the investment made with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with [former] section 2906(d) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, 10 U.S.C. 2687 note].

''(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

''(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

''(I) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000 [Oct. 5, 1999], at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

''(J) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this title after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], or will accept transfer of any portion of such installation, are made not later than 6 months after such date of enactment.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

''(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this title as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

''(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

''(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 [Nov. 18, 1997] and ending on July 31, 2001.

''(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this title.

''(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this title, the Secretary shall—

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act [42 U.S.C. 11411(c)(1)(B)]; and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services—

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of building and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act [42 U.S.C. 11411] while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) Except as provided in subparagraph (B) or (C), all proceeds—

''(i) from any transfer under paragraphs (3) through (6); and

''(ii) from the transfer or disposal of any other property or facility made as a result of a closure or realignment under this title,

shall be deposited into the Account.

''(B) In any case in which the General Services Administration is involved in the management or disposal of such property or facility, the Secretary shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

''(C)(i) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this title, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in a reserve account established in the Treasury to be administered by the Secretary. Subject to the limitation in clause (iii), amounts in the reserve account are hereby made available to the Secretary, without appropriation and until expended, for the purpose of acquiring, constructing, and improving—

''(I) commissary stores; and

''(II) real property and facilities for nonappropriated fund instrumentalities.

''(ii) The amount deposited under clause (i) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

''(iii) The aggregate amount obligated from the reserve account established under clause (i) may not exceed the following:

''(I) In fiscal year 2004, $31,000,000.

''(II) In fiscal year 2005, $24,000,000.

''(III) In fiscal year 2006, $15,000,000.

''(iv) As used in this subparagraph:

''(I) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

''(II) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

''(III) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this title, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this title, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) APPLICABILITY OF OTHER LAW.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to—

''(A) the actions of the Commission, including selecting the military installations which the Commission recommends for closure or realignment under this title, recommending any military installation to receive functions from an installation to be closed or realigned, and making its report to the Secretary and the committees under section 203(b); and

''(B) the actions of the Secretary in establishing the Commission, in determining whether to accept the recommendations of the Commission, in selecting any military installation to receive functions from an installation to be closed or realigned, and in transmitting the report to the Committees referred to in section 202(a)(1).

''(2) The provisions of the National Environmental Policy Act of 1969 shall apply to the actions of the Secretary (A) during the process of the closing or realigning of a military installation after such military installation has been selected for closure or realignment but before the installation is closed or realigned and the functions relocated, and (B) during the process of the relocating of functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. In applying the provisions of such Act, the Secretary shall not have to consider—

''(i) the need for closing or realigning a military installation which has been selected for closure or realignment by the Commission;

''(ii) the need for transferring functions to another military installation which has been selected as the receiving installation; or

''(iii) alternative military installations to those selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), or with respect to any requirement of the Commission made by this title, of any action or failure to act by the Secretary during the closing, realigning, or relocating referred to in clauses (A) and (B) of paragraph (2), or of any action or failure to act by the Commission under this title, may not be brought later than the 60th day after the date of such action or failure to act.

''(d) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this title that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

''(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

''(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993].

''[(e) Repealed. Pub. L. 108–136, div. B, title XXVIII, § 2805(d)(1), Nov. 24, 2003, 117 Stat. 1721.]

''(f) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this title, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this title, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

''(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

''(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

''(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

''(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

''SEC. 205. WAIVER

''The Secretary may carry out this title without regard to—

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization Act; and

''(2) the procedures set forth in sections 2662 and 2687 of title 10, United States Code.

''SEC. 206. REPORTS

''(a) IN GENERAL.—As part of each annual budget request for the Department of Defense, the Secretary shall transmit to the appropriate committees of Congress—

''(1) a schedule of the closure and realignment actions to be carried out under this title in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

''(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

''(b) STUDY.—(1) The Secretary shall conduct a study of the military installations of the United States outside the United States to determine if efficiencies can be realized through closure or realignment of the overseas base structure of the United States. Not later than October 15, 1988, the Secretary shall transmit a report of the findings and conclusions of such study to the Commission and to the Committees on Armed Services of the Senate and the House of Representatives. In developing its recommendations to the Secretary under this title, the Commission shall consider the Secretary's study.

''(2) Upon request of the Commission, the Secretary shall provide the Commission with such information about overseas bases as may be helpful to the Commission in its deliberations.

''(3) The Commission, based on its analysis of military installations in the United States and its review of the Secretary's study of the overseas base structure, may provide the Secretary with such comments and suggestions as it considers appropriate regarding the Secretary's study of the overseas base structure.

''[SEC. 207. Repealed. Pub. L. 112–239, div. B, title XXVII, §2711(c)(1), Jan. 2, 2013, 126 Stat. 2143.]

''SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

''(a) TERMS OF THE RESOLUTION.—For purposes of section 202(b), the term 'joint resolution' means only a joint resolution which is introduced before March 15, 1989, and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Commission on Base Realignment and Closure established by the Secretary of Defense as submitted to the Secretary of Defense on ', the blank space being appropriately filled in; and

''(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Commission on Base Realignment and Closure.'.

''(b) REFERRAL.—A resolution described in subsection (a), introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

''(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) before March 15, 1989, such committee shall be, as of March 15, 1989, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which such Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

''(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

''(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of 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.

''SEC. 209. DEFINITIONS

''In this title:

''(1) The term 'Account' means the Department of Defense Base Closure Account established by section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'appropriate committees of Congress' means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives.

''(3) The terms 'Commission on Base Realignment and Closure' and 'Commission' mean the Commission established by the Secretary of Defense in the charter signed by the Secretary on May 3, 1988, and as altered

thereafter with respect to the membership and voting.

''(4) The term 'charter establishing such Commission' means the charter referred to in paragraph (3).

''(5) The term 'initiate' includes any action reducing functions or civilian personnel positions but does not include studies, planning, or similar activities carried out before there is a reduction of such functions or positions.

''(6) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Secretary of a military department.

''(7) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions.

''(8) The term 'Secretary' means the Secretary of Defense.

''(9) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

''(10) The term 'redevelopment authority', in the case of an installation to be closed under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

''(11) The term 'redevelopment plan' in the case of an installation to be closed under this title, means a plan that—

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse or redevelopment as a result of the closure of the installation.''

[For effective date of amendments by section 2711(c)(1), (3)(B) of Pub. L. 112–239 to sections 204, 207, and 209 of Pub. L. 100–526, set out above, see section 2711(d) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2701 of this title.]

[For effective date of amendment by section 2813(d)(1) of Pub. L. 103–337 to section 209 of Pub. L. 100–526, set out above, see Effective Date of Amendment by Section 2813(d)(1) and (2) of Pub. L. 103–337 note set out above.]

[For effective date of amendment by section 344(a) of Pub. L. 102–190 to sections 204 and 209 of Pub. L. 100–526, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

[Pub. L. 101–510, div. B, title XXIX, § 2923(b)(2), Nov. 5, 1990, 104 Stat. 1821, provided that: ''The amendment made by paragraph (1) [amending section 207 of Pub. L. 100–526 set out above] does not apply with respect to the availability of funds appropriated before the date of the enactment of this Act [Nov. 5, 1990].'']

§ 2687a. Overseas base closures and realignments and basing master plans

(a) ANNUAL REPORT ON STATUS OF OVERSEAS CLOSURES AND REALIGNMENTS AND MASTER PLANS.—(1) At the same time that the budget is submitted under section 1105(a) of title 31 for a fiscal year, the Secretary of Defense shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on—

(A) the status of overseas base closure and realignment actions undertaken as part of a global defense posture realignment strategy; and

(B) the status of development and execution of comprehensive master plans for overseas military main operating bases, forward operating sites, and cooperative security locations.

(2) A report under paragraph (1) shall address the following:

(A) How the master plans described in paragraph (1)(B) would support the security commitments undertaken by the United States pursuant to any international security treaty.

(B) The impact of such plans on the current security environments in the combatant commands, including United States participation in theater security cooperation activities and bilateral partnership, exchanges, and training exercises.

(C) Any comments of the Secretary of Defense resulting from an interagency review of these plans that includes the Department of State and other Federal departments and agencies that the Secretary of Defense considers necessary for national security.

(b) DEPARTMENT OF DEFENSE OVERSEAS MILITARY FACILITY INVESTMENT RECOVERY ACCOUNT.—(1) Except as provided in subsection (c), amounts paid to the United States, pursuant to any treaty, status of forces agreement, or other international agreement to which the United States is a party, for the residual value of real property or improvements to real property used by civilian or military personnel of the Department of Defense shall be deposited into the Department of Defense Overseas Military Facility Investment Recovery Account.

(2) Money deposited in the Department of Defense Overseas Military Facility Investment Recovery Account shall be available to the Secretary of Defense for payment, as provided in appropriation Acts, of costs incurred by the Department of Defense in connection with—

(A) military construction, facility maintenance and repair, and environmental restoration at military installations in the United States; and

(B) military construction, facility maintenance and repair, and compliance with applicable environmental laws at military installations outside the United States at which the Secretary anticipates the United States will have an enduring presence.

(3) Funds in the Department of Defense Overseas Facility Investment Recovery Account shall remain available until expended.

(4) Not later than December 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report detailing all expenditures made from the Department of Defense Overseas Facility Investment Recovery Account during the preceding fiscal year.

(c) TREATMENT OF AMOUNTS CORRESPONDING TO THE VALUE OF PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—In the case of a payment referred to in subsection (b)(1) for the residual value of real property or improvements at an overseas military facility, the portion of the payment that is equal to the depreciated value of the investment made with nonappropriated funds shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Clo-

sure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note). The Secretary of Defense may use amounts in the account (in such an aggregate amount as is provided in advance by appropriation Acts) for the purpose of acquiring, constructing, or improving commissary stores and nonappropriated fund instrumentalities.

(d) OMB REVIEW OF PROPOSED OVERSEAS BASING SETTLEMENTS.—(1) The Secretary of Defense may not enter into an agreement of settlement with a host country regarding the release to the host country of improvements made by the United States to facilities at an installation located in the host country until 30 days after the date on which the Secretary submits the proposed settlement to the Director of the Office of Management and Budget. The prohibition set forth in the preceding sentence shall apply only to agreements of settlement for improvements having a value in excess of $10,000,000. The Director shall evaluate the overall equity of the proposed settlement. In evaluating the proposed settlement, the Director shall consider such factors as the extent of the United States capital investment in the improvements being released to the host country, the depreciation of the improvements, the condition of the improvements, and any applicable requirements for environmental remediation or restoration at the installation.

(2) 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 each proposed agreement of settlement that was not submitted by the Secretary to the Director of the Office of Management and Budget in the previous year under paragraph (1) because the fair market value of the improvements to be released pursuant to the proposed agreement did not exceed $10,000,000.

(e) CONGRESSIONAL OVERSIGHT OF USE OF PAYMENTS-IN-KIND FOR CONSTRUCTION OR OPERATIONS.—(1) Before concluding an agreement for acceptance of military construction or facility improvements as a payment-in-kind, the Secretary of Defense shall submit to the congressional defense committees a notification on the proposed agreement. Any such notification shall contain the following:

(A) A description of the military construction project or facility improvement project.

(B) An explanation of the military requirement to be satisfied with the project.

(C) A certification that the project is included in the current future-years defense program.

(2) Before concluding an agreement for acceptance of host nation support or host nation payment of operating costs of United States forces as a payment-in-kind, the Secretary of Defense shall submit to the congressional defense committees a notification on the proposed agreement. Any such notification shall contain the following:

(A) A description of each activity to be covered by the payment-in-kind.

(B) A certification that the costs to be covered by the payment-in-kind are included in the budget of one or more of the military departments or that it will otherwise be necessary to provide for payment of such costs in a budget of one or more of the military departments in the current or the next fiscal year.

(3) When the Secretary of Defense submits a notification of a proposed agreement under paragraph (1) or (2), the Secretary may then enter into the agreement described in the notification only after the end of the 30-day period beginning on the date on which the notification is submitted or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(f) AUTHORIZED USE OF PAYMENTS-IN-KIND.—(1) A military construction project, as defined in chapter 159 of this title, may be accepted as a payment-in-kind contribution pursuant to a bilateral agreement with a host country only if that military construction project is authorized by law.

(2) Operations of United States forces may be funded through a payment-in-kind contribution under this section only if the costs covered by such payment are included in the budget justification documents for the Department of Defense submitted to Congress in connection with the budget submitted under 1105[1] of title 31.

(3) If funds previously appropriated for a military construction project, facility improvement, or operating costs are subsequently addressed in an agreement for a payment-in-kind contribution, the Secretary of Defense shall return to the Treasury funds in the amount equal to the value of the appropriated funds.

(4) This subsection does not apply to a military construction project that—

(A) was specified in a bilateral agreement with a host country that was entered into prior to the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014;

(B) was accepted as payment-in-kind for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101–510; 10 U.S.C. 2687 note) prior to the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014; or

(C) subject to paragraph (5), will cost less than the cost specified in subsection (a)(2) of section 2805 of this title for certain unspecified minor military construction projects.

(5) In the case of a military construction project excluded pursuant to paragraph (4)(C) whose cost will exceed the cost specified in subsection (b) of section 2805 of this title for certain unspecified minor military construction projects, the congressional notification requirements and waiting period specified in paragraph (2) of such subsection shall apply.

(g) DEFINITIONS.—In this section:

(1) The term ''fair market value of the improvements'' means the value of improvements determined by the Secretary of Defense on the basis of their highest use.

(2) The term ''improvements'' includes new construction of facilities and all additions, im-

[1] So in original. Probably should be preceded by ''section''.

provements, modifications, or renovations made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

(3) The term ''nonappropriated funds'' means funds received from—

(A) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of this title; or

(B) a nonappropriated fund instrumentality.

(4) The term ''nonappropriated fund instrumentality'' means an instrumentality of the United States under the jurisdiction of the armed forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

(Added Pub. L. 111–84, div. B, title XXVIII, § 2822(a)(1), Oct. 28, 2009, 123 Stat. 2665; amended Pub. L. 111–383, div. A, title X, § 1075(b)(44), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–239, div. A, title X, § 1076(f)(34), Jan. 2, 2013, 126 Stat. 1954; Pub. L. 113–66, div. B, title XXVIII, § 2807(a), Dec. 26, 2013, 127 Stat. 1008; Pub. L. 113–291, div. B, title XXVIII, § 2803(a), Dec. 19, 2014, 128 Stat. 3696; Pub. L. 114–92, div. A, title X, § 1081(a)(11), (b)(7), Nov. 25, 2015, 129 Stat. 1001, 1002.)

AMENDMENT OF SUBSECTION (f)

Pub. L. 113–291, div. B, title XXVIII, § 2803(a), (d), Dec. 19, 2014, 128 Stat. 3696, 3697, as amended by Pub. L. 114–92, div. A, title X, § 1081(b)(7), Nov. 25, 2015, 129 Stat. 1002, provided that, effective on the later of Sept. 30, 2016, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2017, subsection (f) of this section is amended to read as follows:

(f) Authorized Use of Payments-In-Kind and In-Kind Contributions.—(1) A military construction project, as defined in chapter 159 of this title, may be accepted as payment-in-kind or as an in-kind contribution required by a bilateral agreement with a host country only if that military construction project is authorized by law.

(2) Operations of United States forces may be funded through payment-in-kind or an in-kind contribution required by a bilateral agreement with a host country under this section only if the costs covered by such payment or contribution are included in the budget justification documents for the Department of Defense submitted to Congress in connection with the budget submitted under section 1105 of title 31.

(3) If funds previously appropriated for a military construction project or operating costs are subsequently addressed in an agreement for payment-in-kind or by an in-kind contribution required by a bilateral agreement with a host country, the Secretary of Defense shall return to the Treasury funds in the amount equal to the value of the appropriated funds.

(4) This subsection does not apply to a military construction project that—

(A) was specified in a bilateral agreement with a host country that was entered into before December 26, 2013;

(B) was the subject of negotiation between the United States and a host country as of the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2015;

(C) was accepted as payment-in-kind for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101–510; 10 U.S.C. 2687 note) before December 26, 2013; or

(D) subject to paragraph (6), will cost less than the cost specified in subsection (a)(2) of section 2805 of this title for certain unspecified minor military construction projects.

(5) This subsection does not apply to an in-kind contribution toward operating costs that—

(A) was specified in a bilateral agreement with a host country that was entered into before December 26, 2013;

(B) was the subject of negotiation between the United States and a host country as of the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2015; or

(C) was accepted as an in-kind contribution for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101–510; 10 U.S.C. 2687 note) before December 26, 2013.

(6) In the case of a military construction project excluded pursuant to paragraph (4)(D) whose cost will exceed the cost specified in subsection (b) of section 2805 of this title for certain unspecified minor military construction projects, the congressional notification requirements and waiting period specified in paragraph (2) of such subsection shall apply.

See 2014 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014, referred to in subsec. (f)(4)(A) and (B), is the date of enactment of div. B of Pub. L. 113–66, which was approved Dec. 26, 2013.

AMENDMENTS

2015—Subsec. (d)(2). Pub. L. 114–92, § 1081(a)(11), inserted ''fair market'' before ''value''.

Subsec. (f). Pub. L. 114–92, § 1081(b)(7), amended Pub. L. 113–291, § 2803(a). See 2014 Amendment note below.

2014—Subsec. (f). Pub. L. 113–291, § 2803(a), as amended by Pub. L. 114–92, § 1081(b)(7), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to authorized use of payments-in-kind.

2013—Pub. L. 113–66, § 2807(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) and (b) which related to an annual status report of overseas base closures, realignments, and basing master plans and required elements of the report, respectively.

Subsec. (a). Pub. L. 112–239, § 1076(f)(34)(A), substituted ''Foreign Relations'' for ''Foreign relations''.

Subsec. (b)(1). Pub. L. 112–239, § 1076(f)(34)(B), struck out comma after ''including'' and substituted ''the Treaty'' for ''The Treaty''.

2011—Subsec. (a). Pub. L. 111–383 substituted ''31 for'' for ''31for'' in introductory provisions.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title X, § 1081(b), Nov. 25, 2015, 129 Stat. 1001, provided in part that the amendment

made by section 1081(b)(7) is effective as of Dec. 19, 2014, and as if included in Pub. L. 113–291 as enacted.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. B, title XXVIII, § 2803(d), Dec. 19, 2014, 128 Stat. 3697, provided that: ''The amendments made by this section [amending this section and section 2802 of this title] shall take effect on the later of—

''(1) September 30, 2016; or

''(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2017.''

§ 2688. Utility systems: conveyance authority

(a) CONVEYANCE AUTHORITY.—The Secretary of a military department may convey a utility system, or part of a utility system, under the jurisdiction of the Secretary to a municipal, private, regional, district, or cooperative utility company or other entity. The conveyance may consist of all right, title, and interest of the United States in the utility system or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(b) SELECTION OF CONVEYEE.—(1) If more than one utility or entity referred to in subsection (a) notifies the Secretary concerned of an interest in a conveyance under such subsection, the Secretary shall carry out the conveyance through the use of competitive procedures.

(2) Notwithstanding paragraph (1), the Secretary concerned may use procedures other than competitive procedures, but only in accordance with subsections (c) through (f) of section 2304 of this title, to select the conveyee of a utility system (or part of a utility system) under subsection (a).

(3) With respect to the solicitation process used in connection with the conveyance of a utility system (or part of a utility system) under subsection (a), the Secretary concerned shall ensure that the process is conducted in a manner consistent with the laws and regulations of the State in which the utility system is located to the extent necessary to ensure that all interested regulated and unregulated utility companies and other interested entities receive an opportunity to acquire and operate the utility system to be conveyed.

(c) CONSIDERATION.—(1) The Secretary concerned may require as consideration for a conveyance under subsection (a) an amount equal to the fair market value (as determined by the Secretary) of the right, title, or interest of the United States conveyed. The consideration may take the form of—

(A) a lump sum payment; or

(B) a reduction in charges for utility services provided by the utility or entity concerned to the military installation at which the utility system is located.

(2) If the utility services proposed to be provided as consideration under paragraph (1) are subject to regulation by a Federal or State agency, any reduction in the rate charged for the utility services shall be subject to establishment or approval by that agency.

(d) CONTRACTS FOR UTILITY SERVICES.—(1) Except as provided in paragraph (2), a contract for the receipt of utility services as consideration under subsection (c), or any other contract for utility services entered into by the Secretary concerned in connection with the conveyance of a utility system under this section, may be for a period not to exceed 10 years.

(2) The Secretary of Defense, or the designee of the Secretary, may authorize a contract for utility services described in paragraph (1) to have a term in excess of 10 years, but not to exceed 50 years, if the Secretary determines that a contract for a longer term will be cost effective. The determination of cost effectiveness shall be made using a business case analysis that includes an independent estimate of the level of investment that should be required to maintain adequate operation of the utility system over the proposed term of the contract.

(e) TREATMENT OF PAYMENTS.—(1) A lump sum payment received under subsection (c) shall be credited, at the election of the Secretary concerned—

(A) to an appropriation of the military department concerned available for the procurement of the same utility services as are provided by the utility system conveyed under this section;

(B) to an appropriation of the military department available for carrying out energy savings projects or water conservation projects; or

(C) to an appropriation of the military department available for improvements to other utility systems.

(2) Amounts so credited shall be merged with funds in the appropriation to which credited and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriation with which merged.

[(f) Repealed. Pub. L. 112–81, div. A, title X, § 1061(21)(C), Dec. 31, 2011, 125 Stat. 1584.]

(g) ADDITIONAL TERMS AND CONDITIONS.—(1) The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(2) The Secretary concerned shall require in any contract for the conveyance of a utility system (or part of a utility system) under subsection (a) that the conveyee manage and operate the utility system in a manner consistent with applicable Federal and State regulations pertaining to health, safety, fire, and environmental requirements.

(h) ASSISTANCE FOR CONSTRUCTION, REPAIR, OR REPLACEMENT OF UTILITY SYSTEMS.—In lieu of carrying out a military construction project to construct, repair, or replace a utility system, the Secretary concerned may use funds authorized and appropriated for the project to facilitate the conveyance of the utility system under this section by making a contribution toward the cost of construction, repair, or replacement of the utility system by the entity to which the utility system is being conveyed.

(i) UTILITY SYSTEM DEFINED.—(1) In this section, the term ''utility system'' means any of the following:

(A) A system for the generation and supply of electric power.

(B) A system for the treatment or supply of water.

(C) A system for the collection or treatment of wastewater.

(D) A system for the generation or supply of steam, hot water, and chilled water.

(E) A system for the supply of natural gas.

(F) A system for the transmission of telecommunications.

(2) The term ''utility system'' includes the following:

(A) Equipment, fixtures, structures, and other improvements utilized in connection with a system referred to in paragraph (1).

(B) Real property, easements, and rights-of-way associated with a system referred to in that paragraph.

(j) CONVEYANCE OF ADDITIONAL UTILITY INFRASTRUCTURE AFTER CONVEYANCE OF A UTILITY SYSTEM.—(1) Upon conveyance of a utility system, the Secretary of a military department may convey additional utility infrastructure under the jurisdiction of the Secretary on a military installation to a utility or entity to which a utility system for the installation has been conveyed under subsection (a) if the Secretary determines that—

(A) the additional utility infrastructure cannot operate without being a part of the conveyed utility system or operation of the additional utility infrastructure by the utility or entity would be in the best interest of the Government; and

(B) the military department receives as consideration an amount for the utility infrastructure determined in the same manner as the consideration the Secretary could require under subsection (c) for a conveyance under subsection (a).

(2) The conveyance under this paragraph may consist of all right, title, and interest of the United States or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(k) LIMITATION.—This section shall not apply to projects constructed or operated by the Army Corps of Engineers under its civil works authorities.

(Added Pub. L. 105–85, div. B, title XXVIII, § 2812(a), Nov. 18, 1997, 111 Stat. 1992; amended Pub. L. 106–65, div. A, title X, § 1067(1), div. B, title XXVIII, § 2812, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(15), div. B, title XXVIII, § 2813], Oct. 30, 2000, 114 Stat. 1654, 1654A–291, 1654A–418; Pub. L. 108–136, div. A, title X, § 1031(a)(32), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109–163, div. B, title XXVIII, § 2823(a)–(d), Jan. 6, 2006, 119 Stat. 3514–3516; Pub. L. 110–417, div. B, title XXVIII, § 2813, Oct. 14, 2008, 122 Stat. 4728; Pub. L. 111–84, div. B, title XXVIII, § 2821, Oct. 28, 2009, 123 Stat. 2664; Pub. L. 112–81, div. A, title X, § 1061(21), Dec. 31, 2011, 125 Stat. 1584; Pub. L. 113–66, div. B, title XXVIII, § 2813, Dec. 26, 2013, 127 Stat. 1014; Pub. L. 114–92, div. B, title XXVIII, § 2813, Nov. 25, 2015, 129 Stat. 1175.)

PRIOR PROVISIONS

A prior section 2688, added Pub. L. 96–125, title VIII, § 804(a)(1), Nov. 26, 1979, 93 Stat. 948; amended Pub. L. 96–418, title VIII, § 804, Oct. 10, 1980, 94 Stat. 1777; Pub. L. 97–22, § 11(a)(9), July 10, 1981, 95 Stat. 138; Pub. L. 97–99, title IX, § 901, Dec. 23, 1981, 95 Stat. 1381, related to use of solar energy systems in new facilities, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2915 of this title.

AMENDMENTS

2015—Subsec. (j). Pub. L. 114–92, § 2813(1), substituted ''Conveyance of Additional'' for ''Construction of'' in heading.

Subsec. (j)(1). Pub. L. 114–92, § 2813(2), redesignated subpar. (B) as (A) and substituted ''utility system or operation of the additional utility infrastructure by the utility or entity would be in the best interest of the Government; and'' for ''utility system;'', redesignated subpar. (D) as (B) and substituted ''amount for'' for ''amount equal to the fair market value of'', and struck out former subpars. (A) and (C) which read as follows:

''(A) the additional utility infrastructure was constructed or installed after the date of the conveyance of the utility system;

''(C) the additional utility infrastructure was planned and coordinated with the entity operating the conveyed utility system; and''.

2013—Subsec. (d)(2). Pub. L. 113–66 inserted at end ''The determination of cost effectiveness shall be made using a business case analysis that includes an independent estimate of the level of investment that should be required to maintain adequate operation of the utility system over the proposed term of the contract.''

2011—Subsec. (a). Pub. L. 112–81, § 1061(21)(A), struck out par. (1) designation before ''The Secretary of a military department'' and struck out pars. (2) and (3) which related to conditions for entry into a contract to convey all or part of a utility system and conditions under which the Secretary concerned could not reconsider conversion to contractor operation under section 2461 of this title for a five-year period, respectively.

Subsec. (d)(2). Pub. L. 112–81, § 1061(21)(B), struck out at end ''The economic analysis submitted to the congressional defense committees under subsection (a)(2) for the conveyance of the utility system, or part thereof, with regard to which the utility services contract will be entered into by the Secretary concerned shall include the determination required by this paragraph, an explanation of the need for the longer term contract, and a comparison of costs between a 10-year contract and the longer-term contract.''

Subsec. (f). Pub. L. 112–81, § 1061(21)(C), struck out subsec. (f). Prior to amendment, text read as follows: ''Not later than 30 days after the end of each quarter of a fiscal year, the Secretary shall submit to the congressional defense committees a report on the conveyances made under subsection (a) during such fiscal quarter.''

Subsec. (h). Pub. L. 112–81, § 1061(21)(D), struck out at end ''The Secretary concerned shall consider any such contribution in the economic analysis required under subsection (a)(2).''

2009—Subsec. (a)(2)(A)(ii). Pub. L. 111–84, § 2821(a), substituted ''system by 10 percent of the long-term cost for provision of those utility services in the agency tender; and'' for ''system; and''.

Subsec. (a)(3). Pub. L. 111–84, § 2821(b), added par. (3).

2008—Subsecs. (j), (k). Pub. L. 110–417 added subsec. (j) and redesignated former subsec. (j) as (k).

2006—Subsec. (a). Pub. L. 109–163, § 2823(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 109–163, § 2823(b), substituted ''may require'' for ''shall require'' in introductory provisions.

Subsec. (c)(3). Pub. L. 109–163, § 2823(c)(2), redesignated subsec. (c)(3) as (d).

Subsec. (d). Pub. L. 109–163, § 2823(c)(2), redesignated subsec. (c)(3) as (d), substituted ''CONTRACTS FOR UTILITY SERVICES.—(1) Except as provided in paragraph (2), a contract'' for ''A contract'', ''subsection (c)'' for ''paragraph (1)'', and ''10 years'' for ''50 years'', and added par. (2). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 109–163, §2823(c)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109–163, §2823(d)(1), struck out at end ''The report shall include, for each such conveyance, an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that—

''(1) the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States; and

''(2) the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned.''

Pub. L. 109–163, §2823(c)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 109–163, §2823(c)(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109–163, §2823(d)(2), substituted ''subsection (a)(2)'' for ''subsection (e)''.

Pub. L. 109–163, §2823(c)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 109–163, §2823(c)(1), redesignated subsecs. (h) and (i) as (i) and (j), respectively.

2003—Subsec. (e). Pub. L. 108–136 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Secretary concerned may not make a conveyance under subsection (a) until—

''(1) the Secretary submits 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 an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that—

''(A) the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States; and

''(B) the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned; and

''(2) a period of 21 days has elapsed after the date on which the economic analysis is received by the committees.''

2000—Subsec. (b). Pub. L. 106–398, §1 [div. B, title XXVIII, §2813(a)], designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 106–398, §1 [div. B, title XXVIII, §2813(b)], designated existing provisions as par. (1) and added par. (2).

Subsecs. (h) to (j). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(15)], redesignated subsecs. (i) and (j) as (h) and (i), respectively.

1999—Subsec. (c)(3). Pub. L. 106–65, §2812(a), added par. (3).

Subsec. (e)(1). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

Subsec. (g). Pub. L. 106–65, §2812(c)(2), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (g)(2)(B). Pub. L. 106–65, §2812(b), substituted ''Real property, easements,'' for ''Easements''.

Subsecs. (h) to (j). Pub. L. 106–65, §2812(c)(1), redesignated subsecs. (g) and (h) as (i) and (j), respectively.

[§ 2689. Renumbered § 2917]

[§ 2690. Renumbered § 2918]

§ 2691. Restoration of land used by permit or lease

(a) The Secretary of the military department concerned may remove improvements and take any other action necessary in the judgment of the Secretary to restore land used by that military department by permit or lease from another military department or Federal agency if the restoration is required by the permit or lease making that land available to the military department. The Secretary concerned may carry out this section using funds available for operations and maintenance or for military construction.

(b) Unless otherwise prohibited by law or the terms of the permit or lease, before restoration of any land under subsection (a) is begun, the Secretary concerned shall determine, under the provisions of subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, whether another military department or Federal agency has a use for the land in its existing, improved state. During the period required to make such a determination, the Secretary may provide for maintenance and repair of improvements on the land to the standards established for excess property by the Administrator of General Services.

(c)(1) As a condition of any lease, permit, license, or other grant of access entered into by the Secretary of a military department with another Federal agency authorizing the agency to use lands under the control of the Secretary, the Secretary may require the agency to agree to remove any improvements and to take any other action necessary in the judgment of the Secretary to restore the land used by the agency to its condition before its use by the agency.

(2) In lieu of performing any removal or restoration work under paragraph (1), a Federal agency may elect, with the consent of the Secretary, to reimburse the Secretary for the costs incurred by the military department in performing such removal or restoration work.

(Added Pub. L. 98–407, title VIII, §804(a), Aug. 28, 1984, 98 Stat. 1519; amended Pub. L. 99–145, title XIII, §1303(a)(17), Nov. 8, 1985, 99 Stat. 739; Pub. L. 105–261, div. B, title XXVIII, §2812(a), (b)(1), Oct. 17, 1998, 112 Stat. 2205; Pub. L. 107–217, §3(b)(15), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 111–350, §5(b)(46), Jan. 4, 2011, 124 Stat. 3846.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350 substituted ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)''.

2002—Subsec. (b). Pub. L. 107–217 inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

1998—Pub. L. 105–261, §2812(b)(1), struck out ''from other agencies'' after ''lease'' in section catchline.

Subsec. (c). Pub. L. 105–261, §2812(a), added subsec. (c).

1985—Pub. L. 99–145 substituted ''used by'' for ''used of'' in section catchline.

§ 2692. Storage, treatment, and disposal of nondefense toxic and hazardous materials

(a)(1) Except as otherwise provided in this section, the Secretary of Defense may not permit the use of an installation of the Department of Defense for the storage, treatment, or disposal of any material that is a toxic or hazardous material and that is not owned either by the Department of Defense or by a member of the

armed forces (or a dependent of the member) assigned to or provided military housing on the installation.

(2) The Secretary of Defense shall define by regulation what materials are hazardous or toxic materials for the purposes of this section, including specification of the quantity of a material that serves to make it hazardous or toxic for the purposes of this section. The definition shall include materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of that Act (42 U.S.C. 9602) and shall include materials that are of an explosive, flammable, or pyrotechnic nature.

(b) Subsection (a) does not apply to the following:

(1) The storage, treatment, or disposal of materials that will be or have been used in connection with an activity of the Department of Defense or in connection with a service to be performed on an installation of the Department for the benefit of the Department.

(2) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services.

(3) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal, State, or local agency concerned.

(4) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

(5) The disposal of excess explosives produced under a Department of Defense contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements.

(6) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy.

(7) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable Department of Defense regulations.

(8) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

(9) The storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of the Department of Defense, including the use of such a facility for testing material or training personnel.

(10) The treatment and disposal of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of that military department and the Secretary enters into a contract or agreement with the prospective user that—

(A) is consistent with the best interest of national defense and environmental security; and

(B) provides for the prospective user's continued financial and environmental responsibility and liability with regard to the material.

(11) The storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the use of a space launch facility located on an installation of the Department of Defense or on other land controlled by the United States.

(c) The Secretary of Defense may grant exceptions to subsection (a) when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

(d)(1) The Secretary may assess a charge for any storage or disposal provided under this section. Any such charge shall be on a reimbursable cost basis.

(2) In the case of storage under this section authorized because of an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no longer exists. In all other cases of storage or disposal authorized under this section, the storage or disposal authorized shall be terminated as determined by the Secretary.

(Added Pub. L. 98–407, title VIII, § 805(a), Aug. 28, 1984, 98 Stat. 1520; amended Pub. L. 102–484, div. B, title XXVIII, § 2852, Oct. 23, 1992, 106 Stat. 2625; Pub. L. 103–337, div. A, title III, § 325, Oct. 5, 1994, 108 Stat. 2711; Pub. L. 105–85, div. A, title III, § 343(a)–(g)(2), Nov. 18, 1997, 111 Stat. 1686, 1687; Pub. L. 106–65, div. A, title X, § 1066(a)(25), Oct. 5, 1999, 113 Stat. 772; Pub. L. 109–364, div. A, title X, § 1071(a)(21), Oct. 17, 2006, 120 Stat. 2399.)

AMENDMENTS

2006—Subsec. (b)(9). Pub. L. 109–364 substituted ''testing material'' for ''testing materiel''.

1999—Subsec. (b). Pub. L. 106–65 substituted ''apply to the following:'' for ''apply to—'' in introductory provisions, ''The'' for ''the'' at the beginning of each of pars. (1) to (11), a period for the semicolon at the end of each of pars. (1) to (9), and a period for ''; and'' at the end of par. (10).

1997—Pub. L. 105–85, § 343(g)(2), substituted ''Storage, treatment, and'' for ''Storage and'' in section catchline.

Subsec. (a)(1). Pub. L. 105–85, § 343(g)(1), substituted ''storage, treatment, or disposal'' for ''storage or disposal''.

Pub. L. 105–85, § 343(a), substituted ''either by the Department of Defense or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation'' for ''by the Department of Defense''.

Subsec. (b)(1), (2). Pub. L. 105–85, §343(b), added par. (1) and redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 105–85, §343(b)(1), (c), redesignated par. (2) as (3) and substituted ''Federal, State, or local law enforcement'' for ''Federal law enforcement'' and ''Federal, State, or local agency'' for ''Federal agency''. Former par. (3) redesignated (4).

Subsec. (b)(4) to (8). Pub. L. 105–85, §343(b)(1), redesignated pars. (3) to (7) as (4) to (8), respectively. Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 105–85, §343(b)(1), (d), redesignated par. (8) as (9) and substituted ''in connection with the authorized and compatible use of a'' for ''by a private person in connection with the authorized and compatible use by that person of an industrial-type'' and '', including the use of such a facility for testing materiel or training personnel;'' for ''; and''. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 105–85, §343(b)(1), (e), redesignated par. (9) as (10) and substituted ''in connection with the authorized and compatible use of a'' for ''by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type'', ''or agreement with the prospective user'' for ''with that person'', ''for the prospective user's'' for ''for that person's'', and ''; and'' for period at end.

Subsec. (b)(11). Pub. L. 105–85, §343(f), added par. (11).

1994—Subsec. (b)(9). Pub. L. 103–337 added par. (9).

1992—Subsec. (b)(8). Pub. L. 102–484 added par. (8).

SAVINGS PROVISION

Pub. L. 105–85, div. A, title III, §343(h), Nov. 18, 1997, 111 Stat. 1688, provided that: ''Nothing in the amendments made by this section [amending this section] is intended to modify environmental laws or laws relating to the siting of facilities.''

[§ 2693. Repealed. Pub. L. 109–364, div. B, title XXVIII, § 2825(c)(2), Oct. 17, 2006, 120 Stat. 2477]

Section, added Pub. L. 101–647, title XVIII, §1802(a), Nov. 29, 1990, 104 Stat. 4849; amended Pub. L. 107–107, div. A, title X, §1048(a)(26)(A), (B)(i), Dec. 28, 2001, 115 Stat. 1224, 1225; Pub. L. 109–364, div. B, title XXVIII, §2825(b), Oct. 17, 2006, 120 Stat. 2476, related to conveyance of real property or facility for utilization under the correctional options program. See section 2696(f) of this title.

A prior section 2693 was renumbered section 2465 of this title.

§ 2694. Conservation and cultural activities

(a) ESTABLISHMENT.—The Secretary of Defense may establish and carry out a program to conduct and manage in a coordinated manner the conservation and cultural activities described in subsection (b).

(b) ACTIVITIES.—(1) A conservation or cultural activity eligible for the program that the Secretary establishes under subsection (a) is any activity—

(A) that has regional or Department of Defense-wide significance and that involves more than one military department;

(B) that is necessary to meet legal requirements or to support military operations;

(C) that can be more effectively managed at the Department of Defense level; and

(D) for which no executive agency has been designated responsible by the Secretary.

(2) Such activities include the following:

(A) The development of ecosystem-wide land management plans.

(B) The conduct of wildlife studies to ensure the safety and sustainability of military operations.

(C) The identification and return of Native American human remains and cultural items in the possession or control of the Department of Defense, or discovered on land under the jurisdiction of the Department, to the appropriate Native American tribes.

(D) The control of invasive species that may hinder military activities or degrade military training ranges.

(E) The establishment of a regional curation system for artifacts found on military installations.

(F) The implementation of ecosystem-wide land management plans—

(i) for a single ecosystem that encompasses at least two non-contiguous military installations, if those military installations are not all under the administrative jurisdiction of the same Secretary of a military department; and

(ii) providing synergistic benefits unavailable if the installations acted separately.

(c) COOPERATIVE AGREEMENTS.—The Secretary may negotiate and enter into cooperative agreements with public and private agencies, organizations, institutions, individuals, or other entities to carry out the program established under subsection (a).

(d) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed or interpreted as preempting any otherwise applicable Federal, State, or local law or regulation relating to the management of natural and cultural resources on military installations.

(Added Pub. L. 104–201, div. A, title III, §332(a)(1), Sept. 23, 1996, 110 Stat. 2484; amended Pub. L. 105–85, div. A, title X, §1073(a)(59), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 112–81, div. B, title XXVIII, §2814, Dec. 31, 2011, 125 Stat. 1688.)

AMENDMENTS

2011—Subsec. (b)(2)(B). Pub. L. 112–81, §2814(1), inserted ''and sustainability'' after ''safety''.

Subsec. (b)(2)(F). Pub. L. 112–81, §2814(2), added subpar. (F).

1997—Subsec. (b)(1)(D). Pub. L. 105–85 substituted ''executive agency'' for ''executive ageny''.

EFFECTIVE DATE

Pub. L. 104–201, div. A, title III, §332(b), Sept. 23, 1996, 110 Stat. 2485, provided that: ''Section 2694 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1996.''

§ 2694a. Conveyance of surplus real property for natural resource conservation

(a) AUTHORITY TO CONVEY.—The Secretary of a military department may convey to an eligible entity described in subsection (b) any surplus real property that—

(1) is under the administrative control of the Secretary;

(2) is suitable and desirable for conservation purposes;

(3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and

(4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property

disposal processes and authorities under subtitle I of title 40.

(b) ELIGIBLE ENTITIES.—The conveyance of surplus real property under this section may be made to any of the following:

(1) A State or political subdivision of a State.

(2) A nonprofit organization that exists for the primary purpose of conservation of natural resources on real property.

(c) REVERSIONARY INTEREST AND OTHER DEED REQUIREMENTS.—(1) The deed of conveyance of any surplus real property conveyed under this section shall require the property to be used and maintained for the conservation of natural resources in perpetuity. If the Secretary concerned determines at any time that the property is not being used or maintained for such purpose, then, at the option of the Secretary, all or any portion of the property shall revert to the United States.

(2) The deed of conveyance may permit the recipient of the property—

(A) to convey the property to another eligible entity, subject to the approval of the Secretary concerned and subject to the same covenants and terms and conditions as provided in the deed from the United States; and

(B) to conduct incidental revenue-producing activities on the property that are compatible with the use of the property for conservation purposes.

(3) The deed of conveyance may contain such additional terms, reservations, restrictions, and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

(d) RELEASE OF COVENANTS.—With the concurrence of the Secretary of Interior, the Secretary concerned may grant a release from a covenant included in the deed of conveyance of real property conveyed under this section, subject to the condition that the recipient of the property pay the fair market value, as determined by the Secretary concerned, of the property at the time of the release of the covenant. The Secretary concerned may reduce the amount required to be paid under this subsection to account for the value of the natural resource conservation benefit that has accrued to the United States during the period the covenant was in effect, if the benefit was not taken into account in determining the original consideration for the conveyance.

(e) CONGRESSIONAL NOTIFICATION.—The Secretary concerned may not approve of the reconveyance of real property under subsection (c) or grant the release of a covenant under subsection (d) until the Secretary notifies the appropriate committees of Congress of the proposed reconveyance or release and a period of 21 days elapses from the date the notification is received by the committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(f) LIMITATIONS.—The conveyance of real property under this section shall not be used as a condition of allowing any defense activity under any Federal, State, or local permitting or review process. The Secretary concerned may make the conveyance, with the restrictions specified in subsection (c), to establish a mitigation bank, but only if the establishment of the mitigation bank does not occur in order to satisfy any condition for permitting military activity under a Federal, State, or local permitting or review process.

(g) CONSIDERATION.—In fixing the consideration for the conveyance of real property under this section, or in determining the amount of any reduction of the amount to be paid for the release of a covenant under subsection (d), the Secretary concerned shall take into consideration any benefit that has accrued or may accrue to the United States from the use of such property for the conservation of natural resources.

(h) RELATION TO OTHER CONVEYANCE AUTHORITIES.—(1) The Secretary concerned may not make a conveyance under this section of any real property to be disposed of under a base closure law in a manner that is inconsistent with the requirements and conditions of the base closure law.

(2) In the case of real property on Guam, the Secretary concerned may not make a conveyance under this section unless the Government of Guam has been first afforded the opportunity to acquire the real property as authorized by section 1 of Public Law 106–504 (114 Stat. 2309).

(i) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' has the meaning given such term in section 2801 of this title.

(2) The term ''Secretary concerned'' means the Secretary of a military department.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, the Virgin Islands, and American Samoa.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2812(a)(1), Dec. 2, 2002, 116 Stat. 2707; amended Pub. L. 109–163, div. A, title X, § 1056(a)(1), (b), Jan. 6, 2006, 119 Stat. 3438, 3439; Pub. L. 109–364, div. A, title X, § 1071(a)(22), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 111–383, div. B, title XXVIII, § 2803(a), Jan. 7, 2011, 124 Stat. 4458.)

REFERENCES IN TEXT

Section 1 of Public Law 106–504 (114 Stat. 2309), referred to in subsec. (h)(2), is set out as a note under section 521 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2011—Subsec. (e). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2006—Subsec. (c). Pub. L. 109–364 substituted ''Reversionary'' for ''Revisionary'' in heading.

Subsec. (i)(2) to (4). Pub. L. 109–163 struck out par. (2), which defined ''base closure law'', redesignated pars. (3) and (4) as (2) and (3), respectively, and, in par. (3), substituted ''Guam, the Virgin Islands, and American Samoa'' for ''and the territories and possessions of the United States''.

§ 2694b. Participation in wetland mitigation banks

(a) AUTHORITY TO PARTICIPATE.—The Secretary of a military department, and the Secretary of Defense with respect to matters concerning a Defense Agency, when engaged in an authorized activity that may or will result in the destruction of, or an adverse impact to, a wetland, may make payments to a wetland mitigation banking program or ''in-lieu-fee'' mitigation sponsor approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995) or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66913; November 7, 2000), or any successor administrative guidance or regulation.

(b) ALTERNATIVE TO CREATION OF WETLAND.—Participation in a wetland mitigation banking program or consolidated user site under subsection (a) shall be in lieu of mitigating wetland impacts through the creation of a wetland on Federal property.

(c) TREATMENT OF PAYMENTS.—Payments made under subsection (a) to a wetland mitigation banking program or consolidated user site may be treated as eligible project costs for military construction.

(Added Pub. L. 108–136, div. A, title III, § 314(a)(1), Nov. 24, 2003, 117 Stat. 1430.)

§ 2694c. Participation in conservation banking programs

(a) AUTHORITY TO PARTICIPATE.—Subject to the availability of appropriated funds, the Secretary concerned, when engaged or proposing to engage in an activity described in subsection (b) that may or will result in an adverse impact to one or more species protected (or pending protection) under any applicable provision of law, or habitat for such species, may make payments to a conservation banking program or ''in-lieu-fee'' mitigation sponsor approved in accordance with—

(1) the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995);

(2) the Guidance for the Establishment, Use, and Operation of Conservation Banks (68 Fed. Reg. 24753; May 2, 2003);

(3) the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66915; November 7, 2000); or

(4) any successor or related administrative guidance or regulation.

(b) COVERED ACTIVITIES.—Payments to a conservation banking program or ''in-lieu-fee'' mitigation sponsor under subsection (a) may be made only for the purpose of facilitating one or more of the following activities:

(1) Military testing, operations, training, or other military activity.

(2) Military construction.

(c) TREATMENT OF AMOUNTS FOR CONSERVATION BANKING.—Payments made under subsection (a) to a conservation banking program or ''in-lieu-fee'' mitigation sponsor for the purpose of facilitating military construction may be treated as eligible costs of the military construction project.

(d) SOURCE OF FUNDS.—Amounts available from any of the following shall be available for activities under this section:

(1) Operation and maintenance.

(2) Military construction.

(3) Research, development, test, and evaluation.

(4) The Support for United States Relocation to Guam Account established under section 2824 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4730; 10 U.S.C. 2687 note).

(e) SECRETARY CONCERNED DEFINED.—In this section, the term ''Secretary concerned'' means—

(1) the Secretary of a military department; and

(2) the Secretary of Defense with respect to a Defense Agency.

(Added Pub. L. 110–417, [div. A], title III, § 311(a), Oct. 14, 2008, 122 Stat. 4408; amended Pub. L. 111–84, div. A, title III, § 311, Oct. 28, 2009, 123 Stat. 2247; Pub. L. 111–383, div. A, title X, § 1075(b)(45), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Subsec. (d)(4). Pub. L. 111–383 inserted ''Authorization'' after ''Military Construction''.

2009—Subsec. (a). Pub. L. 111–84, § 311(1), struck out ''to carry out this section'' after ''appropriated funds'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 111–84, § 311(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Pub. L. 110–417, [div. A], title III, § 311(c), Oct. 14, 2008, 122 Stat. 4409, provided that: ''Section 2694c of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2008, and only funds appropriated for fiscal years beginning after September 30, 2008, may be used to carry out such section.''

§ 2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions

(a) AUTHORITY TO ACCEPT.—In connection with a real property transaction referred to in subsection (b) with a non-Federal person or entity, the Secretary of a military department may accept amounts provided by the person or entity to cover administrative expenses incurred by the Secretary in entering into the transaction.

(b) COVERED TRANSACTIONS.—Subsection (a) applies to the following transactions involving real property under the control of the Secretary of a military department:

(1) The exchange of real property.

(2) The grant of an easement over, in, or upon real property of the United States.

(3) The lease or license of real property of the United States.

(4) The disposal of real property of the United States for which the Secretary will be the disposal agent.

(5) The conveyance of real property under section 2694a of this title.

(c) USE OF AMOUNTS COLLECTED.—(1) Amounts collected by the Secretary of a military department under subsection (a) for administrative expenses shall be credited, at the option of the Secretary—

(A) to the appropriation, fund, or account from which the expenses were paid; or

(B) to an appropriate appropriation, fund, or account currently available to the Secretary for the purposes for which the expenses were paid.

(2) Amounts credited under paragraph (1) shall be merged with funds in such appropriation, fund, or account and shall be available for the same purposes and subject to the same limitations as the funds with which merged.

(Added Pub. L. 105–85, div. B, title XXVIII, § 2813(a), Nov. 18, 1997, 111 Stat. 1993; amended Pub. L. 106–65, div. B, title XXVIII, § 2813, Oct. 5, 1999, 113 Stat. 851; Pub. L. 107–314, div. B, title XXVIII, § 2812(b), Dec. 2, 2002, 116 Stat. 2709; Pub. L. 113–291, div. B, title XXVIII, § 2812(a), Dec. 19, 2014, 128 Stat. 3700.)

AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113–291, § 2812(a)(1), substituted ''(1) Amounts collected by the Secretary of a military department under subsection (a) for administrative expenses shall be credited, at the option of the Secretary—'' and subpars. (A) and (B) for ''Amounts collected under subsection (a) for administrative expenses shall be credited to the appropriation, fund, or account from which the expenses were paid.''

Subsec. (c)(2). Pub. L. 113–291, § 2812(a)(2), substituted ''(2) Amounts credited under paragraph (1)'' for ''Amounts so credited''.

2002—Subsec. (b)(5). Pub. L. 107–314 added par. (5).

1999—Subsec. (b). Pub. L. 106–65 inserted ''involving real property under the control of the Secretary of a military department'' after ''transactions'' in introductory provisions and added par. (4).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. B, title XXVIII, § 2812(b), Dec. 19, 2014, 128 Stat. 3700, provided that: ''The amendments made by subsection (a) [amending this section] shall not apply to administrative expenses related to a real property transaction referred to in section 2695(b) of title 10, United States Code, that were covered by the Secretary of a military department using amounts appropriated to the Secretary before the date of the enactment of this Act [Dec. 19, 2014].''

ADMINISTRATIVE COSTS OF LAND CONVEYANCES

Pub. L. 106–541, title II, § 226, Dec. 11, 2000, 114 Stat. 2598, provided that: ''Notwithstanding any other provision of law, the administrative costs associated with the conveyance of property by the Secretary to a non-Federal governmental or nonprofit entity shall be limited to the extent that the Secretary determines that such limitation is necessary to complete the conveyance based on the entity's ability to pay.''

§ 2696. Real property: transfer between armed forces and screening requirements for other Federal use

(a) TRANSFERS BETWEEN ARMED FORCES.—If either of the Secretaries concerned requests it and the other approves, real property may be transferred, without compensation, from one armed force to another. Section 2571(d) of this title shall apply to the transfer of real property under this subsection.

(b) SCREENING REQUIREMENTS FOR ADDITIONAL FEDERAL USE.—The Secretary concerned may not convey real property that is authorized or required to be conveyed, whether for or without consideration, by any provision of law enacted after December 31, 1997, unless the Administrator of General Services has screened the property for further Federal use in accordance with subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(c) TIME FOR SCREENING.—(1) Before the end of the 30-day period beginning on the date of the enactment of a provision of law authorizing or requiring the conveyance of a parcel of real property by the Secretary concerned, the Administrator of General Services shall complete the screening referred to in subsection (b) with regard to the real property and notify the Secretary concerned and Congress of the results of the screening. The notice shall include—

(A) the name of the Federal agency requesting transfer of the property;

(B) the proposed use to be made of the property by the Federal agency; and

(C) the fair market value of the property, including any improvements thereon, as estimated by the Administrator.

(2) If the Administrator fails to complete the screening and notify the Secretary concerned and Congress within such period, the Secretary concerned shall proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance.

(d) EFFECT OF SUBMISSION OF NOTICE.—If the Administrator of General Services submits notice under subsection (c)(1) that further Federal use of a parcel of real property is requested by a Federal agency, the Secretary concerned may not proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance until the end of the 180-day period beginning on the date on which the notice is submitted to Congress.

(e) EXCEPTED CONVEYANCE AUTHORITIES.—The screening requirements of subsection (b) shall not apply to real property authorized or required to be conveyed under any of the following provisions of law:

(1) A base closure law.

(2) Chapter 5 of title 40.

(3) Any specific provision of law authorizing or requiring the transfer of administrative jurisdiction over a parcel of real property between Federal agencies.

(f) SCREENING AND CONVEYANCE OF PROPERTY FOR CORRECTIONAL FACILITIES PURPOSES.—(1) Except as provided in paragraph (2), before any real property or facility of the United States that is under the jurisdiction of any department, agency, or instrumentality of the Department of Defense is determined to be excess to the needs of such department, agency, or instrumentality, the Secretary of Defense shall—

(A) provide adequate notification of the availability of such real property or facility within the Department of Defense;

(B) if the real property or facility remains available after such notification, notify the Attorney General of its availability; and

(C) if the Attorney General certifies to the Secretary of Defense that a determination has been made by the Director of the Bureau of Justice Assistance within the Department of Justice to utilize the real property or facility under the correctional options program carried out under section 515 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3762a), convey the real property or facility, without reimbursement, to a public agency referred to in paragraph (1) or (3) of subsection (a) of such section for such utilization.

(2) Paragraph (1) shall not apply—

(A) to real property and facilities to which title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) is applicable; and

(B) during any portion of a fiscal year after four conveyances have been made under paragraph (1) in such fiscal year.

(Added Pub. L. 105–85, div. B, title XXVIII, §2814(a)(1), Nov. 18, 1997, 111 Stat. 1994; amended Pub. L. 106–65, div. A, title X, §1066(a)(26), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107–217, §3(b)(16), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 108–136, div. A, title X, §§1031(a)(33), 1043(c)(4), Nov. 24, 2003, 117 Stat. 1600, 1612; Pub. L. 109–364, div. B, title XXVIII, §2825(a), (b)(5), (c)(3), (d)(2)(A), Oct. 17, 2006, 120 Stat. 2476, 2477; Pub. L. 111–350, §5(b)(47), Jan. 4, 2011, 124 Stat. 3846.)

REFERENCES IN TEXT

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (f)(2)(A), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623. Title II of the Act is set out as a note under section 2687 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of this title and Tables.

CODIFICATION

The text of section 2693 of this title, which was transferred to the end of this section and redesignated as subsec. (f), by Pub. L. 109–364, §2825(b)(5), was based on Pub. L. 101–647, title XVIII, §1802(a), Nov. 29, 1990, 104 Stat. 4849; amended Pub. L. 107–107, div. A, title X, §1048(a)(26)(A), (B)(i), Dec. 28, 2001, 115 Stat. 1224, 1225; Pub. L. 109–364, div. B, title XXVIII, §2825(b), Oct. 17, 2006, 120 Stat. 2476.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350, which directed substitution of ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' in subsec. (a), was executed by making the substitution in subsec. (b) to reflect the probable intent of Congress.

2006—Pub. L. 109–364, §2825(d)(2)(A), substituted ''Real property: transfer between armed forces and screening requirements for other Federal use'' for ''Screening of real property for further Federal use before conveyance'' in section catchline.

Subsec. (a). Pub. L. 109–364, §2825(a)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 109–364, §2825(c)(3)(A), substituted ''Requirements for Additional Federal Use'' for ''Requirement'' in heading.

Pub. L. 109–364, §2825(a)(1), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 109–364, §2825(a)(1), redesignated subsec. (b) as (c).

Subsec. (c)(1). Pub. L. 109–364, §2825(c)(3)(B), substituted ''subsection (b)'' for ''subsection (a)'' in introductory provisions.

Subsec. (d). Pub. L. 109–364, §2825(c)(3)(C), substituted ''subsection (c)(1)'' for ''subsection (b)(1)''.

Subsec. (e). Pub. L. 109–364, §2825(c)(3)(D), substituted ''subsection (b)'' for ''this section'' in introductory provisions.

Subsec. (f). Pub. L. 109–364, §2825(b)(5), transferred the text of section 2693 of this title to end of this section and redesignated it as subsec. (f). See Codification note above.

2003—Subsec. (b)(1). Pub. L. 108–136, §1031(a)(33)(A)(i), inserted ''and Congress'' before ''of the results'' in introductory provisions.

Subsec. (b)(2). Pub. L. 108–136, §1031(a)(33)(A)(ii), inserted ''and Congress'' before ''within such period''.

Subsec. (c). Pub. L. 108–136, §1031(a)(33)(B), struck out heading and text of subsec. (c). Text read as follows: ''If the Administrator of General Services notifies the Secretary concerned under subsection (b) that further Federal use of a parcel of real property authorized or required to be conveyed by any provision of law is requested by a Federal agency, the Secretary concerned shall submit a copy of the notice to Congress.''

Subsec. (d). Pub. L. 108–136, §1031(a)(33)(C), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''If the Secretary concerned submits a notice under subsection (c) with regard to a parcel of real property, the Secretary concerned may not proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance if Congress enacts a law rescinding the conveyance authority or requirement before the end of the 180-day period beginning on the date on which the Secretary concerned submits the notice.''

Subsec. (e). Pub. L. 108–136, §1043(c)(4), added par. (1), redesignated pars. (5) and (6) as (2) and (3), respectively, and struck out former pars. (1) to (4) which read as follows:

''(1) Section 2687 of this title.

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

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

''(4) Any provision of law authorizing the closure or realignment of a military installation that is enacted after November 18, 1997.''

2002—Subsec. (a). Pub. L. 107–217, §3(b)(16)(A), inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

Subsec. (e)(5). Pub. L. 107–217, §3(b)(16)(B), substituted ''Chapter 5 of title 40'' for ''Title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

1999—Subsec. (a). Pub. L. 106–65, §1066(a)(26)(A), inserted ''enacted after December 31, 1997,'' after ''any provision of law''.

Subsec. (b)(1). Pub. L. 106–65, §1066(a)(26)(B), substituted ''referred to in subsection (a)'' for ''required by paragraph (1)'' in introductory provisions.

Subsec. (e)(4). Pub. L. 106–65, §1066(a)(26)(C), substituted ''November 18, 1997'' for ''the date of enactment of the National Defense Authorization Act for Fiscal Year 1998''.

EFFECTIVE DATE

Pub. L. 105–85, div. B, title XXVIII, §2814(b), Nov. 18, 1997, 111 Stat. 1995, provided that: ''Section 2696 of title 10, United States Code, as added by subsection (a) of this section, shall apply with respect to any real property authorized or required to be conveyed under a provision of law covered by such section that is enacted after December 31, 1997.''

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumer-

ated in section 3742(3) to (6) of Title 42, The Public Health and Welfare, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of Title 42.

§ 2697. Acceptance and use of landing fees charged for use of domestic military airfields by civil aircraft

(a) AUTHORITY.—The Secretary of a military department may impose landing fees for the use by civil aircraft of domestic military airfields under the jurisdiction of that Secretary and may use any fees received under this section as a source of funding for the operation and maintenance of airfields of that department.

(b) UNIFORM LANDING FEES.—The Secretary of Defense shall prescribe the amount of the landing fees that may be imposed under this section. Such fees shall be uniform among the military departments.

(c) USE OF PROCEEDS.—Amounts received for a fiscal year in payment of landing fees imposed under this section for the use of a military airfield shall be credited to the appropriation that is available for that fiscal year for the operation and maintenance of that military airfield, shall be merged with amounts in the appropriation to which credited, and shall be available for that military airfield for the same period and purposes as the appropriation is available.

(d) LIMITATION.—The Secretary of a military department shall determine whether consideration for a landing fee has been received in a lease, license, or other real estate agreement for an airfield and shall use such a determination to offset appropriate amounts imposed under subsection (a) for that airfield.

(Added Pub. L. 111–383, div. A, title III, § 341(a), Jan. 7, 2011, 124 Stat. 4189.)

CHAPTER 160—ENVIRONMENTAL RESTORATION

Sec.
2700. Definitions.
2701. Environmental restoration program.
2702. Research, development, and demonstration program.
2703. Environmental restoration accounts.
2704. Commonly found unregulated hazardous substances.
2705. Notice of environmental restoration activities.
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2707. Environmental restoration projects for environmental responses.
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2709. Investment control process for environmental technologies.
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2711. Annual report on defense environmental programs.

AMENDMENTS

2011—Pub. L. 112–81, div. A, title III, § 317(b), title X, § 1061(22)(B), Dec. 31, 2011, 125 Stat. 1360, 1584, struck out item 2706 ''Annual reports to Congress'' and added item 2711.

2002—Pub. L. 107–314, div. A, title III, § 313(d)(1), Dec. 2, 2002, 116 Stat. 2508, added items 2700 and 2707 and struck out former item 2707 ''Definitions''.

2001—Pub. L. 107–107, div. A, title III, § 311(a)(2), Dec. 28, 2001, 115 Stat. 1051, added item 2710.

1999—Pub. L. 106–65, div. A, title III, § 323(b)(2), Oct. 5, 1999, 113 Stat. 563, added item 2709.

1996—Pub. L. 104–201, div. A, title III, § 322(a)(2), Sept. 23, 1996, 110 Stat. 2478, substituted ''accounts'' for ''transfer account'' in item 2703.

1991—Pub. L. 102–190, div. A, title III, § 331(a)(2), Dec. 5, 1991, 105 Stat. 1340, added item 2708.

Pub. L. 102–25, title VII, § 701(e)(6), Apr. 6, 1991, 105 Stat. 114, substituted ''Annual reports to Congress'' for ''Annual report to Congress'' in item 2706.

1989—Pub. L. 101–189, div. A, title III, § 357(a)(2)(B), Nov. 29, 1989, 103 Stat. 1427, which directed amendment of the item relating to section 2706 in the table of sections at the beginning of chapter 106 to read ''Annual reports to Congress'', could not be executed because item 2706 is in this chapter and not in chapter 106.

§ 2700. Definitions

In this chapter:

(1) The term ''CERCLA'' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) The terms ''environment'', ''facility'', ''hazardous substance'', ''person'', ''pollutant or contaminant'', ''release'', ''removal'', ''response'', ''disposal'', and ''hazardous waste'' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

(3) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1725, § 2707; renumbered § 2700 and amended Pub. L. 107–314, div. A, title III, § 313(a)(1), (c)(1), Dec. 2, 2002, 116 Stat. 2507; Pub. L. 111–383, div. A, title X, § 1075(b)(46)(A), Jan. 7, 2011, 124 Stat. 4371.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in par. (1), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2011—Par. (2). Pub. L. 111–383 inserted '' 'pollutant or contaminant','' after '' 'person',''.

2002—Pub. L. 107–314, § 313(c)(1), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Pub. L. 107–314, § 313(a)(1), renumbered section 2707 of this title as this section.

§ 2701. Environmental restoration program

(a) ENVIRONMENTAL RESTORATION PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the ''Defense Environmental Restoration Program''.

(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of CERCLA (42 U.S.C. 9620).

(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

(b) PROGRAM GOALS.—Goals of the program shall include the following:

(1) The identification, investigation, research and development, and cleanup of contamination from a hazardous substance or pollutant or contaminant.

(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

(C) Each vessel owned or operated by the Department of Defense.

(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 (relating to settlements) of CERCLA (42 U.S.C. 9622).

(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

(d) SERVICES OF OTHER ENTITIES.—

(1) IN GENERAL.—Subject to paragraph (3), the Secretary may enter into agreements on a reimbursable or other basis with any other Federal agency, any State or local government agency, any Indian tribe, any owner of covenant property, or any nonprofit conservation organization to obtain the services of the agency, Indian tribe, owner, or organization to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

(2) CROSS-FISCAL YEAR AGREEMENTS.—An agreement with an agency under paragraph (1) may be for a period that begins in one fiscal year and ends in another fiscal year so long as the period of the agreement does not exceed two years. This two-year limitation does not apply to an agreement funded using amounts in the Department of Defense Base Closure Account established by section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(3) LIMITATION ON REIMBURSABLE AGREEMENTS.—An agreement with an agency under paragraph (1) may not provide for reimbursement of the agency for regulatory enforcement activities. An agreement under such paragraph with respect to a site also may not change the cleanup standards selected for the site pursuant to law.

(4) DEFINITIONS.—In this subsection:

(A) The term ''Indian tribe'' has the meaning given such term in section 101(36) of CERCLA (42 U.S.C. 9601(36)).

(B) The term ''nonprofit conservation organization'' means any non-governmental nonprofit organization whose primary purpose is conservation of open space or natural resources.

(C) The term ''owner of covenant property'' means an owner of property subject to a covenant provided by the United States in accordance with the requirements of paragraphs (3) and (4) of section 120(h) of CERCLA (42 U.S.C. 9620(h)), so long as the covenant property is the site at which the services procured under paragraph (1) are to be performed.

(5) SAVINGS CLAUSE.—Nothing in this subsection affects the applicability of section 120 of CERCLA (42 U.S.C. 9620) to the Department of Defense or the obligations and responsibilities of the Department of Defense under subsection (h) of such section.

(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA (42 U.S.C. 9619) apply to response action contractors (as defined in that section) who carry out response actions under this section.

(f) USE OF APPROPRIATED FUNDS AT FORMER DOD SITES.—Appropriations available to the Department of Defense may be used at sites formerly used by the Department of Defense for removal of unsafe buildings or debris of the Department of Defense.

(g) REMOVAL OF UNSAFE BUILDINGS AND DEBRIS BEFORE RELEASE FROM FEDERAL CONTROL.—In the case of property formerly used by the Department of Defense which is to be released from Federal Government control and at which there are unsafe buildings or debris of the Department of Defense, all actions necessary to comply with regulations of the General Services Administra-

tion on the transfer of property in a safe condition shall be completed before the property is released from Federal Government control, except in the case of property to be conveyed to an entity of State or local government or to a native corporation.

(h) SURETY-CONTRACTOR RELATIONSHIP.—Any surety which provides a bid, performance, or payment bond in connection with any direct Federal procurement for a response action contract under the Defense Environmental Restoration Program and begins activities to meet its obligations under such bond, shall, in connection with such activities or obligations, be entitled to any indemnification and the same standard of liability to which its principal was entitled under the contract or under any applicable law or regulation.

(i) SURETY BONDS.—

(1) APPLICABILITY OF SECTIONS 3131 AND 3133 OF TITLE 40.—If under sections 3131 and 3133 of title 40 surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program and are not waived pursuant to section 3134 of title 40, the surety bonds shall be issued in accordance with sections 3131 and 3133.

(2) LIMITATION OF ACCRUAL OF RIGHTS OF ACTION UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, no right of action shall accrue on the performance bond issued on such contract to or for the use of any person other than an obligee named in the bond.

(3) LIABILITY OF SURETIES UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, unless otherwise provided for by the Secretary in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications of the contract less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) NONPREEMPTION.—Nothing in this section shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices, or procedures. Nothing in this section shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgment, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(j) APPLICABILITY.—(1) Subsections (h) and (i) shall not apply to bonds executed before December 5, 1991.

(2) Subsections (h) and (i) shall not apply to bonds to which section 119(g) of CERCLA (42 U.S.C. 9619(g)) applies.

(k) UXO PROGRAM MANAGER.—(1) The Secretary of Defense shall designate a program manager who shall serve as the single point of contact in the Department of Defense for policy and budgeting issues involving the characterization, research, remediation, and management of explosive and related risks with respect to unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (as such terms are defined in section 2710[1] of this title) that pose a threat to human health or safety.

(2) The position of program manager shall be filled by—

(A) an employee in a position that is equivalent to pay grade O–6 or above; or

(B) a member of the armed forces who is serving in the grade of colonel or, in the case of the Navy, captain, or in a higher grade.

(3) The program manager shall report to the Assistant Secretary of Defense for Energy, Installations, and Environment.

(4) The program manager may establish an independent advisory and review panel that may include representatives of the National Academy of Sciences, nongovernmental organizations with expertise regarding unexploded ordnance, discarded military munitions, or munitions constituents, the Environmental Protection Agency, States (as defined in section 2710[1] of this title), and tribal governments. If established, the panel shall report annually to Congress on progress made by the Department of Defense to address unexploded ordnance, discarded military munitions, or munitions constituents at defense sites and make such recommendations as the panel considers appropriate.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1719; amended Pub. L. 101–510, div. A, title XIV, § 1481(i)(1), Nov. 5, 1990, 104 Stat. 1708; Pub. L. 102–190, div. A, title III, § 336(a), Dec. 5, 1991, 105 Stat. 1342; Pub. L. 102–484, div. A, title III, § 331(b), title X, § 1052(35), Oct. 23, 1992, 106 Stat. 2373, 2501; Pub. L. 103–35, title II, § 201(d)(6), May 31, 1993, 107 Stat. 99; Pub. L. 103–337, div. A, title III, §§ 322, 323, Oct. 5, 1994, 108 Stat. 2711; Pub. L. 104–106, div. A, title III, § 321(a)(1), title XV, § 1504(a)(1), div. D, title XLIII, § 4321(b)(22), Feb. 10, 1996, 110 Stat. 251, 513, 673; Pub. L. 104–201, div. A, title III, § 329, Sept. 23, 1996, 110 Stat. 2483; Pub. L. 107–107, div. A, title III, § 314, Dec. 28, 2001, 115 Stat. 1053; Pub. L. 107–217, § 3(b)(17), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title III, §§ 311, 312, 313(c)(2), div. B, title XXVIII, § 2812(c), Dec. 2, 2002, 116 Stat. 2506, 2508, 2709; Pub. L. 108–375, div. A, title X, § 1084(d)(24), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–163, div. A, title III, § 312(a), Jan. 6, 2006, 119 Stat. 3190; Pub. L. 109–284, § 2, Sept. 27, 2006, 120 Stat. 1211; Pub. L. 109–364, div. A, title III, §§ 311, 312, Oct. 17, 2006, 120 Stat. 2137; Pub. L. 111–84, div. A, title X, § 1073(a)(28), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–383, div. A, title X, § 1075(b)(46)(B), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–239, div. B, title XXVII,

[1] See References in Text note below.

§ 2711(c)(4)(A), Jan. 2, 2013, 126 Stat. 2144; Pub. L. 113–291, div. A, title IX, § 901(n)(2), Dec. 19, 2014, 128 Stat. 3469.)

REFERENCES IN TEXT

Section 2710 of this title, referred to in subsec. (k), was subsequently amended, and no longer defines the term ''unexploded ordnance''.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (f) and (g) of this section were contained in Pub. L. 101–165, title IX, § 9038, Nov. 21, 1989, 103 Stat. 1137, which was set out below, prior to repeal by Pub. L. 101–510, § 1481(i)(2).

A prior section 2701 was renumbered section 2721 of this title.

AMENDMENTS

2013—Subsec. (d)(2). Pub. L. 112–239 substituted ''Department of Defense Base Closure Account established by section 2906'' for ''Department of Defense Base Closure Account 1990 or the Department of Defense Base Closure Account 2005 established under sections 2906 and 2906A''.

2011—Subsec. (b)(1). Pub. L. 111–383 substituted ''a hazardous substance or pollutant or contaminant'' for ''hazardous substances, pollutants, and contaminants''.

2009—Subsec. (d)(5). Pub. L. 111–84 substituted ''9620)'' for ''6920)''.

2006—Subsec. (d)(1). Pub. L. 109–163, § 312(a)(1), inserted ''any owner of covenant property,'' after ''any Indian tribe,'' and ''owner,'' after '', Indian tribe,''.

Subsec. (d)(2). Pub. L. 109–364, § 312, inserted at end ''This two-year limitation does not apply to an agreement funded using amounts in the Department of Defense Base Closure Account 1990 or the Department of Defense Base Closure Account 2005 established under sections 2906 and 2906A of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

Subsec. (d)(3). Pub. L. 109–163, § 312(a)(2), inserted ''An agreement under such paragraph with respect to a site also may not change the cleanup standards selected for the site pursuant to law.'' at end.

Subsec. (d)(4)(C). Pub. L. 109–163, § 312(a)(3), added subpar. (C).

Subsec. (d)(5). Pub. L. 109–163, § 312(a)(4), added par. (5).

Subsec. (i)(1). Pub. L. 109–284 substituted ''sections 3131 and 3133 of title 40'' for ''miller act'' in heading.

Subsec. (k)(1). Pub. L. 109–364, § 311(1), substituted ''designate'' for ''establish'' and inserted ''research,'' after ''characterization,''.

Subsec. (k)(2) to (4). Pub. L. 109–364, § 311(2), (3), added pars. (2) and (3), redesignated former par. (3) as (4), and struck out former par. (2) which read as follows: ''The authority to establish the program manager may be delegated to the Secretary of a military department, who may delegate the authority to the Under Secretary of that military department. The authority may not be further delegated.''.

2004—Subsec. (a)(2). Pub. L. 108–375, § 1084(d)(24)(A), inserted ''(42 U.S.C. 9620)'' before period at end.

Subsec. (c)(2). Pub. L. 108–375, § 1084(d)(24)(B), substituted ''(relating to settlements) of CERCLA (42 U.S.C. 9622)'' for ''of CERCLA (relating to settlements)''.

Subsec. (e). Pub. L. 108–375, § 1084(d)(24)(C), inserted ''(42 U.S.C. 9619)'' after ''CERCLA''.

Subsec. (j)(2). Pub. L. 108–375, § 1084(d)(24)(D), substituted ''CERCLA'' for ''the Comprehensive Environmental Response, Compensation, and Liability Act of 1980''.

2002—Subsec. (a)(2). Pub. L. 107–314, § 313(c)(2), substituted ''CERCLA'' for ''the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA') (42 U.S.C. 9601 et seq.)''.

Subsec. (d). Pub. L. 107–314, § 2812(c)(1), substituted ''Entities'' for ''Agencies'' in heading.

Subsec. (d)(1). Pub. L. 107–314, §§ 311(1), 2812(c)(2), substituted ''paragraph (3)'' for ''paragraph (2)'', ''any State or local government agency, any Indian tribe, or any nonprofit conservation organization'' for ''with any State or local government agency, or with any Indian tribe,'', and ''the agency, Indian tribe, or organization'' for ''the agency''.

Subsec. (d)(2), (3). Pub. L. 107–314, § 311(2), (3), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 107–314, § 2812(c)(3), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''In this subsection, the term 'Indian tribe' has the meaning given such term in section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).''

Pub. L. 107–314, § 311(2), redesignated par. (3) as (4).

Subsec. (i)(1). Pub. L. 107–217 substituted ''sections 3131 and 3133 of title 40'' for ''the Miller Act (40 U.S.C. 270a et seq.)'', ''section 3134 of title 40'' for ''the Act of April 29, 1941 (40 U.S.C. 270e–270f)'', and ''sections 3131 and 3133'' for ''the Miller Act''.

Subsec. (k). Pub. L. 107–314, § 312, added subsec. (k).

2001—Subsec. (j)(1). Pub. L. 107–107 struck out '', or after December 31, 1999'' before period at end.

1996—Subsec. (d). Pub. L. 104–201 substituted '', with any State or local government agency, or with any Indian tribe,'' for '', or with any State or local government agency,'' in par. (1) and added par. (3).

Pub. L. 104–106, § 1504(a)(1), made technical correction to directory language of Pub. L. 103–337, § 322(1). See 1994 Amendment note below.

Pub. L. 104–106, § 321(a)(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''SERVICES OF OTHER AGENCIES.—

''(1) IN GENERAL.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency or any Indian tribe, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

''(2) DEFINITION.—In this subsection, the term 'Indian tribe' has the meaning given such term in section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).''

Subsec. (i)(1). Pub. L. 104–106, § 4321(b)(22), substituted ''Miller Act (40 U.S.C. 270a et seq.)'' for ''Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the 'Miller Act','' and ''the Miller Act'' for ''such Act of August 24, 1935''.

1994—Subsec. (d). Pub. L. 103–337, § 322(1), as amended by Pub. L. 104–106, § 1504(a)(1), designated existing provisions as par. (1) and inserted par. (1) heading.

Subsec. (d)(1). Pub. L. 103–337, § 322(2), inserted ''or any Indian tribe'' after ''any State or local government agency''.

Subsec. (d)(2). Pub. L. 103–337, § 322(3), added par. (2).

Subsec. (j)(1). Pub. L. 103–337, § 323, substituted ''December 31, 1999'' for ''December 31, 1995''.

1993—Subsec. (j)(2). Pub. L. 103–35 substituted ''(42 U.S.C. 9619(g)) applies'' for ''applies (42 U.S.C. 9619(g))''.

1992—Subsec. (j). Pub. L. 102–484, § 1052(35), substituted ''December 5, 1991,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993'' in par. (1).

Pub. L. 102–484, § 331(b), substituted ''December 31, 1995'' for ''December 31, 1992'', designated existing provisions as par. (1), and added par. (2).

1991—Subsecs. (h) to (j). Pub. L. 102–190 added subsecs. (h) to (j).

1990—Subsecs. (f), (g). Pub. L. 101–510 added subsecs. (f) and (g).

CHANGE OF NAME

''Assistant Secretary of Defense for Energy, Installations, and Environment'' substituted for ''Deputy Under Secretary of Defense for Installations and Environment'' in subsec. (k)(3) on authority of section 901(n)(2) of Pub. L. 113–291, set out as a References note under section 131 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. B, title XXVII, § 2711(d), Jan. 2, 2013, 126 Stat. 2144, provided that: ''This section and the amendments made by this section [amending this section and sections 2703, 2705, and 2883 of this title and enacting and amending provisions set out as notes under section 2687 of this title] shall take effect on the later of—

''(1) October 1, 2013; and [sic]

''(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 [div. J of Pub. L. 113–76, approved Jan. 17, 2014].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1504(a), Feb. 10, 1996, 110 Stat. 513, provided that the amendment made by that section is effective as of Oct. 5, 1994, and as if included in Pub. L. 103–337 as enacted.

For effective date and applicability of amendment by section 4321(b)(22) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

PROHIBITION ON DISPOSING OF WASTE IN OPEN-AIR BURN PITS

Pub. L. 111–84, div. A, title III, § 317, Oct. 28, 2009, 123 Stat. 2249, as amended by Pub. L. 112–81, div. A, title III, § 316, Dec. 31, 2011, 125 Stat. 1358; Pub. L. 113–66, div. A, title III, § 314, Dec. 26, 2013, 127 Stat. 729; Pub. L. 113–291, div. A, title X, § 1071(g)(1), Dec. 19, 2014, 128 Stat. 3511, provided that:

''(a) REGULATIONS.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall prescribe regulations prohibiting the disposal of covered waste in open-air burn pits during contingency operations except in circumstances in which the Secretary determines that no alternative disposal method is feasible. Such regulations shall apply to contingency operations that are ongoing as of the date of the enactment of this Act, including Operation Iraqi Freedom and Operation Enduring Freedom, and to contingency operations that begin after the date of the enactment of this Act.

''(2) NOTIFICATION.—In determining that no alternative disposal method is feasible for an open-air burn pit pursuant to regulations prescribed under paragraph (1), the Secretary shall—

''(A) not later than 30 days after such determination is made, submit to the Committees on Armed Services of the Senate and House of Representatives notice of such determination, including the circumstances, reasoning, and methodology that led to such determination; and

''(B) after notice is given under subparagraph (A), for each subsequent 180-day-period during which covered waste is disposed of in the open-air burn pit covered by such notice, submit to the Committees on Armed Services of the Senate and House of Representatives the justifications of the Secretary for continuing to operate such open-air burn pit.

''(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the use of open-air burn pits by the United States Armed Forces. Such report shall include—

''(1) an explanation of the situations and circumstances under which open-air burn pits are used to dispose of waste during military exercises and operations worldwide;

''(2) a detailed description of the types of waste authorized to be burned in open-air burn pits;

''(3) a plan through which the Secretary intends to develop and implement alternatives to the use of open-air burn pits;

''(4) a copy of the regulations required to be prescribed by subsection (a);

''(5) the health and environmental compliance standards the Secretary has established for military and contractor operations in Iraq and Afghanistan with regard to solid waste disposal, including an assessment of whether those standards are being met;

''(6) a description of the environmental, health, and operational impacts of open-pit burning of plastics and the feasibility of including plastics in the regulations prescribed pursuant to subsection (a); and

''(7) an assessment of the ability of existing medical surveillance programs to identify and track exposures to toxic substances that result from open-air burn pits, including recommendations for such changes to such programs as would be required to more accurately identify and track such exposures.

''(c) HEALTH ASSESSMENT REPORTS.—Not later than 180 days after notice is due under subsection (a)(2), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a health assessment report on each open-air burn pit at a location where at least 100 personnel have been employed for 90 consecutive days or more. Each such report shall include each of the following:

''(1) An epidemiological description of the short-term and long-term health risks posed to personnel in the area where the burn pit is located because of exposure to the open-air burn pit.

''(2) A copy of the methodology used to determine the health risks described in paragraph (1).

''(3) A copy of the assessment of the operational risks and health risks when making the determination pursuant to subsection (a) that no alternative disposal method is feasible for the open-air burn pit.

''(d) DEFINITIONS.—In this section:

''(1) The term 'contingency operation' has the meaning given that term by section 101(a)(13) of title 10, United States Code.

''(2) The term 'covered waste' includes—

''(A) hazardous waste, as defined by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5));

''(B) medical waste;

''(C) tires;

''(D) treated wood;

''(E) batteries;

''(F) plastics, except insignificant amounts of plastic remaining after a good-faith effort to remove or recover plastic materials from the solid waste stream;

''(G) munitions and explosives, except when disposed of in compliance with guidance on the destruction of munitions and explosives contained in the Department of Defense Ammunition and Explosives Safety Standards, DoD Manual 6055.09-M;

''(H) compressed gas cylinders, unless empty with valves removed;

''(I) fuel containers, unless completely evacuated of its contents;

''(J) aerosol cans;

''(K) polychlorinated biphenyls;

''(L) petroleum, oils, and lubricants products (other than waste fuel for initial combustion);

''(M) asbestos;

''(N) mercury;

''(O) foam tent material;

''(P) any item containing any of the materials referred to in a preceding paragraph; and

''(Q) other waste as designated by the Secretary.''

PURPOSE OF PUB. L. 109–284

Pub. L. 109–284, § 1, Sept. 27, 2006, 120 Stat. 1211, provided that: ''The purpose of this Act [amending this section, sections 107 and 210 of Title 23, Highways, section 1499 of Title 28, Judiciary and Judicial Procedure,

sections 2301, 20908, 40103, 70912, 150511, 151303, 153513, 220104, 220501, 220505, 220506, 220509, 220511, 220512, and 220521 of Title 36, Patriotic and National Observances, Ceremonies, and Organizations, and sections 522, 552, 554, 581, 593, 611, 3131, 3133, 3141, 3142, 3701, 3702, 3704, 6111, 8104, 8105, 8501, 8502, 8711, 8712, 8722, 9302, 14308, and 17504 of Title 40, Public Buildings, Property, and Works] is to make technical corrections to the United States Code relating to cross references, typographical errors, and stylistic matters.''

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

Pub. L. 106–398, §1 [div. C, title XXXI, §3138], Oct. 30, 2000, 114 Stat. 1654, 1654A–461, provided that:

''(a) CONTINGENT LIMITATION ON AVAILABILITY OF FUNDS FOR CERTAIN TRAVEL EXPENSES.—Effective November 1, 2001, but subject to subsection (b), no funds authorized to be appropriated or otherwise made available by this or any other Act for the Department of Energy or the Department of the Army may be obligated or expended for travel by—

''(1) the Secretary of Energy or any officer or employee of the Office of the Secretary of Energy; or

''(2) the Chief of Engineers.

''(b) EFFECTIVE DATE.—The limitation in subsection (a) shall not take effect if before November 1, 2001, both of the following certifications are submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]:

''(1) A certification by the Secretary of Energy that the Department of Energy is in compliance with the requirements of section 3131 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 925; 10 U.S.C. 2701 note).

''(2) A certification by the Chief of Engineers that the Corps of Engineers is in compliance with the requirements of that section.

''(c) TERMINATION.—If the limitation in subsection (a) takes effect, the limitation shall cease to be in effect when both certifications referred to in subsection (b) have been submitted to the congressional defense committees.''

Pub. L. 106–65, div. C, title XXXI, §3131, Oct. 5, 1999, 113 Stat. 925, provided that: ''Notwithstanding any other provision of law, no funds authorized to be appropriated or otherwise made available by this Act [see Tables for classification], or by any Act authorizing appropriations for the military activities of the Department of Defense or the defense activities of the Department of Energy for a fiscal year after fiscal year 2000, may be obligated or expended to conduct treatment, storage, or disposal activities at any site designated as a site under the Formerly Utilized Site Remedial Action Program as of the date of the enactment of this Act [Oct. 5, 1999].''

Pub. L. 106–60, title VI, §611, Sept. 29, 1999, 113 Stat. 502, provided that:

''(a) The Secretary of the Army, acting through the Chief of Engineers, in carrying out the program known as the Formerly Utilized Sites Remedial Action Program, shall undertake the following functions and activities to be performed at eligible sites where remediation has not been completed:

''(1) Sampling and assessment of contaminated areas.

''(2) Characterization of site conditions.

''(3) Determination of the nature and extent of contamination.

''(4) Selection of the necessary and appropriate response actions as the lead Federal agency.

''(5) Cleanup and closeout of sites.

''(6) Any other functions and activities determined by the Secretary of the Army, acting through the Chief of Engineers, as necessary for carrying out that program, including the acquisition of real estate interests where necessary, which may be transferred upon completion of remediation to the administrative jurisdiction of the Secretary of Energy.

''(b) Any response action under that program by the Secretary of the Army, acting through the Chief of Engineers, shall be subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (in this section referred to as 'CERCLA'), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300).

''(c) Any sums recovered under CERCLA or other authority from a liable party, contractor, insurer, surety, or other person for any expenditures by the Army Corps of Engineers or the Department of Energy for response actions under that program shall be credited to the amounts made available to carry out that program and shall be available until expended for costs of response actions for any eligible site.

''(d) The Secretary of Energy may exercise the authority under section 168 of the Atomic Energy Act of 1954 (42 U.S.C. 2208) to make payments in lieu of taxes for federally owned property at which activities under that program are carried out, regardless of which Federal agency has administrative jurisdiction over the property and notwithstanding any reference to 'the activities of the Commission' in that section.

''(e) This section does not alter, curtail, or limit the authorities, functions, or responsibilities of other agencies under CERCLA or, except as stated in this section, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

''(f) This section shall apply to fiscal year 2000 and each succeeding fiscal year.''

SETTLEMENT OF CLAIMS OF FOREIGN GOVERNMENTS FOR ENVIRONMENTAL CLEANUP OF OVERSEAS SITES FORMERLY USED BY DEPARTMENT OF DEFENSE

Pub. L. 105–261, div. A, title III, §321, Oct. 17, 1998, 112 Stat. 1962, provided that:

''(a) NOTICE OF NEGOTIATIONS.—The President shall notify Congress before entering into any negotiations for the ex-gratia settlement of the claims of a government of another country against the United States for environmental cleanup of sites in that country that were formerly used by the Department of Defense.

''(b) AUTHORIZATION REQUIRED FOR USE OF FUNDS FOR PAYMENT OF SETTLEMENT.—No funds may be used for any payment under an ex-gratia settlement of any claims described in subsection (a) unless the use of the funds for that purpose is specifically authorized by law or international agreement, including a treaty.''

RECOVERY AND SHARING OF COSTS OF ENVIRONMENTAL RESTORATION AT DEPARTMENT OF DEFENSE SITES

Pub. L. 105–85, div. A, title III, §348, Nov. 18, 1997, 111 Stat. 1689, provided that:

''(a) REGULATIONS.—Not later than March 1, 1998, the Secretary of Defense shall prescribe regulations containing the guidelines and requirements described in subsections (b) and (c).

''(b) GUIDELINES.—(1) The regulations prescribed under subsection (a) shall contain uniform guidelines for the military departments and defense agencies concerning the cost-recovery and cost-sharing activities of those departments and agencies.

''(2) The Secretary shall take appropriate actions to ensure the implementation of the guidelines.

''(c) REQUIREMENTS.—The regulations prescribed under subsection (a) shall contain requirements for the Secretaries of the military departments and the heads of defense agencies to—

''(1) obtain all data that is relevant for purposes of cost-recovery and cost-sharing activities; and

''(2) identify any negligence or other misconduct that may preclude indemnification or reimbursement by the Department of Defense for the costs of environmental restoration at a Department site or justify the recovery or sharing of costs associated with such restoration.

''(d) DEFINITION.—In this section, the term 'cost-recovery and cost-sharing activities' means activities concerning—

''(1) the recovery of the costs of environmental restoration at Department of Defense sites from con-

tractors of the Department and other private parties that contribute to environmental contamination at such sites; and

''(2) the sharing of the costs of such restoration with such contractors and parties.''

PILOT PROGRAM FOR SALE OF AIR POLLUTION EMISSION REDUCTION INCENTIVES

Pub. L. 107–107, div. A, title III, § 316(b), Dec. 28, 2001, 115 Stat. 1053, directed the Secretary of Defense to prepare a report concerning the operation of the pilot program for the sale of economic incentives for the reduction of emission of air pollutants attributable to military facilities, as authorized by section 351 of Pub. L. 105–85, formerly set out below, and to submit the report to the Congress not later than Mar. 1, 2003.

Pub. L. 105–85, div. A, title III, § 351, Nov. 18, 1997, 111 Stat. 1692, as amended by Pub. L. 106–65, div. A, title III, § 325, Oct. 5, 1999, 113 Stat. 563; Pub. L. 107–107, div. A, title III, § 316(a), Dec. 28, 2001, 115 Stat. 1053, authorized the Secretary of Defense, until Sept. 30, 2003, to carry out a pilot program to assess the feasibility and advisability of the sale of economic incentives for the reduction of emission of air pollutants attributable to a facility of a military department.

AUTHORITY TO DEVELOP AND IMPLEMENT LAND USE PLANS FOR DEFENSE ENVIRONMENTAL RESTORATION PROGRAM

Pub. L. 104–201, div. A, title III, § 325, Sept. 23, 1996, 110 Stat. 2481, provided that:

''(a) AUTHORITY.—The Secretary of Defense may, to the extent possible and practical, develop and implement, as part of the Defense Environmental Restoration Program provided for in chapter 160 of title 10, United States Code, a land use plan for any defense site selected by the Secretary under subsection (b).

''(b) SELECTION OF SITES.—The Secretary may select up to 10 defense sites, from among sites where the Secretary is planning or implementing environmental restoration activities, for which land use plans may be developed under this section.

''(c) REQUIREMENT TO CONSULT WITH REVIEW COMMITTEE OR ADVISORY BOARD.—In developing a land use plan under this section, the Secretary shall consult with a technical review committee established pursuant to section 2705(c) of title 10, United States Code, a restoration advisory board established pursuant to section 2705(d) of such title, a local land use redevelopment authority, or another appropriate State agency.

''(d) 50-YEAR PLANNING PERIOD.—A land use plan developed under this section shall cover a period of at least 50 years.

''(e) IMPLEMENTATION.—For each defense site for which the Secretary develops a land use plan under this section, the Secretary shall take into account the land use plan in selecting and implementing, in accordance with applicable law, environmental restoration activities at the site.

''(f) DEADLINES.—For each defense site for which the Secretary intends to develop a land use plan under this section, the Secretary shall develop a draft land use plan by October 1, 1997, and a final land use plan by March 15, 1998.

''(g) DEFINITION OF DEFENSE SITE.—For purposes of this section, the term 'defense site' means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft under the jurisdiction of the Department of Defense, or (B) any site or area under the jurisdiction of the Department of Defense where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

''(h) REPORT.—In the annual report required under [former] section 2706(a) of title 10, United States Code, the Secretary shall include information on the land use plans developed under this section and the effect such plans have had on environmental restoration activities at the defense sites where they have been implemented. The annual report submitted in 1999 shall include recommendations on whether such land use plans should be developed and implemented throughout the Department of Defense.

''(i) SAVINGS PROVISIONS.—(1) Nothing in this section, or in a land use plan developed under this section with respect to a defense site, shall be construed as requiring any modification to a land use plan that was developed before the date of the enactment of this Act [Sept. 23, 1996].

''(2) Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.''

FISCAL YEAR 1996 RESTRICTIONS ON REIMBURSEMENTS UNDER AGREEMENTS FOR SERVICES OF OTHER AGENCIES

Pub. L. 104–106, div. A, title III, § 321(a)(2), Feb. 10, 1996, 110 Stat. 251, as amended by Pub. L. 105–85, div. A, title X, § 1073(d)(1)(A), Nov. 18, 1997, 111 Stat. 1905, provided that:

''(A) Except as provided in subparagraph (B), the total amount of funds available for reimbursements under agreements entered into under section 2701(d) of title 10, United States Code, as amended by paragraph (1), in fiscal year 1996 may not exceed $10,000,000.

''(B) The Secretary of Defense may pay in fiscal year 1996 an amount for reimbursements under agreements referred to in subparagraph (A) in excess of the amount specified in that subparagraph for that fiscal year if—

''(i) the Secretary certifies to Congress that the payment of the amount under this subparagraph is essential for the management of the Defense Environmental Restoration Program under chapter 160 of title 10, United States Code; and

''(ii) a period of 60 days has expired after the date on which the certification is received by Congress.''

ENVIRONMENTAL EDUCATION AND TRAINING PROGRAM FOR DEFENSE PERSONNEL

Pub. L. 103–337, div. A, title III, § 328, Oct. 5, 1994, 108 Stat. 2714, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish and conduct an education and training program for members of the Armed Forces and civilian employees of the Department of Defense whose responsibilities include planning or executing the environmental mission of the Department. The Secretary shall conduct the program to ensure that such members and employees obtain and maintain the knowledge and skill required to comply with existing environmental laws and regulations.

''(b) IDENTIFICATION OF MILITARY FACILITIES WITH ENVIRONMENTAL TRAINING EXPERTISE.—As part of the program, the Secretary may identify military facilities that have existing expertise (or the capacity to develop such expertise) in conducting education and training activities in various environmental disciplines. In the case of a military facility identified under this subsection, the Secretary should encourage the use of the facility by members and employees referred to in subsection (a) who are not under the jurisdiction of the military department operating the facility.''

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE EDUCATION AND TRAINING IN ENVIRONMENTAL RESTORATION TO DISLOCATED DEFENSE WORKERS AND YOUNG ADULTS

Pub. L. 103–160, div. A, title XIII, § 1333, Nov. 30, 1993, 107 Stat. 1798, as amended by Pub. L. 103–337, div. A,

title X, §1070(b)(11), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105–244, title I, §102(a)(2)(D), Oct. 7, 1998, 112 Stat. 1617; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(8), (f)(7)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430; Pub. L. 109–163, div. A, title X, §1056(a)(2), Jan. 6, 2006, 119 Stat. 3438, provided that:

''(a) GRANT PROGRAM AUTHORIZED.—(1) The Secretary of Defense may establish a program to provide demonstration grants to institutions of higher education to assist such institutions in providing education and training in environmental restoration and hazardous waste management to eligible dislocated defense workers and young adults described in subsection (d). The Secretary shall award the grants pursuant to a merit-based selection process.

''(2) A grant provided under this subsection may cover a period of not more than three fiscal years, except that the payments under the grant for the second and third fiscal year shall be subject to the approval of the Secretary and to the availability of appropriations to carry out this section in that fiscal year.

''(b) APPLICATION.—To be eligible for a grant under subsection (a), an institution of higher education shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary may require. The application shall include the following:

''(1) An assurance by the institution of higher education that it will use the grant to supplement and not supplant non-Federal funds that would otherwise be available for the education and training activities funded by the grant.

''(2) A proposal by the institution of higher education to provide expertise, training, and education in hazardous materials and waste management and other environmental fields applicable to defense manufacturing sites and Department of Defense and Department of Energy defense facilities.

''(c) USE OF GRANT FUNDS.—(1) An institution of higher education receiving a grant under subsection (a) shall use the grant to establish a consortium consisting of the institution and one or more of each of the entities described in paragraph (2) for the purpose of establishing and conducting a program to provide education and training in environmental restoration and waste management to eligible individuals described in subsection (d). To the extent practicable, the Secretary shall authorize the consortium to use a military installation closed or selected to be closed under a base closure law in providing on-site basic skills training to participants in the program.

''(2) The entities referred to in paragraph (1) are the following:

''(A) Appropriate State and local agencies.

''(B) local [sic] workforce investment boards established under [former] section 117 of the Workforce Investment Act of 1998 [former 29 U.S.C. 2832].

''(C) Community-based organizations (as defined in section 4(5) of such Act (29 U.S.C. 1503(5)).

''(D) Businesses.

''(E) Organized labor.

''(F) Other appropriate educational institutions.

''(d) ELIGIBLE INDIVIDUALS.—A program established or conducted using funds provided under subsection (a) may provide education and training in environmental restoration and waste management to—

''(1) individuals who have been terminated or laid off from employment (or have received notice of termination or lay off) as a consequence of reductions in expenditures by the United States for defense, the cancellation, termination, or completion of a defense contract, or the closure or realignment of a military installation under a base closure law, as determined in accordance with regulations prescribed by the Secretary; or

''(2) individuals who have attained the age of 16 but not the age of 25.

''(e) ELEMENTS OF EDUCATION AND TRAINING PROGRAM.—In establishing or conducting an education and training program using funds provided under subsection (a), the institution of higher education shall meet the following requirements:

''(1) The institution of higher education shall establish and provide a work-based learning system consisting of education and training in environmental restoration—

''(A) which may include basic educational courses, on-site basic skills training, and mentor assistance to individuals described in subsection (d) who are participating in the program; and

''(B) which may lead to the awarding of a certificate or degree at the institution of higher education.

''(2) The institution of higher education shall undertake outreach and recruitment efforts to encourage participation by eligible individuals in the education and training program.

''(3) The institution of higher education shall select participants for the education and training program from among eligible individuals described in paragraph (1) or (2) of subsection (d).

''(4) To the extent practicable, in the selection of young adults described in subsection (d)(2) to participate in the education and training program, the institution of higher education shall give priority to those young adults who—

''(A) have not attended and are otherwise unlikely to be able to attend an institution of higher education; or

''(B) have, or are members of families who have, received a total family income that, in relation to family size, is not in excess of the higher of—

''(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))); or

''(ii) 70 percent of the lower living standard income level.

''(5) To the extent practicable, the institution of higher education shall select instructors for the education and training program from institutions of higher education, appropriate community programs, and industry and labor.

''(6) To the extent practicable, the institution of higher education shall consult with appropriate Federal, State, and local agencies carrying out environmental restoration programs for the purpose of achieving coordination between such programs and the education and training program conducted by the consortium.

''(f) SELECTION OF GRANT RECIPIENTS.—To the extent practicable, the Secretary shall provide grants to institutions of higher education under subsection (a) in a manner which will equitably distribute such grants among the various regions of the United States.

''(g) LIMITATION ON AMOUNT OF GRANT TO A SINGLE RECIPIENT.—The amount of a grant under subsection (a) that may be made to a single institution of higher education in a fiscal year may not exceed ⅓ of the amount made available to provide grants under such subsection for that fiscal year.

''(h) REPORTING REQUIREMENTS.—(1) The Secretary may provide a grant to an institution of higher education under subsection (a) only if the institution agrees to submit to the Secretary, in each fiscal year in which the Secretary makes payments under the grant to the institution, a report containing—

''(A) a description and evaluation of the education and training program established by the consortium formed by the institution under subsection (c); and

''(B) such other information as the Secretary may reasonably require.

''(2) Not later than 18 months after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall submit to the President and Congress an interim report containing—

''(A) a compilation of the information contained in the reports received by the Secretary from each institution of higher education under paragraph (1); and

''(B) an evaluation of the effectiveness of the demonstration grant program authorized by this section.

''(3) Not later than January 1, 1997, the Secretary shall submit to the President and Congress a final report containing—

''(A) a compilation of the information described in the interim report; and

''(B) a final evaluation of the effectiveness of the demonstration grant program authorized by this section, including a recommendation as to the feasibility of continuing the program.

''(i) DEFINITIONS.—For purposes of this section:

''(1) BASE CLOSURE LAW.—The term 'base closure law' has the meaning given such term in section 101(a)(17) of title 10, United States Code.

''(2) ENVIRONMENTAL RESTORATION.—The term 'environmental restoration' means actions taken consistent with a permanent remedy to prevent or minimize the release of hazardous substances into the environment so that such substances do not migrate to cause substantial danger to present or future public health or welfare or the environment.

''(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].

''(4) SECRETARY.—The term 'Secretary' means the Secretary of Defense.

''(j) CONFORMING REPEAL.—Section 4452 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 2701 note) is repealed.''

ENVIRONMENTAL EDUCATION OPPORTUNITIES PROGRAM

Pub. L. 103–160, div. A, title XIII, § 1334, Nov. 30, 1993, 107 Stat. 1801, as amended by Pub. L. 105–244, title I, § 102(a)(2)(E), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) AUTHORITY.—The Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, may establish a scholarship program in order to enable eligible individuals described in subsection (d) to undertake the educational training or activities relating to environmental engineering, environmental sciences, or environmental project management in fields related to hazardous waste management and cleanup described in subsection (b) at the institutions of higher education described in subsection (c).

''(b) EDUCATIONAL TRAINING OR ACTIVITIES.—(1) The program established under subsection (a) shall be limited to educational training or activities related to—

''(A) site remediation;

''(B) site characterization;

''(C) hazardous waste management;

''(D) hazardous waste reduction;

''(E) recycling;

''(F) process and materials engineering;

''(G) training for positions related to environmental engineering, environmental sciences, or environmental project management (including training for management positions); and

''(H) environmental engineering with respect to the construction of facilities to address the items described in subparagraphs (A) through (G).

''(2) The program established under subsection (a) shall be limited to educational training or activities designed to enable individuals to achieve specialization in the following fields:

''(A) Earth sciences.

''(B) Chemistry.

''(C) Chemical Engineering.

''(D) Environmental engineering.

''(E) Statistics.

''(F) Toxicology.

''(G) Industrial hygiene.

''(H) Health physics.

''(I) Environmental project management.

''(c) ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION.—Scholarship funds awarded under this section shall be used by individuals awarded scholarships to enable such individuals to attend institutions of higher education associated with hazardous substance research centers to enable such individuals to undertake a program of educational training or activities described in subsection (b) that leads to an undergraduate degree, a graduate degree, or a degree or certificate that is supplemental to an academic degree.

''(d) ELIGIBLE INDIVIDUALS.—Individuals eligible for scholarships under the program established under subsection (a) are the following:

''(1) Any member of the Armed Forces who—

''(A) was on active duty or full-time National Guard duty on September 30, 1990;

''(B) during the 5-year period beginning on that date—

''(i) is involuntarily separated (as defined in section 1141 of title 10, United States Code) from active duty or full-time National Guard duty; or

''(ii) is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under section 1174a of title 10, United States Code, or the voluntary separation incentive program under section 1175 of that title; and

''(C) is not entitled to retired or retainer pay incident to that separation.

''(2) Any civilian employee of the Department of Energy or the Department of Defense (other than an employee referred to in paragraph (3)) who—

''(A) is terminated or laid off from such employment during the five-year period beginning on September 30, 1990, as a result of reductions in defense-related spending (as determined by the appropriate Secretary); and

''(B) is not entitled to retired or retainer pay incident to that termination or lay off.

''(3) Any civilian employee of the Department of Defense whose employment at a military installation approved for closure or realignment under a base closure law is terminated as a result of such closure or realignment.

''(e) AWARD OF SCHOLARSHIP.—(1)(A) The Secretary of Defense shall award scholarships under this section to such eligible individuals as the Secretary determines appropriate pursuant to regulations or policies promulgated by the Secretary.

''(B) In awarding a scholarship under this section, the Secretary shall—

''(i) take into consideration the extent to which the qualifications and experience of the individual applying for the scholarship prepared such individual for the educational training or activities to be undertaken; and

''(ii) award a scholarship only to an eligible individual who has been accepted for enrollment in the institution of higher education described in subsection (c) and providing the educational training or activities for which the scholarship assistance is sought.

''(2) The Secretary of Defense shall determine the amount of the scholarships awarded under this section, except that the amount of scholarship assistance awarded to any individual under this section may not exceed—

''(A) $10,000 in any 12-month period; and

''(B) a total of $20,000.

''(f) APPLICATION; PERIOD FOR SUBMISSION.—(1) Each individual desiring a scholarship under this section shall submit an application to the Secretary of Defense in such manner and containing or accompanied by such information as the Secretary may reasonably require.

''(2) A member of the Armed Forces described in subsection (d)(1) who desires to apply for a scholarship under this section shall submit an application under this subsection not later than 180 days after the date of the separation of the member. In the case of members described in subsection (d)(1) who were separated before the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall accept applications from these members submitted during the 180-day period beginning on the date of the enactment of this Act.

''(3) A civilian employee described in paragraph (2) or (3) of subsection (d) who desires to apply for a scholarship under this section, but who receives no prior notice of such termination or lay off, may submit an application under this subsection at any time after such termination or lay off. A civilian employee described in paragraph (1) or (2) of subsection (d) who receives a notice of termination or lay off shall submit an application not later than 180 days before the effective date of the termination or lay off. In the case of employees described in such paragraphs who were terminated or laid off before the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall accept applications from these employees submitted during the 180-day period beginning on the date of the enactment of this Act.

''(g) REPAYMENT.—(1) Any individual receiving scholarship assistance from the Secretary of Defense under this section shall enter into an agreement with the Secretary under which the individual agrees to pay to the United States the total amount of the scholarship assistance provided to the individual by the Secretary under this section, plus interest at the rate prescribed in paragraph (4), if the individual does not complete the educational training or activities for which such assistance is provided.

''(2) If an individual fails to pay to the United States the total amount required pursuant to paragraph (1), including the interest, at the rate prescribed in paragraph (4), the unpaid amount shall be recoverable by the United States from the individual or such individual's estate by—

''(A) in the case of an individual who is an employee of the United States, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

''(B) such other method as is provided by law for the recovery of amounts owing to the United States.

''(3) The Secretary of Defense may waive in whole or in part a required repayment under this subsection if the Secretary determines that the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(4) The total amount of scholarship assistance provided to an individual under this section, for purposes of repayment under this subsection, shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

''(h) COORDINATION OF BENEFITS.—Any scholarship assistance provided to an individual under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]).

''(i) REPORT TO CONGRESS.—Not later than January 1, 1995, the Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit to the Congress a report describing the activities undertaken under the program authorized by subsection (a) and containing recommendations for future activities under the program.

''(j) FUNDING.—(1) To carry out the scholarship program authorized by subsection (a), the Secretary of Defense may use the unobligated balance of funds made available pursuant to section 4451(k) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2701 note) for fiscal year 1993 for environmental scholarship and fellowship programs for the Department of Defense.

''(2) The cost of carrying out the program authorized by subsection (a) may not exceed $8,000,000 in any fiscal year.

''(k) DEFINITIONS.—For purposes of this section:

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

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

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

''(2) The term 'hazardous substance research centers' means the hazardous substance research centers described in section 311(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(d)). Such term includes the Great Plains and Rocky Mountain Hazardous Substance Research Center, the Northeast Hazardous Substance Research Center, the Great Lakes and Mid-Atlantic Hazardous Substance Research Center, the South and Southwest Hazardous Substance Research Center, and the Western Region Hazardous Substance Research Center.

''(3) The term 'institution of higher education' has the same meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].''

TRAINING AND EMPLOYMENT OF DEPARTMENT OF DEFENSE EMPLOYEES TO CARRY OUT ENVIRONMENTAL RESTORATION AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 103–160, div. A, title XIII, §1335, Nov. 30, 1993, 107 Stat. 1804, provided that:

''(a) TRAINING PROGRAM.—The Secretary of Defense may establish a program to provide such training to eligible civilian employees of the Department of Defense as the Secretary considers to be necessary to qualify such employees to carry out environmental assessment, remediation, and restoration activities (including asbestos abatement) at military installations closed or to be closed.

''(b) EMPLOYMENT OF GRADUATES.—In the case of eligible civilian employees of the Department of Defense who successfully complete the training program established pursuant to subsection (a), the Secretary may—

''(1) employ such employees to carry out environmental assessment, remediation, and restoration activities at military installations referred to in subsection (a); or

''(2) require, as a condition of a contract for the private performance of such activities at such an installation, the contractor to be engaged in carrying out such activities to employ such employees.

''(c) ELIGIBLE EMPLOYEES.—Eligibility for selection to participate in the training program under subsection (a) shall be limited to those civilian employees of the Department of Defense whose employment would be terminated by reason of the closure of a military installation if not for the selection of the employees to participate in the training program.

''(d) PRIORITY IN TRAINING AND EMPLOYMENT.—The Secretary shall give priority in providing training and employment under this section to eligible civilian employees employed at a military installation the closure of which will directly result in the termination of the employment of at least 1,000 civilian employees of the Department of Defense.

''(e) EFFECT ON OTHER ENVIRONMENTAL REQUIREMENTS.—Nothing in this section shall be construed to revise or modify any requirement established under Federal or State law relating to environmental assessment, remediation, or restoration activities at military installations closed or to be closed.''

COOPERATIVE AGREEMENTS AND GRANTS TO IMPLEMENT LEGACY RESOURCE MANAGEMENT PROGRAM

Pub. L. 103–139, title II, Nov. 11, 1993, 107 Stat. 1422, provided in part: ''That notwithstanding the provisions of the Federal Cooperative Grant and Agreement Act of 1977 (31 U.S.C. 6303–6308), the Department of Defense may hereafter negotiate and enter into cooperative agreements and grants with public and private agencies, organizations, institutions, individuals or other entities to implement the purposes of the Legacy Resource Management Program''.

PILOT PROGRAM FOR EXPEDITED ENVIRONMENTAL RESPONSE ACTIONS

Pub. L. 102–484, div. A, title III, § 323, Oct. 23, 1992, 106 Stat. 2365, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a pilot program to expedite the performance of on-site environmental restoration at—

''(1) military installations scheduled for closure under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

''(2) military installations scheduled for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note); and

''(3) facilities for which the Secretary is responsible under the Defense Environmental Restoration Program established under section 2701 of title 10, United States Code.

''(b) SELECTION OF INSTALLATIONS AND FACILITIES.—(1) For participation in the pilot program, the Secretary shall select—

''(A) 2 military installations referred to in subsection (a)(1);

''(B) 4 military installations referred to in subsection (a)(2), consisting of—

''(i) 2 military installations scheduled for closure as of the date of the enactment of this Act [Oct. 23, 1992]; and

''(ii) 2 military installations included in the list transmitted by the Secretary no later than April 15, 1993, pursuant to section 2903(c)(1) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510] (10 U.S.C. 2687 note) and recommended in a report transmitted by the President in that year pursuant to section 2903(e) of such Act and for which a joint resolution disapproving such recommendations is not enacted by the deadline set forth in section 2904(b) of such Act [10 U.S.C. 2687 note]; and

''(C) not less than 4 facilities referred to in subsection (a)(3) with respect to each military department.

''(2)(A) Except as provided in subparagraph (B), the selections under paragraph (1) shall be made not later than 60 days after the date of the enactment of this Act.

''(B) The selections under paragraph (1) of military installations described in subparagraph (B)(ii) of such paragraph shall be made not later than 60 days after the date on which the deadline (set forth in section 2904(b) of such Act) for enacting a joint resolution of disapproval with respect to the report transmitted by the President has passed.

''(3) The installations and facilities selected under paragraph (1) shall be representative of—

''(A) a variety of the environmental restoration activities required for facilities under the Defense Environmental Restoration Program and for military installations scheduled for closure under the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note) [see Short Title of 1988 Amendment note under 10 U.S.C. 2687] and the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); and

''(B) the different sizes of such environmental restoration activities to provide, to the maximum extent practicable, opportunities for the full range of business sizes to enter into environmental restoration contracts with the Department of Defense and with prime contractors to perform activities under the pilot program.

''(c) EXECUTION OF PROGRAM.—Subject to subsection (d), and to the maximum extent possible, the Secretary shall, in order to eliminate redundant tasks and to accelerate environmental restoration at military installations, use the authorities granted in existing law to carry out the pilot program, including—

''(1) the development and use of innovative contracting techniques;

''(2) the use of all reasonable and appropriate methods to expedite necessary Federal and State administrative decisions, agreements, and concurrences; and

''(3) the use (including any necessary request for the use) of existing authorities to ensure that environmental restoration activities under the pilot program are conducted expeditiously, with particular emphasis on activities that may be conducted in advance of any final plan for environmental restoration.

''(d) PROGRAM PRINCIPLES.—The Secretary shall carry out the pilot program consistent with the following principles:

''(1) Activities of the pilot program shall be carried out subject to and in accordance with all applicable Federal and State laws and regulations.

''(2) Competitive procedures shall be used to select the contractors.

''(3) The experience and ability of the contractors shall be considered, in addition to cost, as a factor to be evaluated in the selection of the contractors.

''(e) PROGRAM RESTRICTIONS.—The pilot program established in this section shall not result in the delay of environmental restoration activities at other military installations and former sites of the Department of Defense.''

OVERSEAS ENVIRONMENTAL RESTORATION

Pub. L. 102–484, div. A, title III, § 324, Oct. 23, 1992, 106 Stat. 2367, as amended by Pub. L. 108–136, div. A, title X, § 1031(d)(1), Nov. 24, 2003, 117 Stat. 1604, provided that:

''It is the sense of the Congress that in carrying out environmental restoration activities at military installations outside the United States, the President should seek to obtain an equitable division of the costs of environmental restoration with the nation in which the installation is located.''

ENVIRONMENTAL SCHOLARSHIP AND FELLOWSHIP PROGRAMS FOR DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. D, title XLIV, § 4451, Oct. 23, 1992, 106 Stat. 2735, as amended by Pub. L. 105–244, title I, § 102(a)(2)(F), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense (hereinafter in this section referred to as the 'Secretary') may conduct scholarship and fellowship programs for the purpose of enabling individuals to qualify for employment in the field of environmental restoration or other environmental programs in the Department of Defense.

''(b) ELIGIBILITY.—To be eligible to participate in the scholarship or fellowship program, an individual must—

''(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]);

''(2) be pursuing a program of education that leads to an appropriate higher education degree in engineering, biology, chemistry, or another qualifying field related to environmental activities, as determined by the Secretary;

''(3) sign an agreement described in subsection (c);

''(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

''(5) meet any other requirements prescribed by the Secretary.

''(c) AGREEMENT.—An agreement between the Secretary and an individual participating in a scholarship or fellowship established in subsection (a) shall be in writing, shall be signed by the individual, and shall include the following provisions:

''(1) The agreement of the Secretary to provide the individual with educational assistance for a specified number of school years (not to exceed 5 years) during which the individual is pursuing a course of education in a qualifying field. The assistance may include payment of tuition, fees, books, laboratory expenses, and (in the case of a fellowship) a stipend.

''(2) The agreement of the individual to perform the following:

''(A) Accept such educational assistance.

''(B) Maintain enrollment and attendance in the educational program until completed.

''(C) Maintain, while enrolled in the educational program, satisfactory academic progress as prescribed by the institution of higher education in which the individual is enrolled.

''(D) Serve, upon completion of the educational program and selection by the Secretary under subsection (e), as a full-time employee in an environmental restoration or other environmental position in the Department of Defense for the applicable period of service specified in subsection (d).

''(d) PERIOD OF SERVICE.—The period of service required under subsection (c)(2)(D) is as follows:

''(1) For an individual who completes a bachelor's degree under a scholarship program established under subsection (a), a period of 12 months for each school year or part thereof for which the individual is provided a scholarship under the program.

''(2) For an individual who completes a master's degree or other post-graduate degree under a fellowship program established under subsection (a), a period of 24 months for each school year or part thereof for which the individual is provided a fellowship under the program.

''(e) SELECTION FOR SERVICE.—The Secretary shall annually review the number and performance under the agreement of individuals who complete educational programs during the preceding year under any scholarship and fellowship programs conducted pursuant to subsection (a). From among such individuals, the Secretary shall select individuals for environmental positions in the Department of Defense, based on the type and availability of such positions.

''(f) REPAYMENT.—(1) Any individual participating in a scholarship or fellowship program under this section shall agree to pay to the United States the total amount of educational assistance provided to the individual under the program, plus interest at the rate prescribed in paragraph (4), if—

''(A) the individual does not complete the educational program as agreed to pursuant to subsection (c)(2)(B), or is selected by the Secretary under subsection (e) but declines to serve, or fails to complete the service, in a position in the Department of Defense as agreed to pursuant to subsection (c)(2)(D); or

''(B) the individual is involuntarily separated for cause from the Department of Defense before the end of the period for which the individual has agreed to continue in the service of the Department of Defense.

''(2) If an individual fails to fulfill the agreement of the individual to pay to the United States the total amount of educational assistance provided under a program established under subsection (a), plus interest at the rate prescribed in paragraph (4), a sum equal to the amount of the educational assistance (plus such interest, if applicable) shall be recoverable by the United States from the individual or his estate by—

''(A) in the case of an individual who is an employee of the Department of Defense or other Federal agency, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

''(B) such other method provided by law for the recovery of amounts owing to the United States.

''(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(4) The total amount of educational assistance provided to an individual under a program established under subsection (a) shall, for purposes of repayment under this section, bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

''(g) PREFERENCE.—In evaluating applicants for the award of a scholarship or fellowship under a program established under subsection (a), the Secretary shall give a preference to—

''(1) individuals who are, or have been, employed by the Department of Defense or its contractors and subcontractors who have been engaged in defense-related activities; and

''(2) individuals who are or have been members of the Armed Forces.

''(h) COORDINATION OF BENEFITS.—A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.].

''(i) AWARD OF SCHOLARSHIPS AND FELLOWSHIPS.—The Secretary may award to qualified applicants not more than 100 scholarships (for undergraduate students) and not more than 30 fellowships (for graduate students) in fiscal year 1993.

''(j) REPORT TO CONGRESS.—Not later than January 1, 1994, the Secretary shall submit to the Congress a report on activities undertaken under the programs established under subsection (a) and recommendations for future activities under the programs.

''(k) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301(5) [106 Stat. 2360]—

''(1) $7,000,000 shall be available to carry out the scholarship and fellowship programs established in subsection (a); and

''(2) $3,000,000 shall be available to provide training to Department of Defense personnel to obtain the skills required to comply with existing environmental statutory and regulatory requirements.''

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE TRAINING IN ENVIRONMENTAL RESTORATION AND HAZARDOUS WASTE MANAGEMENT

Pub. L. 102–484, div. D, title XLIV, §4452, Oct. 23, 1992, 106 Stat. 2738, authorized the Secretary of Defense to establish a program to assist institutions of higher education, as defined in former section 1141(a) of Title 20, Education, to provide education and training in environmental restoration and hazardous waste management and to award grants to such institutions, prior to repeal by Pub. L. 103–160, div. A, title XIII, §1333(j), Nov. 30, 1993, 107 Stat. 1800. See section 1333 of Pub. L. 103–160, set out above.

POLICIES AND REPORT ON OVERSEAS ENVIRONMENTAL COMPLIANCE

Pub. L. 101–510, div. A, title III, §342(b), Nov. 5, 1990, 104 Stat. 1537, provided that:

''(1) The Secretary of Defense shall develop a policy for determining applicable environmental requirements for military installations located outside the United States. In developing the policy, the Secretary shall ensure that the policy gives consideration to adequately protecting the health and safety of military and civilian personnel assigned to such installations.

''(2) The Secretary of Defense shall develop a policy for determining the responsibilities of the Department of Defense with respect to cleaning up environmental contamination that may be present at military installations located outside the United States. In developing the policy, the Secretary shall take into account applicable international agreements (such as Status of Forces agreements), multinational or joint use and operation of such installations, relative share of the collective defense burden, and negotiated accommodations.

''(3) The Secretary of Defense shall develop a policy and strategy to ensure adequate oversight of compliance with applicable environmental requirements and responsibilities of the Department of Defense determined under the policies developed under paragraphs (1) and (2). In developing the policy, the Secretary shall consider using the Inspector General of the Department of Defense to ensure active and forceful oversight.

''(4) At the same time the President submits to Congress his budget for fiscal year 1993 pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a report describing the policies developed under paragraphs (1), (2), and (3). The report also shall include a discussion of the role of the Inspector General of the Department of Defense in overseeing environmental compliance at military installations outside the United States.

''(5) For purposes of this subsection, the term 'military installation' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located outside the United States and outside any territory, commonwealth, or possession of the United States.''

ENVIRONMENTAL EDUCATION PROGRAM FOR DEPARTMENT OF DEFENSE PERSONNEL

Pub. L. 101–510, div. A, title III, § 344, Nov. 5, 1990, 104 Stat. 1538, directed Secretary of Defense to establish a program for the purpose of educating Department of Defense personnel in environmental management and, not later than date on which President submits budget for FY 1992 to Congress pursuant to 31 U.S.C. 1105(a), to submit to Congress recommendations regarding whether program should be continued after Sept. 30, 1991.

USE OF OZONE DEPLETING SUBSTANCES WITHIN DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. A, title III, § 325, Oct. 23, 1992, 106 Stat. 2367, required the Director of the Defense Logistics Agency to evaluate the use of class I and class II substances, listed under 42 U.S.C. 7671a, by the military departments and Defense Agencies for the years 1992 to 1995 and to submit to the congressional defense committees a report on the status of the evaluation in 1993.

Pub. L. 101–510, div. A, title III, § 345, Nov. 5, 1990, 104 Stat. 1538, provided that:

''(a) DOD REQUIREMENTS FOR OZONE DEPLETING CHEMICALS OTHER THAN CFCs.—(1) In addition to the functions of the advisory committee established pursuant to section 356(c) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 [Pub. L. 101–189] (10 U.S.C. 2701 note), it shall be the function of the Committee to study (A) the use of methyl chloroform, hydrochlorofluorcarbons (HCFCs), and carbon tetrachloride by the Department of Defense and by contractors in the performance of contracts for the Department of Defense, and (B) the costs and feasibility of using alternative compounds or technologies for methyl chloroform, HCFCs, and carbon tetrachloride.

''(2) Within 120 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that specify the use of methyl chloroform, HCFCs, or carbon tetrachloride.

''(3) Within 150 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that do not specify use of methyl chloroform, HCFCs, or carbon tetrachloride but cannot be met without the use of one or more of such substances.

''(b) REQUIREMENT.—In preparing the report required by section 356(d) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 [Pub. L. 101–189, set out below] and the report required by subsection (d) of this section, the Committee shall work closely with the Strategic Environmental Research and Development Program Council and shall provide to such Council such reports.

''(c) EXTENSION OF REPORTING DEADLINE FOR CFCs.—The deadline for submitting to Congress the report required by section 356(d) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 concerning the uses of CFCs is hereby extended to June 30, 1991.

''(d) REPORTING DEADLINE FOR METHYL CHLOROFORM, HCFCs, AND CARBON TETRACHLORIDE.—Not later than September 30, 1991, the Secretary shall submit to Congress a report containing the results of the study by the Committee required by subsection (a)(1) of this section.''

REQUIREMENT FOR DEVELOPMENT OF ENVIRONMENTAL DATA BASE

Pub. L. 101–189, div. A, title III, § 352, Nov. 29, 1989, 103 Stat. 1423, provided that:

''(a) ENVIRONMENTAL DATA BASE.—The Secretary of Defense shall develop and maintain a comprehensive data base on environmental activities carried out by the Department of Defense pursuant to, and environmental compliance obligations to which the Department is subject under, chapter 160 of title 10, United States Code, and all other applicable Federal and State environmental laws. At a minimum, the information in the data base shall include all the fines and penalties assessed against the Department of Defense pursuant to environmental laws and paid by the Department, all notices of violations of environmental laws received by the Department, and all obligations of the Department for compliance with environmental laws. The Secretary may include any other information he considers appropriate.

''(b) REPORT.—Not later than one year after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the progress in development of the data base required under subsection (a). The report shall include a summary of the information collected for the data base with respect to environmental activities during 1989.''

FUNDING FOR WASTE MINIMIZATION PROGRAMS FOR CERTAIN INDUSTRIAL-TYPE ACTIVITIES OF DEPARTMENT OF DEFENSE

Pub. L. 101–189, div. A, title III, § 354, Nov. 29, 1989, 103 Stat. 1424, as amended by Pub. L. 102–190, div. A, title III, § 332, Dec. 5, 1991, 105 Stat. 1340, directed the Secretary of Defense to require the Secretary of each military department to establish a program for fiscal years 1992, 1993, and 1994 to reduce the volume of solid and hazardous wastes disposed of, and hazardous materials used by, each industrial-type activity within the department that was a depot maintenance installation and for which a working-capital fund had been established under section 2208 of this title, and to submit to Congress, not later than 90 days after Nov. 29, 1989, the name of each industrial-type or commercial-type activity of each military department which was not covered by the waste minimization program because the activity did not carry out depot maintenance installation functions.

USE OF CHLOROFLUOROCARBONS AND HALONS IN DEPARTMENT OF DEFENSE

Pub. L. 101–189, div. A, title III, § 356, Nov. 29, 1989, 103 Stat. 1425, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(a) CHLOROFLUOROCARBONS EMISSION REDUCTION.—The Secretary of Defense shall formulate and carry out, through the Under Secretary of Defense for Acquisition, Technology, and Logistics a program to reduce the unnecessary release of chlorofluorocarbons (hereinafter in this section referred to as 'CFCs') and halons into the atmosphere in connection with maintenance operations and training and testing practices of the Department of Defense.

''(b) REPORT.—(1) Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the program the Secretary proposes to carry out pursuant to subsection (a). The Secretary shall specify in the report the reduction

goals that are attainable on the basis of known technology, including the use of refrigerant recovery systems currently available. The Secretary shall include in the report a schedule for meeting those goals. The Secretary shall also include in such report reduction goals that can be achieved only with the use of new technology and assess the technologies and investment that will be required to attain those goals within a five-year period.

''(2) Before the report required under paragraph (1) is submitted to the committees named in such paragraph, the Secretary shall transmit a copy of the report to the Administrator of the Environmental Protection Agency for comment.

''(c) DOD REQUIREMENTS FOR CFCS.—(1) Not later than 30 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary shall establish an advisory committee to be known as the 'CFC Advisory Committee' (hereinafter in this section referred to as the 'Committee'). The Committee shall be composed of not more than 15 members, with an equal number of representatives from the Department of Defense, the Environmental Protection Agency, and defense contractors. Members representing defense contractors shall be contractors that supply the Department of Defense with products or equipment that require the use of CFCs.

''(2) It shall be the function of the Committee to study (A) the use of CFCs by the Department of Defense and by contractors in the performance of contracts for the Department of Defense, and (B) the cost and feasibility of using alternative compounds for CFCs or using alternative technologies that do not require the use of CFCs.

''(3) Within 120 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that specify the use of CFCs.

''(4) Within 150 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that do not specify use of CFCs but cannot be met without the use of CFCs.

''(d) REPORT.—Not later than September 30, 1990, the Secretary shall submit to the committees named in subsection (b) a report containing the results of the study by the Committee. The report shall—

''(1) identify cases in which the Committee found that substitutes for CFCs could be made most expeditiously;

''(2) identify the feasibility and cost of substituting compounds or technologies for CFC uses referred to in subsection (c)(3) and estimate the time necessary for completing the substitution;

''(3) identify CFC uses referred to in subsection (c)(4) for which substitutes are not currently available and indicate the reasons substitutes are not available;

''(4) describe the types of research programs that should be undertaken to identify substitute compounds or technologies for CFC uses referred to in paragraphs (3) and (4) of subsection (c) and estimate the cost of the program;

''(5) recommend procedures to expedite the use of substitute compounds and technologies offered by contractors to replace CFC uses;

''(6) estimate the earliest date on which CFCs will no longer be required for military applications; and

''(7) estimate the cost of revising military specifications for the use of substitutes for CFCs, the additional costs resulting from modification of Department of Defense contracts to provide for the use of substitutes for CFCs, and the cost of purchasing new equipment and reverification necessitated by the use of substitutes for CFCs.''

REPORT ON ENVIRONMENTAL REQUIREMENTS AND PRIORITIES

Pub. L. 101–189, div. A, title III, §358, Nov. 29, 1989, 103 Stat. 1427, directed Secretary of Defense, not later than two years after Nov. 29, 1989, to submit to Congress a comprehensive report on the long-range environmental challenges and goals of the Department of Defense.

STUDY OF WASTE RECYCLING

Pub. L. 101–189, div. A, title III, §361, Nov. 29, 1989, 103 Stat. 1429, as amended by Pub. L. 101–510, div. A, title III, §343, Nov. 5, 1990, 104 Stat. 1538, required the Secretary of Defense to conduct a study of current practices and future plans for managing postconsumer waste at facilities of the Department of Defense at which such waste was generated and the feasibility of such Department of Defense facilities participating in programs at military installations or in local communities to recycle the postconsumer waste generated at the facilities, and to submit to Congress a report describing the findings and conclusions of the Secretary resulting from the study not later than Mar. 1, 1991.

USE OF DEPARTMENT OF DEFENSE APPROPRIATIONS FOR REMOVAL OF UNSAFE BUILDINGS OR DEBRIS

Pub. L. 101–165, title IX, §9038, Nov. 21, 1989, 103 Stat. 1137, which authorized appropriations available to the Department of Defense to be used at sites formerly used by the Department for removal of unsafe buildings or debris of the Department and required that removal be completed before the property is released from Federal Government control, was repealed and restated in subsecs. (f) and (g) of this section by Pub. L. 101–510, div. A, title XIV, §1481(i), Nov. 5, 1990, 104 Stat. 1708.

§ 2702. Research, development, and demonstration program

(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA (42 U.S.C. 9660(a)(5)). The program shall include research, development, and demonstration with respect to each of the following:

(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid

Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

(d) INFORMATION COLLECTION AND DISSEMINATION.—

(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1721; amended Pub. L. 108–375, div. A, title X, § 1084(d)(25), Oct. 28, 2004, 118 Stat. 2063.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 inserted ''(42 U.S.C. 9660(a)(5))'' after ''311(a)(5) of CERCLA''.

PARTNERSHIPS FOR INVESTMENT IN INNOVATIVE ENVIRONMENTAL TECHNOLOGIES

Pub. L. 105–85, div. A, title III, § 349, Nov. 18, 1997, 111 Stat. 1690, as amended by Pub. L. 106–65, div. A, title X, § 1067(4), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–81, div. A, title X, § 1062(k)(1), Dec. 31, 2011, 125 Stat. 1586, authorized the Secretary of Defense, until three years after Nov. 18, 1997, to enter into a partnership with one or more private entities to demonstrate and validate innovative environmental technologies, and to provide funds to the partner or partners from appropriations available to the Department of Defense for environmental activities for a period of up to five years.

AGREEMENTS FOR SERVICES OF OTHER AGENCIES IN SUPPORT OF ENVIRONMENTAL TECHNOLOGY CERTIFICATION

Pub. L. 105–85, div. A, title III, § 342(d), Nov. 18, 1997, 111 Stat. 1686, provided that not later than 90 days after Nov. 18, 1997, the Secretary of Defense was to submit to Congress a report setting forth the guidelines established by the Secretary for reimbursement of State and local governments, and for cost-sharing between the Department of Defense, such governments, and vendors, under cooperative agreements entered into under section 327 of Pub. L. 104–201, formerly set out below.

Pub. L. 104–201, div. A, title III, § 327, Sept. 23, 1996, 110 Stat. 2483, as amended by Pub. L. 105–85, div. A, title III, § 342(a)–(c), Nov. 18, 1997, 111 Stat. 1686, authorized the Secretary of Defense, until five years after Sept. 23, 1996, to enter into a cooperative agreement with an agency of a State or local government, or with an Indian tribe, to obtain assistance in certifying environmental technologies.

§ 2703. Environmental restoration accounts

(a) ESTABLISHMENT OF ACCOUNTS.—There are hereby established in the Department of Defense the following accounts:

(1) An account to be known as the ''Environmental Restoration Account, Defense''.

(2) An account to be known as the ''Environmental Restoration Account, Army''.

(3) An account to be known as the ''Environmental Restoration Account, Navy''.

(4) An account to be known as the ''Environmental Restoration Account, Air Force''.

(5) An account to be known as the ''Environmental Restoration Account, Formerly Used Defense Sites''.

(b) PROGRAM ELEMENTS FOR ORDNANCE REMEDIATION.—The Secretary of Defense shall establish a program element for remediation of unexploded ordnance, discarded military munitions, and munitions constituents within each environmental restoration account established under subsection (a). In this subsection, the terms ''discarded military munitions'' and ''munitions constituents'' have the meanings given such terms in section 2710 of this title.

(c) OBLIGATION OF AUTHORIZED AMOUNTS.—(1) Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account only to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law.

(2) Funds authorized for deposit in an account under subsection (a) shall remain available until expended.

(d) BUDGET REPORTS.—In proposing the budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amounts requested for environmental restoration programs of the Department of Defense and of each of the military departments under this chapter and under any other Act.

(e) CREDIT OF AMOUNTS RECOVERED.—The following amounts shall be credited to the appropriate environmental restoration account:

(1) Amounts recovered under CERCLA for response actions.

(2) Any other amounts recovered from a contractor, insurer, surety, or other person to reimburse the Department of Defense or a military department for any expenditure for environmental response activities.

(f) PAYMENTS OF FINES AND PENALTIES.—None of the funds appropriated to the Environmental Restoration Account, Defense, or to any environmental restoration account of a military department, may be used for the payment of a fine or penalty (including any supplemental environmental project carried out as part of such penalty) imposed against the Department of Defense or a military department unless the act or omission for which the fine or penalty is imposed arises out of an activity funded by the environmental restoration account concerned and the payment of the fine or penalty has been specifically authorized by law.

(g) SOLE SOURCE OF FUNDS FOR OPERATION AND MONITORING OF ENVIRONMENTAL REMEDIES.—(1) Except as provided in subsection (h), the sole

source of funds for all phases of an environmental remedy at a site under the jurisdiction of the Department of Defense or a formerly used defense site shall be the applicable environmental restoration account established under subsection (a).

(2) In this subsection, the term ''environmental remedy'' has the meaning given the term ''remedy'' in section 101 of CERCLA (42 U.S.C. 9601).

(h) SOLE SOURCE OF FUNDS FOR ENVIRONMENTAL REMEDIATION AT CERTAIN BASE REALIGNMENT AND CLOSURE SITES.—In the case of property disposed of pursuant to a base closure law and subject to a covenant that was required to be provided by paragraphs (3) and (4) of section 120(h) of CERCLA (42 U.S.C. 9620(h)), the sole source of funds for services procured under section 2701(d)(1) of this title shall be the Department of Defense Base Closure Account established under section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note). The limitation in this subsection shall expire upon the closure of such base closure account.

(Added Pub. L. 99–499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 103–337, div. A, title III, §321, Oct. 5, 1994, 108 Stat. 2710; Pub. L. 104–106, div. A, title III, §322, Feb. 10, 1996, 110 Stat. 252; Pub. L. 104–201, div. A, title III, §322(a)(1), Sept. 23, 1996, 110 Stat. 2477; Pub. L. 106–65, div. A, title III, §321, title X, §1066(a)(27), Oct. 5, 1999, 113 Stat. 560, 772; Pub. L. 106–398, §1 [[div. A], title III, §§311, 312], Oct. 30, 2000, 114 Stat. 1654, 1654A–53, 1654A–54; Pub. L. 107–107, div. A, title III, §312, Dec. 28, 2001, 115 Stat. 1051; Pub. L. 108–136, div. A, title III, §313(a), Nov. 24, 2003, 117 Stat. 1430; Pub. L. 108–375, div. A, title X, §1084(d)(26), Oct. 28, 2004, 118 Stat. 2063; Pub. L. 109–163, div. A, title III, §312(b), title X, §1056(c)(7), Jan. 6, 2006, 119 Stat. 3191, 3439; Pub. L. 109–364, div. A, title X, §1071(a)(23), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–239, div. B, title XXVII, §2711(c)(4)(B), Jan. 2, 2013, 126 Stat. 2144; Pub. L. 113–291, div. A, title III, §311, Dec. 19, 2014, 128 Stat. 3336.)

AMENDMENTS

2014—Subsec. (f). Pub. L. 113–291 struck out ''for fiscal years 1995 through 2010,'' before ''or to any environmental'' and ''for fiscal years 1997 through 2010'' before '', may be used''.

2013—Subsec. (h). Pub. L. 112–239 substituted ''the Department of Defense Base Closure Account established under section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note)'' for ''the applicable Department of Defense base closure account'' and ''such base closure account'' for ''the applicable base closure account''.

2006—Subsec. (b). Pub. L. 109–163, §1056(c)(7), substituted ''In this subsection, the terms 'discarded military munitions' and'' for ''For purposes of the preceding sentence, the terms 'unexploded ordnance', 'discarded military munitions', and''.

Subsec. (g)(1). Pub. L. 109–163, §312(b)(1), substituted ''Except as provided in subsection (h), the sole source'' for ''The sole source''.

Subsec. (h). Pub. L. 109–364 substituted ''section 2701(d)(1)'' for ''subsection 2701(d)(1)''.

Pub. L. 109–163, §312(b)(2), added subsec. (h).

2004—Subsec. (b). Pub. L. 108–375 substituted ''For purposes of the preceding sentence, the terms'' for ''The terms''.

2003—Subsec. (c)(1). Pub. L. 108–136, §313(a)(1), substituted ''only to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law.'' for ''only—

''(A) to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law; and

''(B) to pay for the costs of permanently relocating a facility because of a release or threatened release of hazardous substances, pollutants, or contaminants from—

''(i) real property on which the facility is located and that is currently under the jurisdiction of the Secretary of Defense or the Secretary of a military department; or

''(ii) real property on which the facility is located and that was under the jurisdiction of the Secretary of Defense or the Secretary of a military department at the time of the actions leading to the release or threatened release.''

Subsec. (c)(2). Pub. L. 108–136, §313(a)(3), redesignated par. (4) as (2) and struck out second sentence which read as follows: ''Not more than 5 percent of the funds deposited in an account under subsection (a) for a fiscal year may be used to pay relocation costs under paragraph (1)(B).''

Pub. L. 108–136, §313(a)(2), struck out par. (2) which read as follows: ''The authority provided by paragraph (1)(B) expires September 30, 2003. The Secretary of Defense or the Secretary of a military department may not pay the costs of permanently relocating a facility under such paragraph unless the Secretary—

''(A) determines that permanent relocation—

''(i) is the most cost effective method of responding to the release or threatened release of hazardous substances, pollutants, or contaminants from the real property on which the facility is located;

''(ii) has the approval of relevant regulatory agencies; and

''(iii) is supported by the affected community; and

''(B) submits to Congress written notice of the determination before undertaking the permanent relocation of the facility, including a description of the response action taken or to be taken in connection with the permanent relocation and a statement of the costs incurred or to be incurred in connection with the permanent relocation.''

Subsec. (c)(3). Pub. L. 108–136, §313(a)(2), struck out par. (3) which read as follows: ''If relocation costs are to be paid under paragraph (1)(B) with respect to a facility located on real property described in clause (ii) of such paragraph, the Secretary of Defense or the Secretary of the military department concerned may use only fund transfer mechanisms otherwise available to the Secretary.''

Subsec. (c)(4). Pub. L. 108–136, §313(a)(3), redesignated par. (4) as (2).

2001—Subsecs. (b) to (g). Pub. L. 107–107 added subsec. (b) and redesignated former subsecs. (b) to (f) as (c) to (g), respectively.

2000—Subsec. (a)(5). Pub. L. 106–398, §1 [[div. A], title III, §311(a)], added par. (5).

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title III, §312], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account only in order to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law. Funds so authorized shall remain available until expended.''

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title III, §311(b)], added subsec. (f).

1999—Subsec. (c). Pub. L. 106–65, §1066(a)(27), struck out ''United States Code,'' after ''title 31,''.

Subsec. (e). Pub. L. 106–65, §321, substituted ''through 2010,'' for ''through 1999,'' in two places.

1996—Pub. L. 104–201 substituted ''accounts'' for ''transfer account'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (f) establishing the Defense Environmental Restoration Account and providing for deposits into and withdrawals from the Account.

Subsec. (e). Pub. L. 104–106 amended subsec. (e) generally, substituting

''(e) AMOUNTS RECOVERED.—The following amounts shall be credited to the transfer account:

''(1) Amounts recovered under CERCLA for response actions of the Secretary.

''(2) Any other amounts recovered by the Secretary or the Secretary of the military department concerned from a contractor, insurer, surety, or other person to reimburse the Department of Defense for any expenditure for environmental response activities.'' for

''(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.''

1994—Subsec. (f). Pub. L. 103–337 added subsec. (f).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113–76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112–239, set out as a note under section 2701 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title III, § 313(a), Nov. 24, 2003, 117 Stat. 1430, provided that the amendment made by that section is effective Oct. 1, 2003.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title III, § 322(e), Sept. 23, 1996, 110 Stat. 2479, provided that: ''The amendments made by this section [amending this section and section 2705 of this title] shall take effect on the later of—

''(1) October 1, 1996; or

''(2) the date of the enactment of this Act [Sept. 23, 1996].''

EFFECTIVE DATE

Pub. L. 99–499, title II, § 211(c), Oct. 17, 1986, 100 Stat. 1726, provided that: ''Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.''

EFFECT OF AMENDMENT BY PUB. L. 108–136 ON EXISTING AGREEMENTS

Pub. L. 108–136, div. A, title III, § 313(b), Nov. 24, 2003, 117 Stat. 1430, provided that: ''An agreement in effect on September 30, 2003, under section 2703(c)(1)(B) of title 10, United States Code, as in effect on that date, to pay for the costs of permanently relocating a facility because of a release or threatened release of hazardous substances, pollutants, or contaminants shall remain in effect after that date, subject to the terms of the agreement, and costs may be paid in accordance with the terms of the agreement, notwithstanding the amendments made by subsection (a) [amending this section].''

REFERENCES TO DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT

Pub. L. 104–201, div. A, title III, § 322(b), Sept. 23, 1996, 110 Stat. 2478, provided that: ''Any reference to the Defense Environmental Restoration Account in any Federal law, Executive Order, regulation, delegation of authority, or document shall be deemed to refer to the appropriate environmental restoration account established under section 2703(a)(1) of title 10, United States Code (as amended by subsection (a)(1)).''

UNOBLIGATED BALANCES IN DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT

Pub. L. 104–201, div. A, title III, § 322(d), Sept. 23, 1996, 110 Stat. 2479, provided that: ''Any unobligated balances that remain in the Defense Environmental Restoration Account under section 2703(a) of title 10, United States Code, as of the effective date specified in subsection (e) [Oct. 1, 1996] shall be transferred on such date to the Environmental Restoration Account, Defense, established under section 2703(a)(1) of title 10, United States Code (as amended by subsection (a)(1)).''

§ 2704. Commonly found unregulated hazardous substances

(a) NOTICE TO HHS.—

(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

(2) DEFINITION.—In this subsection, the term ''unregulated hazardous substance'' means a hazardous substance—

(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA (42 U.S.C. 9604(i)). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding re-

garding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

(d) EPA HEALTH ADVISORIES.—

(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

(A) for which no advisory exists;

(B) which is found to threaten drinking water; and

(C) which is emanating from a facility under the jurisdiction of the Secretary.

(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

(e) CROSS REFERENCE.—Section 104(i) of CERCLA (42 U.S.C. 9604(i)) applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA (42 U.S.C. 9604(i)).

(Added Pub. L. 99–499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 102–25, title VII, §701(j)(10), Apr. 6, 1991, 105 Stat. 116; Pub. L. 108–375, div. A, title X, §1084(d)(27), Oct. 28, 2004, 118 Stat. 2063.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in subsec. (a)(2)(A), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (a)(2)(A), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (a)(2)(A), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 15B (§1857 et seq.) of Title 42. On enactment of Pub. L. 95–95, the Act was reclassified to chapter 85 (§7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Clean Water Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

2004—Subsecs. (c), (e), (f). Pub. L. 108–375 inserted ''(42 U.S.C. 9604(i))'' after ''CERCLA''.

1991—Subsec. (f). Pub. L. 102–25 substituted ''Agency for Toxic Substances'' for ''Agency of Toxic Substances''.

§ 2705. Notice of environmental restoration activities

(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

(1) The discovery of releases or threatened releases of hazardous substances at the facility.

(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and

proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

(d) RESTORATION ADVISORY BOARD.—(1) In lieu of establishing a technical review committee under subsection (c), the Secretary may permit the establishment of a restoration advisory board in connection with any installation (or group of nearby installations) where the Secretary is planning or implementing environmental restoration activities.

(2)(A) The Secretary shall prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards pursuant to this subsection.

(B) The issuance of regulations under subparagraph (A) shall not be a precondition to the establishment of restoration advisory boards under this subsection.

(C) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a restoration advisory board established under this subsection.

(3) The Secretary may authorize the commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) to pay routine administrative expenses of a restoration advisory board established for that installation. Such payments shall be made from funds available under subsection (g).

(e) TECHNICAL ASSISTANCE.—(1) The Secretary may, upon the request of the technical review committee or restoration advisory board for an installation, authorize the commander of the installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) to obtain for the committee or advisory board, as the case may be, from private sector sources technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted, at the installation. The commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) shall use funds made available under subsection (g) for obtaining assistance under this paragraph.

(2) The commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) may obtain technical assistance under paragraph (1) for a technical review committee or restoration advisory board only if—

(A) the technical review committee or restoration advisory board demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation, and available Department of Defense personnel, do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(B) the technical assistance—

(i) is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(ii) is likely to contribute to community acceptance of environmental restoration activities at the installation.

(f) INVOLVEMENT IN DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.—If a technical review committee or restoration advisory board is established with respect to an installation (or group of installations), the Secretary shall consult with and seek the advice of the committee or board on the following issues:

(1) Identifying environmental restoration activities and projects at the installation or installations.

(2) Monitoring progress on these activities and projects.

(3) Collecting information regarding restoration priorities for the installation or installations.

(4) Addressing land use, level of restoration, acceptable risk, and waste management and technology development issues related to environmental restoration at the installation or installations.

(5) Developing environmental restoration strategies for the installation or installations.

(g) FUNDING.—The Secretary shall, to the extent provided in appropriations Acts, make funds available for administrative expenses and technical assistance under this section using funds in the following accounts:

(1) In the case of a military installation not approved for closure pursuant to a base closure law, the environmental restoration account concerned under section 2703(a) of this title.

(2) In the case of an installation approved for closure pursuant to such a law, the Department of Defense Base Closure Account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 103–337, div. A, title III, § 326(a)–(c), Oct. 5, 1994, 108 Stat. 2712, 2713; Pub. L. 104–106, div. A, title III, § 324(a)–(d)(1), (e), Feb. 10, 1996, 110 Stat. 252–254; Pub. L. 104–201, div. A, title III, § 322(c), Sept. 23, 1996, 110 Stat. 2479; Pub. L. 108–136, div. A, title III, § 317(b), title X, § 1043(c)(5), Nov. 24, 2003, 117 Stat. 1432, 1612; Pub. L. 112–239, div. B, title XXVII, § 2711(c)(4)(C), Jan. 2, 2013, 126 Stat. 2144.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(2)(C), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2013—Subsec. (g)(2). Pub. L. 112–239 substituted ''Closure Account'' for ''Closure Account 1990''.

2003—Subsec. (d)(2)(C). Pub. L. 108–136, § 317(b), added subpar. (C).

Subsec. (h). Pub. L. 108–136, § 1043(c)(5), struck out heading and text of subsec. (h). Text read as follows: ''In this section, the term 'base closure law' means the following:

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

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

''(3) Section 2687 of this title.''

1996—Subsec. (d)(2). Pub. L. 104–106, §324(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall prescribe regulations regarding the characteristics, composition, funding, and establishment of restoration advisory boards pursuant to this subsection. However, the issuance of regulations shall not be a precondition to the establishment of a restoration advisory board or affect the existence or operation of a restoration advisory board established before the date of the enactment of this section.''

Subsec. (d)(3). Pub. L. 104–106, §324(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary may provide for the payment of routine administrative expenses of a restoration advisory board from funds available for the operation and maintenance of the installation (or installations) for which the board is established or from the funds available under subsection (e)(3).''

Subsec. (e). Pub. L. 104–106, §324(c), added subsec. (e) and struck out former subsec. (e) which authorized Secretary to make technical assistance grants under section 9617(e) of title 42 in connection with installations containing facilities listed on the National Priorities List and to make funds available to facilitate participation on technical review committees and restoration advisory boards relating to environmental restoration activities at other installations.

Subsec. (g). Pub. L. 104–106, §324(d)(1), added subsec. (g).

Subsec. (g)(1). Pub. L. 104–201 substituted ''the environmental restoration account concerned'' for ''the Defense Environmental Restoration Account established''.

Subsec. (h). Pub. L. 104–106, §324(e), added subsec. (h).

1994—Subsecs. (d) to (f). Pub. L. 103–337 added subsecs. (d) to (f).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113–76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112–239, set out as a note under section 2701 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 322(e) of Pub. L. 104–201, set out as a note under section 2703 of this title.

REQUIREMENTS FOR RESTORATION ADVISORY BOARDS AND EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT

Pub. L. 108–136, div. A, title III, §317(a), Nov. 24, 2003, 117 Stat. 1432, provided that: ''The Secretary of Defense shall amend the regulations required by section 2705(d)(2) of title 10, United States Code, relating to the establishment, characteristics, composition, and funding of restoration advisory boards to ensure that each restoration advisory board complies with the following requirements:

''(1) Each restoration advisory board shall be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

''(2) Unless a closed or partially closed meeting is determined to be proper in accordance with one or more of the exceptions listed in section 552b(c) of title 5, United States Code, each meeting of a restoration advisory board shall be—

''(A) held at a reasonable time and in a manner or place reasonably accessible to the public, including individuals with disabilities; and

''(B) open to the public.

''(3) Timely notice of each meeting of a restoration advisory board shall be published in a local newspaper of general circulation.

''(4) Interested persons may appear before or file statements with a restoration advisory board, subject to such reasonable restrictions as the Secretary may prescribe.

''(5) Subject to section 552 of title 5, United States Code, the records, reports, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to, prepared for, or prepared by each restoration advisory board shall be available for public inspection and copying at a single, publicly accessible location, such as a public library or an appropriate office of the military installation for which the restoration advisory board is established, at least until the restoration advisory board is terminated.

''(6) Detailed minutes of each meeting of each restoration advisory board shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the restoration advisory board. The accuracy of the minutes of a restoration advisory board shall be certified by the chairperson of the board.''

IMPLEMENTATION REQUIREMENTS FOR RESTORATION ADVISORY BOARDS

Pub. L. 103–337, div. A, title III, §326(d), Oct. 5, 1994, 108 Stat. 2713, provided that: ''Not later than 180 days after the date on which the Secretary of Defense announces a decision to establish restoration advisory boards, the Secretary shall—

''(1) prescribe the regulations required under subsection (d)(2) of section 2705 of title 10, United States Code, as added by subsection (a); and

''(2) take appropriate actions to notify the public of the availability of funding under subsection (e) of such section, as added by subsection (b).''

REPORT ON RESTORATION ADVISORY BOARDS AND ASSISTANCE FOR CITIZEN PARTICIPATION ON COMMITTEES AND BOARDS

Pub. L. 103–337, div. A, title III, §326(e), Oct. 5, 1994, 108 Stat. 2713, directed Secretary of Defense to submit, not later than May 1, 1996, report regarding establishment of restoration advisory boards under subsections (d) and (e) of this section and the expenditure of funds for assistance for citizen participation on technical review committees under subsection (e) of this section.

RESTRICTIONS ON ADMINISTRATIVE AND TECHNICAL ASSISTANCE FUNDING

Pub. L. 104–106, div. A, title III, §324(d)(2), Feb. 10, 1996, 110 Stat. 254, provided that:

''(2)(A) Subject to subparagraph (B), the total amount of funds made available under section 2705(g) of title 10, United States Code, as added by paragraph (1), for fiscal year 1996 may not exceed $6,000,000.

''(B) Amounts may not be made available under subsection (g) of such section 2705 after September 15, 1996, unless the Secretary of Defense publishes proposed final or interim final regulations required under subsection (d) of such section, as amended by subsection (a).''

[§ 2706. Repealed. Pub. L. 112–81, div. A, title X, § 1061(22)(A), Dec. 31, 2011, 125 Stat. 1584]

Section, added Pub. L. 99–499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 101–189, div. A, title III, §357(a)(1), (2)(A), Nov. 29, 1989, 103 Stat. 1426, 1427; Pub. L. 101–510, div. A, title III, §§341, 342(a), Nov. 5, 1990, 104 Stat. 1536, 1537; Pub. L. 103–160, div. A, title X, §1001(a)–(d), Nov. 30, 1993, 107 Stat. 1742–1744; Pub. L. 103–337, div. A, title X, §1070(b)(9), Oct. 5, 1994, 108 Stat.

2857; Pub. L. 104–106, div. A, title III, § 324(f), Feb. 10, 1996, 110 Stat. 254; Pub. L. 104–201, div. A, title III, § 321, Sept. 23, 1996, 110 Stat. 2477; Pub. L. 105–85, div. A, title III, §§ 344(a), 345, Nov. 18, 1997, 111 Stat. 1688; Pub. L. 105–261, div. A, title III, § 325, Oct. 17, 1998, 112 Stat. 1965; Pub. L. 106–65, div. A, title III, §§ 322, 323(c)(1), Oct. 5, 1999, 113 Stat. 560, 563; Pub. L. 107–107, div. A, title III, § 315, Dec. 28, 2001, 115 Stat. 1053; Pub. L. 109–163, div. A, title III, § 311, Jan. 6, 2006, 119 Stat. 3190, related to annual reports by the Secretary of Defense to Congress regarding environmental restoration activities, environmental quality programs and other environmental activities, and the Department of Defense's environmental technology program.

§ 2707. Environmental restoration projects for environmental responses

(a) ENVIRONMENTAL RESTORATION PROJECTS AUTHORIZED.—The Secretary of Defense or the Secretary of a military department may carry out an environmental restoration project if that Secretary determines that the project is necessary to carry out a response under this chapter or CERCLA.

(b) TREATMENT OF PROJECT.—Any construction, development, conversion, or extension of a structure, and any installation of equipment, that is included in an environmental restoration project under this section may not be considered military construction (as that term is defined in section 2801(a) of this title).

(c) SOURCE OF FUNDS.—Funds authorized for deposit in an account established by section 2703(a) of this title shall be the only source of funds to conduct an environmental restoration project under this section.

(d) ENVIRONMENTAL RESTORATION PROJECT DEFINED.—In this section, the term ''environmental restoration project'' includes any construction, development, conversion, or extension of a structure, or installation of equipment, in direct support of a response.

(Added Pub. L. 107–314, div. A, title III, § 313(a)(2), Dec. 2, 2002, 116 Stat. 2507.)

PRIOR PROVISIONS

A prior section 2707 was renumbered section 2700 of this title.

§ 2708. Contracts for handling hazardous waste from defense facilities

(a) REIMBURSEMENT REQUIREMENT.—(1) Each contract or subcontract to which this section applies shall provide that, upon receipt of hazardous wastes properly characterized pursuant to applicable laws and regulations, the contractor or subcontractor will reimburse the Federal Government for all liabilities incurred by, penalties assessed against, costs incurred by, and damages suffered by, the Government that are caused by—

(A) the contractor's or subcontractor's breach of any term or provision of the contract or subcontract; and

(B) any negligent or willful act or omission of the contractor or subcontractor, or the employees of the contractor or subcontractor, in the performance of the contract or subcontract.

(2) Not later than 30 days after such a contract or subcontract is awarded, the contractor or subcontractor shall demonstrate that the contractor or subcontractor will reimburse the Federal Government as provided in paragraph (1).

(b) APPLICABILITY.—(1) Except as provided in paragraph (2), this section applies to each contract entered into by the Secretary of Defense or the Secretary of a military department, and any subcontract under any such contract, with an owner or operator of a hazardous waste treatment or disposal facility during fiscal years 1992 through 1996 for the offsite treatment or disposal of hazardous wastes from a facility under the jurisdiction of the Secretary of Defense.

(2) This section does not apply to—

(A) any contract or subcontract to perform remedial action or corrective action under the Defense Environmental Restoration Program, other programs or activities of the Department of Defense, or authorized State hazardous waste programs;

(B) any contract or subcontract under which the generation of the hazardous waste to be disposed of is incidental to the performance of the contract; or

(C) any contract or subcontract to dispose of ammunition or solid rocket motors.

(c) EXCEPTION TO REIMBURSEMENT REQUIREMENT.—Notwithstanding subsection (a), in the case of any contract to which this section applies, if the Secretary of Defense or the Secretary of the military department concerned determines that—

(1) there is only one responsible offeror or there is no responsible offeror willing to provide the reimbursement required by subsection (a) for such contract; or

(2) failure to award the contract would place the facility concerned in violation of any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),

then the contract may be awarded without including the reimbursement provision required by subsection (a).

(d) DEFINITIONS.—In this section:

(1) The term ''hazardous waste'' has the meaning given that term by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)), except that such term also includes polychlorinated biphenyls.

(2) The term ''remedial action'' has the meaning given that term by section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(24)).

(3) The term ''corrective action'' has the meaning given that term under section 3004(u) of the Solid Waste Disposal Act (42 U.S.C. 6924(u)).

(4) The term ''polychlorinated biphenyls'' has the meaning given that term under section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(e) EFFECT ON LIABILITY.—Nothing in this section shall affect the liability of the Federal Government under any Federal or State law or under common law.

(Added Pub. L. 102–190, div. A, title III, § 331(a)(1), Dec. 5, 1991, 105 Stat. 1339; amended Pub. L. 102–484, div. A, title III, § 321, title X,

§ 1052(36), Oct. 23, 1992, 106 Stat. 2365, 2501; Pub. L. 103–160, div. A, title X, § 1004, Nov. 30, 1993, 107 Stat. 1748.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–160 substituted ''fiscal years 1992 through 1996'' for ''fiscal years 1992 and 1993''.

1992—Subsec. (b)(1). Pub. L. 102–484, § 1052(36)(A), substituted ''each contract'' for ''all contracts'' and ''any subcontract under any such contract'' for ''all subcontracts under such contracts''.

Pub. L. 102–484, § 321, substituted ''fiscal years 1992 and 1993'' for ''fiscal year 1992''.

Subsec. (d). Pub. L. 102–484, § 1052(36)(B), substituted ''In'' for ''For purposes of'' in introductory provisions.

EFFECTIVE DATE

Pub. L. 102–190, div. A, title III, § 331(b), Dec. 5, 1991, 105 Stat. 1340, provided that: ''Section 2708 of title 10, United States Code, shall apply with respect to contracts entered into after the expiration of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

§ 2709. Investment control process for environmental technologies

(a) INVESTMENT CONTROL PROCESS.—The Secretary of Defense shall ensure that the technology planning process developed to implement section 2501 of this title and section 270(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2469) provides for an investment control process for the selection, prioritization, management, and evaluation of environmental technologies by the Department of Defense, the military departments, and the Defense Agencies.

(b) PLANNING AND EVALUATION.—The environmental technology investment control process required by subsection (a) shall provide, at a minimum, for the following:

(1) The active participation by end-users of environmental technology, including the officials responsible for the environmental security programs of the Department of Defense and the military departments, in the selection and prioritization of environmental technologies.

(2) The development of measurable performance goals and objectives for the management and development of environmental technologies and specific mechanisms for assuring the achievement of the goals and objectives.

(3) Annual performance reviews to determine whether the goals and objectives have been achieved and to take appropriate action in the event that they are not achieved.

(Added Pub. L. 106–65, div. A, title III, § 323(b)(1), Oct. 5, 1999, 113 Stat. 562.)

REFERENCES IN TEXT

Section 270(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2469), referred to in subsec. (a), is set out as a note under section 2501 of this title.

PURPOSES OF SECTION 323 OF PUB. L. 106–65

Pub. L. 106–65, div. A, title III, § 323(a), Oct. 5, 1999, 113 Stat. 562, provided that: ''The purposes of this section [enacting this section, amending section 2706 of this title, and enacting provisions set out as a note under section 2706 of this title] are—

''(1) to hold the Department of Defense and the military departments accountable for achieving performance-based results in the management of environmental technology by providing a connection between program direction and the achievement of specific performance-based results;

''(2) to assure the identification of end-user requirements for environmental technology within the military departments;

''(3) to assure results, quality of effort, and appropriate levels of service and support for end-users of environmental technology within the military departments; and

''(4) to promote improvement in the performance of environmental technologies by establishing objectives for environmental technology programs, measuring performance against such objectives, and making public reports on the progress made in such performance.''

§ 2710. Inventory of unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (other than operational ranges)

(a) INVENTORY REQUIRED.—(1) The Secretary of Defense shall develop and maintain an inventory of defense sites that are known or suspected to contain unexploded ordnance, discarded military munitions, or munitions constituents.

(2) The information in the inventory for each defense site shall include, at a minimum, the following:

(A) A unique identifier for the defense site.

(B) An appropriate record showing the location, boundaries, and extent of the defense site, including identification of the State and political subdivisions of the State, including the county, where applicable, in which the defense site is located and any Tribal lands encompassed by the defense site.

(C) Known persons and entities, other than a military department, with any current ownership interest or control of lands encompassed by the defense site.

(D) Any restrictions or other land use controls currently in place at the defense site that might affect the potential for public and environmental exposure to the unexploded ordnance, discarded military munitions, or munitions constituents.

(b) SITE PRIORITIZATION.—(1) The Secretary shall develop, in consultation with representatives of the States and Indian Tribes, a proposed protocol for assigning to each defense site a relative priority for response activities related to unexploded ordnance, discarded military munitions, and munitions constituents based on the overall conditions at the defense site. After public notice and comment on the proposed protocol, the Secretary shall issue a final protocol and shall apply the protocol to defense sites listed on the inventory. The level of response priority assigned the site shall be included with the information required by subsection (a)(2).

(2) In assigning the response priority for a defense site on the inventory, the Secretary shall primarily consider factors relating to safety and environmental hazard potential, such as the following:

(A) Whether there are known, versus suspected, unexploded ordnance, discarded military munitions, or munitions constituents on all or any portion of the defense site and the types of unexploded ordnance, discarded military munitions, or munitions constituents present or suspected to be present.

(B) Whether public access to the defense site is controlled, and the effectiveness of these controls.

(C) The potential for direct human contact with unexploded ordnance, discarded military munitions, or munitions constituents at the defense site and evidence of people entering the site.

(D) Whether a response action has been or is being undertaken at the defense site under the Formerly Used Defense Sites program or other program.

(E) The planned or mandated dates for transfer of the defense site from military control.

(F) The extent of any documented incidents involving unexploded ordnance, discarded military munitions, or munitions constituents at or from the defense site, including incidents involving explosions, discoveries, injuries, reports, and investigations.

(G) The potential for drinking water contamination or the release of munitions constituents into the air.

(H) The potential for destruction of sensitive ecosystems and damage to natural resources.

(3) The priority assigned to a defense site included on the inventory shall not impair, alter, or diminish any applicable Federal or State authority to establish requirements for the investigation of, and response to, environmental problems at the defense site.

(c) UPDATES AND AVAILABILITY.—(1) The Secretary shall annually update the inventory and site prioritization list to reflect new information that becomes available. The inventory shall be available in published and electronic form.

(2) The Secretary shall work with communities adjacent to a defense site to provide information concerning conditions at the site and response activities. At a minimum, the Secretary shall provide the site inventory information and site prioritization list to appropriate Federal, State, tribal, and local officials, and, to the extent the Secretary considers appropriate, to civil defense or emergency management agencies and the public.

(d) EXCEPTIONS.—This section does not apply to the following:

(1) Any locations outside the United States.

(2) The presence of military munitions resulting from combat operations.

(3) Operating storage and manufacturing facilities.

(4) Operational ranges.

(e) DEFINITIONS.—In this section:

(1) The term ''defense site'' applies to locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions.

(2) The term ''discarded military munitions'' means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations.

(3) The term ''munitions constituents'' means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions.

(4) The term ''possessions'' includes Johnston Atoll, Kingman Reef, Midway Island, Nassau Island, Palmyra Island, and Wake Island.

(5) The term ''Secretary'' means the Secretary of Defense.

(6) The term ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions.

(7) The term ''United States'', in a geographic sense, means the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States.

(Added Pub. L. 107–107, div. A, title III, § 311(a)(1), Dec. 28, 2001, 115 Stat. 1048; amended Pub. L. 108–136, div. A, title X, § 1042(b), Nov. 24, 2003, 117 Stat. 1610; Pub. L. 111–84, div. A, title III, § 318(a), Oct. 28, 2009, 123 Stat. 2250.)

AMENDMENTS

2009—Subsec. (a)(2)(B). Pub. L. 111–84 inserted '', including the county, where applicable,'' after ''political subdivisions of the State''.

2003—Subsec. (e). Pub. L. 108–136 redesignated pars. (4), (6), (7), (8), and (10) as (3) to (7), respectively, and struck out former pars. (3), (5), and (9) which defined terms ''military munitions'', ''operational range'', and ''unexploded ordnance'', respectively.

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.

EXPEDITED USE OF APPROPRIATE TECHNOLOGY RELATED TO UNEXPLODED ORDNANCE DETECTION

Pub. L. 110–417, [div. A], title III, § 314, Oct. 14, 2008, 122 Stat. 4410, as amended by Pub. L. 111–84, div. A, title X, § 1073(c)(1), Oct. 28, 2009, 123 Stat. 2474, provided that:

''(a) EXPEDITED USE OF APPROPRIATE TECHNOLOGIES.—The Secretary of Defense shall expedite the use of ap-

propriate unexploded ordnance detection instrument technology developed through research funded by the Department of Defense or developed by entities other than the Department of Defense.

''(b) REPORT.—Not later than October 1, 2009, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing and evaluating the following:

''(1) The amounts allocated for research, development, test, and evaluation for unexploded ordnance detection technologies.

''(2) The amounts allocated for transition of new unexploded ordnance detection technologies.

''(3) Activities undertaken by the Department to transition such technologies and train operators on emerging detection instrument technologies.

''(4) Any impediments to the transition of new unexploded ordnance detection instrument technologies to regular operation in remediation programs.

''(5) The transfer of such technologies to private sector entities involved in the detection of unexploded ordnance.

''(6) Activities undertaken by the Department to raise public awareness regarding unexploded ordnance.

''(c) UNEXPLODED ORDNANCE DEFINED.—In this section, the term 'unexploded ordnance' has the meaning given such term in section 101(e)(5) of title 10, United States Code.''

[Pub. L. 111–84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(1) to section 314 of Pub. L. 110–417, set out above, is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 therein as enacted.]

RESPONSE PLAN FOR REMEDIATION OF UNEXPLODED ORDNANCE, DISCARDED MILITARY MUNITIONS, AND MUNITIONS CONSTITUENTS

Pub. L. 109–364, div. A, title III, §313(a)–(d), Oct. 17, 2006, 120 Stat. 2138, 2139, provided that:

''(a) PERFORMANCE GOALS FOR REMEDIATION.—The Secretary of Defense shall set the following remediation goals with regard to unexploded ordnance, discarded military munitions, and munitions constituents:

''(1) To complete, by not later than September 30, 2007, preliminary assessments of unexploded ordnance, discarded military munitions, and munitions constituents at all active installations and formerly used defense sites (other than operational ranges).

''(2) To complete, by not later than September 30, 2010, site inspections of unexploded ordnance, discarded military munitions, and munitions constituents at all active installations and formerly used defense sites (other than operational ranges).

''(3) To achieve, by not later than September 30, 2009, a remedy in place or response complete for unexploded ordnance, discarded military munitions, and munitions constituents at all military installations closed or realigned as part of a round of defense base closure and realignment occurring prior to the 2005 round.

''(4) To achieve, by a date certain established by the Secretary of Defense, a remedy in place or response complete for unexploded ordnance, discarded military munitions, and munitions constituents at all active installations and formerly used defense sites (other than operational ranges) and all military installations realigned or closed under the 2005 round of defense base closure and realignment.

''(b) RESPONSE PLAN REQUIRED.—

''(1) IN GENERAL.—Not later than March 1, 2007, 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 comprehensive plan for addressing the remediation of unexploded ordnance, discarded military munitions, and munitions constituents at current and former defense sites (other than operational ranges).

''(2) CONTENT.—The plan required by paragraph (1) shall include—

''(A) a schedule, including interim goals, for achieving the goals described in paragraphs (1) through (3) of subsection (a), based upon the Munitions Response Site Prioritization Protocol established by the Department of Defense;

''(B) such interim goals as the Secretary determines feasible for efficiently achieving the goal required under paragraph (4) of such subsection; and

''(C) an estimate of the funding required to achieve the goals established pursuant to such subsection and the interim goals established pursuant to subparagraphs (A) and (B).

''(3) UPDATES.—Not later than March 15 of 2008, 2009, and 2010, the Secretary shall submit to the congressional defense committees an update of the plan required under paragraph (1). The Secretary may include the update in the report on environmental restoration activities that is submitted to Congress under [former] section 2706(a) of title 10, United States Code, in the year in which that update is required and may include in the update any adjustment to the remediation goals established under subsection (a) that the Secretary determines necessary to respond to unforeseen circumstances.

''(c) REPORT ON REUSE STANDARDS AND PRINCIPLES.—Not later than March 1, 2007, 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 the status of the efforts of the Department of Defense to achieve agreement with relevant regulatory agencies on appropriate reuse standards or principles, including—

''(1) a description of any standards or principles that have been agreed upon; and

''(2) a discussion of any issues that remain in disagreement, including the impact that any such disagreement is likely to have on the ability of the Department of Defense to carry out the response plan required by subsection (b).

''(d) DEFINITIONS.—In this section:

''(1) The terms 'unexploded ordnance' and 'operational range' have the meanings given such terms in section 101(e) of title 10, United States Code.

''(2) The terms 'discarded military munitions', 'munitions constituents', and 'defense site' have the meanings given such terms in section 2710(e) of such title.''

RESEARCH ON EFFECTS OF OCEAN DISPOSAL OF MUNITIONS

Pub. L. 109–364, div. A, title III, §314, Oct. 17, 2006, 120 Stat. 2139, provided that:

''(a) IDENTIFICATION OF DISPOSAL SITES.—

''(1) HISTORICAL REVIEW.—The Secretary of Defense shall conduct a historical review of available records to determine the number, size, and probable locations of sites where the Armed Forces disposed of military munitions in coastal waters. The historical review shall, to the extent possible, identify the types of munitions at individual sites.

''(2) COOPERATION.—The Secretary shall request the assistance of the Coast Guard, the National Oceanic and Atmospheric Administration, and other relevant Federal agencies in conducting the review required by this subsection.

''(3) INTERIM REPORTS.—The Secretary shall periodically, but no less often than annually, release any new information obtained during the historical review conducted under paragraph (1). The Secretary may withhold from public release the exact nature and locations of munitions the potential unauthorized retrieval of which could pose a significant threat to the national defense or public safety.

''(4) INCLUSION OF INFORMATION IN ANNUAL REPORT ON ENVIRONMENTAL RESTORATION ACTIVITIES.—The Secretary shall include the information obtained pursuant to the review conducted under paragraph (1) in

the annual report on environmental restoration activities submitted to Congress under [former] section 2706 of title 10, United States Code.

''(5) FINAL REPORT.—The Secretary shall complete the historical review required under paragraph (1) and submit a final report on the findings of such review in the annual report on environmental restoration activities submitted to Congress for fiscal year 2009.

''(b) IDENTIFICATION OF NAVIGATIONAL AND SAFETY HAZARDS.—

''(1) IDENTIFICATION OF HAZARDS.—The Secretary of Defense shall provide available information to the Secretary of Commerce to assist the National Oceanic and Atmospheric Administration in preparing nautical charts and other navigational materials for coastal waters that identify known or potential hazards posed by disposed military munitions to private activities, including commercial shipping and fishing operations.

''(2) CONTINUATION OF INFORMATION ACTIVITIES.—The Secretary of Defense shall continue activities to inform potentially affected users of the ocean environment, particularly fishing operations, of the possible hazards from contact with disposed military munitions and the proper methods to mitigate such hazards.

''(c) RESEARCH.—

''(1) IN GENERAL.—The Secretary of Defense shall continue to conduct research on the effects on the ocean environment and those who use it of military munitions disposed of in coastal waters.

''(2) SCOPE.—Research under paragraph (1) shall include—

''(A) the sampling and analysis of ocean waters and sea beds at or adjacent to military munitions disposal sites selected pursuant to paragraph (3) to determine whether the disposed military munitions have caused or are causing contamination of such waters or sea beds;

''(B) investigation into the long-term effects of seawater exposure on disposed military munitions, particularly effects on chemical munitions;

''(C) investigation into the impacts any such contamination may have on the ocean environment and those who use it, including public health risks;

''(D) investigation into the feasibility of removing or otherwise remediating the military munitions; and

''(E) the development of effective safety measures for dealing with such military munitions.

''(3) RESEARCH CRITERIA.—In conducting the research required by this subsection, the Secretary shall ensure that the sampling, analysis, and investigations are conducted at representative sites, taking into account factors such as depth, water temperature, nature of the military munitions present, and relative proximity to onshore populations. In conducting such research, the Secretary shall select at least two representative sites each in the areas of the Atlantic coast, the Pacific coast (including Alaska), and the Hawaiian Islands.

''(4) AUTHORITY TO MAKE GRANTS AND ENTER INTO COOPERATIVE AGREEMENTS.—In conducting research under this subsection, the Secretary may make grants to, and enter into cooperative agreements with, qualified research entities.

''(d) MONITORING.—If the historical review required by subsection (a) or the research required by subsection (c) indicates that contamination is being released into the ocean waters from disposed military munitions at a particular site or that the site poses a significant public health or safety risk, the Secretary of Defense shall institute appropriate monitoring mechanisms at that site and report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on any additional measures that may be necessary to address the release or risk, as applicable.

''(e) DEFINITIONS.—In this section:

''(1) The term 'coastal waters' means that part of the ocean extending from the coast line of the United States to the outer boundary of the outer Continental Shelf.

''(2) The term 'coast line' has the meaning given that term in section 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

''(3) The term 'military munitions' has the meaning given that term in section 101(e) of title 10, United States Code.

''(4) The term 'outer Continental Shelf' has the meaning given that term in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).''

INITIAL INVENTORY

Pub. L. 107–107, div. A, title III, § 311(b), Dec. 28, 2001, 115 Stat. 1051, provided that: ''The requirements of section 2710 of title 10, United States Code, as added by subsection (a), shall be implemented as follows:

''(1) The initial inventory required by subsection (a) of such section shall be completed not later than May 31, 2003.

''(2) The proposed prioritization protocol required by subsection (b) of such section shall be available for public comment not later than November 30, 2002.''

§ 2711. Annual report on defense environmental programs

(a) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on defense environmental programs. Each report shall include:

(1) With respect to environmental restoration activities of the Department of Defense, and for each of the military departments, the following elements:

(A) Information on the Environmental Restoration Program, including the following:

(i) The total number of sites in the Environmental Restoration Program.

(ii) The number of sites in the Environmental Restoration Program that have reached the Remedy in Place Stage and the Response Complete Stage, and the change in such numbers in the preceding fiscal year.

(iii) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, the Environmental Restoration Program during the fiscal year for which the budget is submitted.

(iv) The Secretary's assessment of the overall progress of the Environmental Restoration Program.

(B) Information on the Military Munitions Restoration Program (MMRP), including the following:

(i) The total number of sites in the MMRP.

(ii) The number of sites that have reached the Remedy in Place Stage and the Response Complete Stage, and the change in such numbers in the preceding fiscal year.

(iii) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, the MMRP during the fiscal year for which the budget is submitted.

(iv) The Secretary's assessment of the overall progress of the MMRP.

(2) With respect to each of the major activities under the environmental quality program of the Department of Defense and for each of the military departments—

(A) a statement of the amount expended, or proposed to be expended, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the current fiscal year, the fiscal year for which the budget is submitted, and the fiscal year following the fiscal year for which the budget is submitted; and

(B) an explanation for any significant change in such amounts during the period covered.

(3) With respect to the environmental technology program of the Department of Defense—

(A) a report on the progress made in achieving the objectives and goals of its environmental technology program during the preceding fiscal year and an overall trend analysis for the program covering the previous four fiscal years; and

(B) a statement of the amount expended, or proposed to be expended, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the fiscal year for which the budget is submitted, and the fiscal year following the fiscal year for which the budget is submitted.

(b) DEFINITIONS.—For purposes of this section—

(1) the term ''environmental quality program'' means a program of activities relating to environmental compliance, conservation, pollution prevention, and other activities relating to environmental quality as the Secretary may designate; and

(2) the term ''major activities'' with respect to an environmental program means—

(A) environmental compliance activities;

(B) conservation activities; and

(C) pollution prevention activities.

(Added Pub. L. 112–81, div. A, title III, §317(a), Dec. 31, 2011, 125 Stat. 1359.)

CHAPTER 161—PROPERTY RECORDS AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY

Sec.
2721. Property records: maintenance on quantitative and monetary basis.
2722. Theft or loss of ammunition, destructive devices, and explosives: report to Secretary of the Treasury.
2723. Notice to congressional committees of certain security and counterintelligence failures within defense programs.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title X, §1042(b), Oct. 5, 1999, 113 Stat. 760, added item 2723.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(17)(B), Dec. 5, 1991, 105 Stat. 1473, substituted ''Property records: maintenance on quantitative and monetary basis'' for ''Basis'' in item 2721.

1990—Pub. L. 101–510, div. A, title XIII, §1331(7), Nov. 5, 1990, 104 Stat. 1673, substituted ''Basis'' for ''Basis: reports'' in item 2721.

1988—Pub. L. 100–456, div. A, title III, §344(b)(1), Sept. 29, 1988, 102 Stat. 1962, inserted ''AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY'' in chapter heading and added item 2722.

1986—Pub. L. 99–499, title II, §211(a)(3), Oct. 17, 1986, 100 Stat. 1725, redesignated item 2701 as item 2721.

§ 2721. Property records: maintenance on quantitative and monetary basis

(a) Under regulations prescribed by him, the Secretary of Defense shall have the records of the fixed property, installations, major equipment items, and stored supplies of the military departments maintained on both a quantitative and a monetary basis, so far as practicable.

(b) The regulations prescribed pursuant to subsection (a) shall include a requirement that the records maintained under such subsection—

(1) to the extent practicable, provide up-to-date information on all items in the inventory of the Department of Defense;

(2) indicate whether the inventory of each item is sufficient or excessive in relation to the needs of the Department for that item; and

(3) permit the Secretary of Defense to include in the budget submitted to Congress under section 1105 of title 31 for each fiscal year, information relating to—

(A) the amounts proposed for each appropriation account in such budget for inventory purchases of the Department of Defense; and

(B) the amounts obligated for such inventory purchases out of the corresponding appropriations account for the preceding fiscal year.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152, §2701; renumbered §2721, Pub. L. 99–499, title II, §211(a)(1)(A), Oct. 17, 1986, 100 Stat. 1719; amended Pub. L. 101–510, div. A, title XIII, §1322(a)(12), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–190, div. A, title III, §347(b), title X, §1061(a)(17)(A), Dec. 5, 1991, 105 Stat. 1347, 1473.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2701(a)	5:172i (less last sentence).	July 26, 1947, ch. 343, §410; added Aug. 10, 1949, ch. 412, §11(410), 63 Stat. 590.
2701(b)	5:172i (last sentence).	

In subsection (a), the words ''equipment'' and ''materials'' are omitted, since the word ''supplies'', as defined in section 101(26) of this title, includes equipment and materials. The word ''stored'' is substituted for the words ''held in store by the armed services''.

In subsection (b), the words ''on property records maintained under this section'' are substituted for the word ''thereon''.

AMENDMENTS

1991—Pub. L. 102–190, §1061(a)(17)(A), substituted section catchline for one which read ''Basis: reports''.

Pub. L. 102–190, §347(b), designated existing provisions as subsec. (a) and added subsec. (b).

1990—Pub. L. 101–510 struck out ''(a)'' before ''Under regulations'' and struck out subsec. (b) which read as follows: ''The Secretary shall report once a year to Congress and the President on property records maintained under this section.''

IMPLEMENTATION OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title III, § 347(c), Dec. 5, 1991, 105 Stat. 1347, provided that: ''The Secretary of Defense shall establish the uniform system of valuation described in section 2458(a)(3) of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by section 2721(b) of such title (as added by subsection (b)), not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

INVENTORY INVESTIGATIONS

Pub. L. 100–456, div. A, title III, § 343, Sept. 29, 1988, 102 Stat. 1961, provided that:

''(a) UNDERCOVER INVESTIGATIONS.—(1) Congress finds that the use of undercover investigative techniques by the Department of Defense enhances the ability of the Department of Defense to detect and investigate theft of Government property (including munitions) from the Department of Defense supply system.

''(2) The Secretary of Defense is urged to continue to conduct undercover investigations to detect and investigate thefts referred to in paragraph (1).

''(b) INVENTORY SECURITY INCIDENT REPOSITORY.—The Secretary of Defense shall establish and maintain a centralized computer system for recording and organizing information on theft, fraud, and breach of security and incidents involving the loss of Department of Defense supplies (including munitions).''

§ 2722. Theft or loss of ammunition, destructive devices, and explosives: report to Secretary of the Treasury

(a) IN GENERAL.—The Secretary of Defense shall report the theft or other loss of any ammunition, destructive device, or explosive material from the stocks of the Department of Defense to the Secretary of the Treasury within 72 hours, if possible, after the discovery of such theft or loss.

(b) EXCLUSION FOR CERTAIN ITEMS.—The Secretary of Defense may exclude from the reporting requirement under subsection (a) any item referred to in that subsection if—

(1) the Secretary determines that the item represents a low risk of danger to the public and would be of minimal utility to any person who may illegally receive such item; and

(2) the exclusion of such item is specified as being excluded from the reporting requirement in a memorandum of agreement between the Secretary of Defense and the Secretary of the Treasury.

(c) DEFINITIONS.—In this section:

(1) The term ''explosive material'' means explosives, blasting agents, and detonators.

(2) The terms ''destructive device'' and ''ammunition'' have the meanings given those terms by paragraphs (4) and (17), respectively, of section 921(a) of title 18.

(Added Pub. L. 100–456, div. A, title III, § 344(a), Sept. 29, 1988, 102 Stat. 1961; amended Pub. L. 109–364, div. A, title X, § 1071(a)(24), Oct. 17, 2006, 120 Stat. 2399.)

AMENDMENTS

2006—Subsec. (c)(2). Pub. L. 109–364 substituted ''921(a)'' for ''921''.

EFFECTIVE DATE

Pub. L. 100–456, div. A, title III, § 344(c), Sept. 29, 1988, 102 Stat. 1962, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect with respect to thefts and losses discovered more than 180 days after the date of the enactment of this Act [Sept. 29, 1988].''

§ 2723. Notice to congressional committees of certain security and counterintelligence failures within defense programs

(a) REQUIRED NOTIFICATION.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each security or counterintelligence failure or compromise of classified information relating to any defense operation, system, or technology of the United States that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States. The Secretary shall consult with the Director of National Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, before submitting any such notification.

(b) MANNER OF NOTIFICATION.—Notification of a failure or compromise of classified information under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (c), not later than 30 days after the date on which the Department of Defense determines that the failure or compromise has taken place.

(c) PROCEDURES.—The Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

(d) STATUTORY CONSTRUCTION.—(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 3091).

(Added Pub. L. 106–65, div. A, title X, § 1042(a), Oct. 5, 1999, 113 Stat. 759; amended Pub. L. 110–181, div. A, title IX, § 931(a)(13), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(12), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 113–291, div. A, title X, § 1071(c)(12), Dec. 19, 2014, 128 Stat. 3509.)

AMENDMENTS

2014—Subsec. (d)(2). Pub. L. 113–291 substituted ''(50 U.S.C. 3091)'' for ''(50 U.S.C. 413)''.

2009—Subsec. (a). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(12). See 2008 Amendment note below.

2008—Subsec. (a). Pub. L. 110–181 and Pub. L. 110–417, § 932(a)(12), amended subsec. (a) identically, substitut-

ing ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, §932(a)(12), was repealed by Pub. L. 111–84. See 2009 Amendment note above.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided in part that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

CHAPTER 163—MILITARY CLAIMS

Sec.
2731. Definition.
2732. Payment of claims: availability of appropriations.
2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force.
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2739. Amounts recovered from third parties for loss or damage to personal property shipped or stored at Government expense: crediting to appropriations.
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AMENDMENTS

2011—Pub. L. 111–383, div. A, title III, §354(a)(2), Jan. 7, 2011, 124 Stat. 4195, added item 2740.

1998—Pub. L. 105–261, div. A, title X, §1010(a)(2), Oct. 17, 1998, 112 Stat. 2117, added item 2739.

1994—Pub. L. 103–337, div. A, title V, §557(b), Oct. 5, 1994, 108 Stat. 2776, added item 2738.

1990—Pub. L. 101–510, div. A, title XIV, §1481(j)(2), Nov. 5, 1990, 104 Stat. 1708, added item 2732.

1984—Pub. L. 98–525, title XIV, §1405(42)(B), Oct. 19, 1984, 98 Stat. 2625, substituted ''in foreign countries'' for '': foreign countries'' in item 2734a.

1968—Pub. L. 90–521, §2, Sept. 26, 1968, 82 Stat. 874, substituted ''advance payment'' for ''incident to aircraft or missile operation'' in item 2736.

1966—Pub. L. 89–718, §21(b), Nov. 2, 1966, 80 Stat. 1118, substituted ''2737'' for ''2736'' as item number for ''Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law''.

1964—Pub. L. 88–558, §5(2), Aug. 31, 1964, 78 Stat. 768, struck out item 2732 ''Property loss: incident to service; members of Army, Navy, Air Force, or Marine Corps and civilian employees'', effective two years after Aug. 31, 1964. Pub. L. 88–558, was itself repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068.

1962—Pub. L. 87–769, §1(1)(B), Oct. 9, 1962, 76 Stat. 768, added item 2736 ''Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law''.

Pub. L. 87–651, title I, §113(b), Sept. 7, 1962, 76 Stat. 513, added items 2734a and 2734b.

1961—Pub. L. 87–212, §1(2), Sept. 8, 1961, 75 Stat. 488, added item 2736 ''Property loss; personal injury or death: incident to aircraft or missile operation''.

1959—Pub. L. 86–223, §1(2), Sept. 1, 1959, 73 Stat. 454, substituted ''armed forces'' for ''Department of Army, Navy, or Air Force'' in item 2734.

§ 2731. Definition

In this chapter, ''settle'' means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2731	[No source].	[No source].

The revised section is inserted for clarity and is based on usage in the source laws for this revised chapter.

CONGRESSIONAL DEFENSE COMMITTEES DEFINED

Pub. L. 114–113, div. C, title VIII, §8026, Dec. 18, 2015, 129 Stat. 2356, provided that: ''For the purposes of this Act [div. C of Pub. L. 114–113, see Tables for classification], the term 'congressional defense committees' means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 113–235, div. C, title VIII, §8026, Dec. 16, 2014, 128 Stat. 2258.

Pub. L. 113–76, div. C, title VIII, §8025, Jan. 17, 2014, 128 Stat. 109.

EX GRATIA PAYMENTS

Pub. L. 114–113, div. C, title VIII, §8111, Dec. 18, 2015, 129 Stat. 2377, provided that:

''(a) Of the funds appropriated in this Act [div. C of Pub. L. 114–113, see Tables for classification] for the Department of Defense, amounts may be made available, under such regulations as the Secretary of Defense may prescribe, to local military commanders appointed by the Secretary, or by an officer or employee designated by the Secretary, to provide at their discretion ex gratia payments in amounts consistent with subsection (d) of this section for damage, personal injury, or death that is incident to combat operations of the Armed Forces in a foreign country.

''(b) An ex gratia payment under this section may be provided only if—

''(1) the prospective foreign civilian recipient is determined by the local military commander to be friendly to the United States;

''(2) a claim for damages would not be compensable under chapter 163 of title 10, United States Code (commonly known as the 'Foreign Claims Act'); and

''(3) the property damage, personal injury, or death was not caused by action by an enemy.

''(c) NATURE OF PAYMENTS.—Any payments provided under a program under subsection (a) shall not be considered an admission or acknowledgement of any legal obligation to compensate for any damage, personal injury, or death.

''(d) AMOUNT OF PAYMENTS.—If the Secretary of Defense determines a program under subsection (a) to be appropriate in a particular setting, the amounts of payments, if any, to be provided to civilians determined to have suffered harm incident to combat operations of the Armed Forces under the program should be determined pursuant to regulations prescribed by the Secretary and based on an assessment, which should in-

clude such factors as cultural appropriateness and prevailing economic conditions.

''(e) LEGAL ADVICE.—Local military commanders shall receive legal advice before making ex gratia payments under this subsection. The legal advisor, under regulations of the Department of Defense, shall advise on whether an ex gratia payment is proper under this section and applicable Department of Defense regulations.

''(f) WRITTEN RECORD.—A written record of any ex gratia payment offered or denied shall be kept by the local commander and on a timely basis submitted to the appropriate office in the Department of Defense as determined by the Secretary of Defense.

''(g) REPORT.—The Secretary of Defense shall report to the congressional defense committees [Committees on Armed Services and Subcommittees on Defense of the Committees on Appropriations of the Senate and the House of Representatives] on an annual basis the efficacy of the ex gratia payment program including the number of types of cases considered, amounts offered, the response from ex gratia payment recipients, and any recommended modifications to the program.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 113–235, div. C, title VIII, §8121, Dec. 16, 2014, 128 Stat. 2281.

Pub. L. 113–76, div. C, title VIII, §8127, Jan. 17, 2014, 128 Stat. 134.

REPORT ON DEPARTMENT POLICY ON PAYMENT OF CLAIMS FOR LOSS OF PERSONAL PROPERTY

Pub. L. 105–85, div. A, title X, §1013(b), Nov. 18, 1997, 111 Stat. 1874, provided that: ''The Secretary of Defense shall submit to Congress a report describing the Department of Defense policy regarding the payment of a claim by a member of the Armed Forces who is not assigned to quarters of the United States for losses and damage to personal property of the member incurred at the member's residence as a result of a natural disaster. The report shall include a description of the number of such claims received over the past 10 years, the number of claims paid, and the number of claims rejected. If the Secretary determines the Department of Defense should modify its policy in order to accept additional claims by members who are not assigned to quarters of the United States for losses and damage to personal property, the Secretary shall also include in the report any legislative changes that the Secretary considers necessary to enable the Secretary to implement the policy change.''

PUBLIC HEALTH SERVICE

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

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by sections 2731, 2732, and 2735 of this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 2732. Payment of claims: availability of appropriations

Appropriations available to the Department of Defense for operation and maintenance may be used for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including—

(1) claims for damages arising under training contracts with carriers; and

(2) repayment of amounts determined by the Secretary concerned to have been erroneously collected—

(A) from military and civilian personnel of the Department of Defense; or

(B) from States or territories or the District of Columbia (or members of the National Guard units thereof).

(Added Pub. L. 101–510, div. A, title XIV, §1481(j)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 100–463, title VIII, §8098, Oct. 1, 1988, 102 Stat. 2270–35, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, §1481(j)(3).

A prior section 2732, acts Aug. 10, 1956, ch. 1041, 70A Stat. 152; Sept. 2, 1958, Pub. L. 85–861, §§1(53), 33(a)(16), 72 Stat. 1461, 1565; Sept. 15, 1965, Pub. L. 89–185, §1, 79 Stat. 789, related to settlement of property loss incident to service, prior to repeal by Pub. L. 88–558, §5(3), Aug. 31, 1964, 78 Stat. 768, effective two years from Aug. 31, 1964. See section 3701 et seq. of Title 31, Money and Finance.

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, or the chief Counsel of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to or loss of real property, including damage or loss incident to use and occupancy;

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employee of the Department of Defense acting within the scope of his employment or otherwise incident to noncombat activities of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 153; Pub. L. 85–729, §1, Aug. 23, 1958, 72 Stat. 813; Pub. L. 85–861, §1(54), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–522, Sept. 26, 1968, 82 Stat. 875; Pub. L. 90–525, §§1, 3–5, Sept. 26, 1968, 82 Stat. 877, 878; Pub. L. 91–312, §2, July 8, 1970, 84 Stat. 412; Pub. L. 93–336, §1, July 8, 1974, 88 Stat. 291; Pub. L. 96–513, title V, §511(94), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 98–564, §1, Oct. 30, 1984, 98 Stat. 2918; Pub. L. 104–316, title II, §202(e), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2733(a)	31:223b (1st sentence, less 52d through 62d, and 76th through 93d, words; and less proviso).	July 3, 1943, ch. 189, §1 (less 4th sentence), 57 Stat. 372; May 29, 1945, ch. 135, §4, 59 Stat. 225; June 28, 1946, ch. 514,
2733(b)	[Uncodified: Aug. 2, 1946, ch. 753, §424(a) (4th clause), 60 Stat. 847]. 31:223b (76th through 93d words and proviso of 1st sentence; and 2d sentence).	§1, 60 Stat. 332; July 3, 1952, ch. 570, §2(c), 66 Stat. 334; Mar. 31, 1953, ch. 13 (as applicable to Act of July 3, 1952, ch. 570, §2(c)), 67 Stat. 18; June 30, 1953, ch. 172
2733(c)	31:223b (3d sentence).	(as applicable to Act of
2733(d)	31:223b (last sentence).	July 3, 1952, ch. 570,
2733(e)	31:223b (52d through 62d words of 1st sentence).	§2(c)), 67 Stat. 131.
2733(f)	31:222h. [31:223b is made applicable to the Navy by 31:223d and 223e].	Aug. 2, 1946, ch. 753, §424(a) (4th clause), 60 Stat. 847. Dec. 28, 1945, ch. 597, §1, 59 Stat. 662; June 28, 1946, ch. 514, §2, 60 Stat. 333. Dec. 28, 1945, ch. 597, §6; added Mar. 20, 1946, ch. 104 (last par.), 60 Stat. 56.

In subsection (a), the words ''a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be'' are substituted for the words ''military personnel or civilian employees of the Department of the Army or of the Army''. The words ''whether under a lease, express or implied'' are omitted as surplusage. The words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in section 2731 of this title. The words ''arising on or after May 27, 1941'' are omitted as executed, since, under revised subsection (b), a claim must be filed within one year after it accrues, or within one year after the war is terminated, if it accrues in time of war.

In subsection (a)(1), the words ''or loss'' are inserted before the word ''incident'', for clarity.

In subsection (b)(1), the words ''it accrues'' are substituted for the words ''the accident or incident out of which such claim arises shall have occurred'', in 31:223b. The words ''the claim accrues'' are substituted for the words ''That if such accident or incident occurs''. The words ''not later than'' are substituted for the words ''within'' to make it clear that a claim may be presented during a war. The words ''the war is terminated'' are substituted for the words ''after peace is established'', since the other time covered is ''time of war''. 31:223b (last 49 words of proviso of 2d sentence) is omitted as executed.

In subsection (b)(2), the words ''or section 2672 of title 28'' are substituted for the words ''claims cognizable under part 2 of this title'', to reflect the express amendment of 31:223b and 223c by the fourth clause of section 424(a) of the Federal Tort Claims Act, 60 Stat. 847. Section 424(a) of the Federal Tort Claims Act referred to ''claims cognizable under part 2 of this title''. Part 2 of that act consisted of sections 403 and 404 which were repealed by section 39 of the Act of June 25, 1948, ch. 646, 62 Stat. 1008, and replaced by sections 2672 and 2673 of title 28. The words ''or possessions thereof'' are omitted, since possessions of foreign countries are not specifically covered by the section to which the words refer.

In subsection (d), the words ''claim * * * that would otherwise be covered by this section'' are substituted for the words ''such claims''.

In subsection (e), the words ''and final settlement'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2733	31:223b.	Mar. 29, 1956, ch. 103, §§1–3, 70 Stat. 60, 61.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General''.

1984—Subsec. (a). Pub. L. 98–564, §1(1), substituted ''Chief Counsel'' for ''chief legal officer'' and ''$100,000'' for ''$25,000'' in provisions preceding par. (1).

Subsec. (d). Pub. L. 98–564, §1(2), amended subsec. (d) generally, substituting ''$100,000'' for ''$25,000'' and provisions requiring Secretary to report excess to the Comptroller General for provisions requiring reporting to Congress.

Subsec. (g). Pub. L. 98–564, §1(3), substituted provisions permitting officers and employees of Secretary concerned to settle claims not otherwise payable under this section in amounts not to exceed $25,000 and providing for an appeal to Secretary concerned or his designee for provisions which provided for delegation of claims settlement authority by Secretary for cases not to exceed $5,000 and for appeal therefrom.

1980—Subsec. (f). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1974—Subsec. (a). Pub. L. 93–336, §1(1), substituted ''$25,000'' for ''$15,000''.

Subsec. (d). Pub. L. 93–336, §1(2), substituted ''$25,000'' for ''$15,000'' wherever appearing.

Subsec. (g). Pub. L. 93–336, §1(3), substituted ''$5,000'' for ''$2,500''.

1970—Subsec. (a). Pub. L. 91–312, §2(a), substituted ''$15,000'' for ''$5,000''.

Subsec. (d). Pub. L. 91–312, §2(b), substituted ''$15,000'' for ''$5,000'' wherever appearing.

1968—Subsec. (a). Pub. L. 90–525, §1, substituted ''Secretary concerned'' for ''Secretary of a military department'', and authorized the Chief Legal Officer of the Coast Guard to settle claims, settlement of claims for damage or loss to personal property in possession of the Coast Guard, and settlements when the torts are caused by civilian officers or employees and members of the Coast Guard when acting within scope of employment or otherwise incident to noncombat activities of the Coast Guard.

Subsec. (b)(4). Pub. L. 90–522, §1(1), authorized application of local law in determining effect of claimant's contributory negligence.

Subsec. (d). Pub. L. 90–525, §5, struck out ''of the military department'' after ''Secretary''.

Subsec. (g). Pub. L. 90–525, §3, increased limitation on amount of settlement from $1,000 to $2,500, struck out ''military'' before ''department concerned'', and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force. See Pub. L. 90–522, §1(2), hereunder, for identical provision for appeals to Secretary concerned.

Pub. L. 90–522, §1(2), provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force.

Subsec. (h). Pub. L. 90–525, §4, added subsec. (h).

1966—Subsec. (f). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1958—Subsec. (a). Pub. L. 85–729, §1(1)(A), substituted ''the Judge Advocate General of an armed force under his jurisdiction, if designated by him, may settle, and pay in an amount not more than $5,000'' for ''any officer designated by him may settle, and pay in an amount not more than $1,000''.

Subsec. (b). Pub. L. 85–861, §1(54)(A), (B), in cl. (1), substituted ''two years'' for ''one year'' in three places and included claims accruing in time of armed conflict, and inserted sentence providing for the determination of dates of the beginning and ending of an armed conflict.

Subsec. (c). Pub. L. 85–861, §1(54)(C), substituted provisions prohibiting payment for reimbursement for medical, hospital, or burial services furnished at the expense of the United States for provisions which prohibited allowance of claims for personal injury or death for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

Subsec. (d). Pub. L. 85–729, §1(1)(B), substituted provisions authorizing partial payments on claims over $5,000 for provisions which authorized the Secretary of the military department concerned to report a claim for more than $1,000 to Congress for its consideration.

Subsec. (e). Pub. L. 85–729, §1(1)(B), substituted ''Except as provided in subsection (d), no claim may be paid under this section'' for ''No claim may be paid under subsection (a)''.

Subsec. (g). Pub. L. 85–729, §1(1)(C), added subsec. (g).

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 Amendment note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

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.

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

CLAIMS FOR INJURY OR DEATH ACCRUED BEFORE MARCH 30, 1956

Pub. L. 85–861, §17, Sept. 2, 1958, 72 Stat. 1558, disallowed claims for personal injury or death under section 2733 of this title, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred if the claim accrued before March 30, 1956.

§ 2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries

(a) To promote and to maintain friendly relations through the prompt settlement of meritorious claims, the Secretary concerned, or an officer or employee designated by the Secretary, may appoint, under such regulations as the Secretary may prescribe, one or more claims commissions, each composed of one or more officers or employees or combination of officers or employees of the armed forces, to settle and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to, or loss of, real property of any foreign country or of any political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property of any foreign country or of any political subdivision or inhabitant of a foreign country, including property bailed to the United States; or

(3) personal injury to, or death of, any inhabitant of a foreign country;

if the damage, loss, personal injury, or death occurs outside the United States, or the Common-

wealths or possessions, and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the military department concerned or the Coast Guard, as the case may be. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, ''foreign country'' includes any place under the jurisdiction of the United States in a foreign country. An officer or employee may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented within two years after it accrues;

(2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commission or by the local military commander to be friendly to the United States; and

(3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(c) The Secretary concerned may appoint any officer or employee under the jurisdiction of the Secretary to act as an approval authority for claims determined to be allowable under subsection (a) in an amount in excess of $10,000.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Upon the request of the department concerned, a claim arising in that department and covered by subsection (a) may be settled and paid by a commission appointed under subsection (a) and composed of officers of an armed force under the jurisdiction of another department.

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department of Homeland Security shall be made out of the appropriation for the operating expenses of the Coast Guard.

(h) The Secretary of Defense may designate any claims commission appointed under subsection (a) to settle and pay, as provided in this section, claims for damage caused by a civilian employee of the Department of Defense other than an employee of a military department. Payments of claims under this subsection shall be made from appropriations as provided in section 2732 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 154; Pub. L. 85–861, §1(55), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 86–223, §1(1), Sept. 1, 1959, 73 Stat. 453; Pub. L. 86–411, Apr. 8, 1960, 74 Stat. 16; Pub. L. 90–521, §§1, 3, Sept. 26, 1968, 82 Stat. 874; Pub. L. 91–312, §1, July 8, 1970, 84 Stat. 412; Pub. L. 93–336, §2, July 8, 1974, 88 Stat. 292; Pub. L. 96–513, title V, §511(95), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 98–564, §2, Oct. 30, 1984, 98 Stat. 2918; Pub. L. 101–510, div. A, title XIV, §1481(j)(4)(A), Nov. 5, 1990, 104 Stat. 1709; Pub. L. 104–316, title II, §202(e), Oct. 19, 1996, 110 Stat. 3842; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title X, §1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734(a)	31:224d (less 98th through 109th words and provisos).	Jan. 2, 1942, ch. 645, §§1 (less last proviso), 6, 7, 55 Stat. 880; restated Apr. 22, 1943, ch. 67, §§1 (less last proviso), 6, 7, 57 Stat. 66, 67.
2734(b)	31:224d (1st and 3d provisos).	
2734(c)	31:224d (2d proviso, less words after semicolon).	
2734(d)	31:224d (words of 2d proviso after semicolon).	
2734(e)	31:224d (98th through 109th words).	
2734(f)	31:224i.	
2734(g)	31:224h.	

In subsection (a), the words ''for such purposes'', ''or destruction'', ''public'', ''private'', ''Army * * * forces'', and ''whether under a lease, express or implied'' are omitted as surplusage. The words ''armed forces under his jurisdiction'' are substituted for the words ''Army, Air Force, Navy, or Marine Corps''. The same words are substituted for the words ''Army, Air Force, Navy, or Marine Corps forces'' to reflect the opinion of the Judge Advocate General of the Army (JAGD/D–55–51000, 17 Jan. 55). The word ''settle'' is substituted for the words ''consider, ascertain, adjust, determine'', since the word ''settle'', as defined in section 2731 of this title, includes those actions. The words ''a member thereof, or by a civilian employee of the department concerned'' are substituted for the words ''or individual members thereof, including military personnel and civilian employees''. The last sentence is substituted for the words ''including places located therein which are under the temporary or permanent jurisdiction of the United States''.

In subsection (a)(2), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the word ''accident'' is omitted as surplusage. The words ''except that claims arising out of accidents or incidents occurring after December 6, 1941, but prior to May 1, 1943, may be presented at any time prior to May 1, 1944'' are omitted as executed. Clauses (2) and (3) are substituted for 31:224d (3d proviso).

In subsection (c), the first 28 words of the second proviso of 31:224d and the words ''but does not exceed $5,000'' are omitted as covered by subsection (a). The words ''commanding officer or other'' are omitted as surplusage. The word ''commissioned'' is inserted for clarity. The word ''designated'' is substituted for the words ''may prescribe''.

In subsection (d), the word ''may'' is substituted for the words ''shall have authority, if he deems''. The words ''that would otherwise be covered by this section'' are inserted for clarity. The words ''to be meritorious'' and ''character of such'' are omitted as surplusage.

In subsection (f), the words ''a military department'' are substituted for the words ''service concerned'' after

the words ''the request of the''. The words ''or Commissions'' and ''even though not'' are omitted as surplusage. The words ''an armed force under the jurisdiction of another military department'' are substituted for the words ''service concerned'' after the words ''officers of the''. 31:224i (last 19 words) is omitted, since all claims are paid from one appropriation made to the Department of Defense.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734(a)	31:224d.	July 28, 1956, ch. 769, §1, 70 Stat. 703.
2734(d)	31:224d.	
2734(f)	31:224i.	
2734(h)	31:224i–1.	

In subsections (a)(1) and (2), the words ''a foreign country'' are substituted for the words ''that country'' to make clear that damage to a political subdivision or an inhabitant of a foreign country need not have occurred in that country.

In subsection (h), the word ''settle'' is substituted for the words ''consider, ascertain, adjust, determine,'', since the word ''settle'', as defined in section 2731 of this title, includes those actions. The words ''as provided in this section'' are substituted for the words ''as described in section 224d of this title'' and 31:224i–1 (2d sentence).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted ''Commonwealths or possessions'' for ''Territories, Commonwealths, or possessions'' in concluding provisions.

2002—Subsec. (g). Pub. L. 107–296 substituted ''Department of Homeland Security'' for ''Department of Transportation''.

1996—Subsec. (d). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General''.

1990—Subsec. (h). Pub. L. 101–510 substituted ''as provided in section 2732 of this title'' for ''available to the Office of the Secretary of Defense for the payment of claims''.

1984—Subsec. (a). Pub. L. 98–564, §2(1), substituted ''$100,000'' for ''$25,000'' and inserted provisions whereby employees as well as officers of the Secretary may settle claims in text preceding par. (1).

Pub. L. 98–564, §2(2), inserted ''or employee'' after ''An officer'' in last sentence.

Subsec. (c). Pub. L. 98–564, §2(3), substituted provisions whereby the Secretary may appoint officers and employees to act as approval authority for claims in excess of $10,000 for provisions which provided that allowance of a claim for more than $2,500 may be subject to the approval of any commissioned officer designated by the Secretary concerned.

Subsec. (d). Pub. L. 98–564, §2(4), substituted provisions providing that if the Secretary considers a claim in excess of $100,000 meritorious, the Secretary may pay $100,000 and report any excess amount to the Comptroller General for provisions which provided that for claims in excess of $25,000 the Secretary may pay $25,000 and certify any excess to Congress as a legal claim to be paid from appropriations.

1980—Subsec. (g). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

1974—Subsec. (a). Pub. L. 93–336 substituted ''$25,000'' for ''$15,000''.

Subsec. (d). Pub. L. 93–336 substituted ''$25,000'' for ''$15,000'' in two places.

1970—Subsec. (d). Pub. L. 91–312 authorized the Secretary to pay, without certification to Congress, up to $15,000 towards the settlement of meritorious claims in excess of $15,000.

Subsec. (e). Pub. L. 91–312 excepted claims under subsec. (d) from requirement that all claims paid be accepted by the claimant in full satisfaction, and struck out provision limiting the application of such requirement to claims payable under subsec. (a) of this section.

1968—Subsec. (a). Pub. L. 90–521, §1, struck out ''under his jurisdiction'' after ''armed forces'' in text preceding cl. (1) and permitted an officer to serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but required him to perform his duties under regulations of the department appointing the commission, respectively.

Subsec. (b)(3). Pub. L. 90–521, §3, provided for allowance of claim if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including the airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

1960—Subsec. (b). Pub. L. 86–411 substituted ''two years'' for ''one year'' in cl. (1).

1959—Pub. L. 86–223, §1(1)(A), substituted ''the armed forces'' for ''Department of Army, Navy, or Air Force'' in section catchline.

Subsec. (a). Pub. L. 86–223, §1(1)(B), substituted ''concerned'' and ''the military department concerned or the Coast Guard, as the case may be'' for ''of a military department'' and ''the department concerned'', respectively.

Subsecs. (c), (d). Pub. L. 86–223, §1(1)(C), struck out ''of the military department'' after ''Secretary''.

Subsec. (f). Pub. L. 86–223, §1(1)(D), substituted ''the department concerned'' for ''a military department'' and deleted ''military'' after ''another''.

Subsec. (g). Pub. L. 86–223, §1(1)(E), substituted provision for payment of claims against the Coast Guard arising while it is operating as a service in the Department of the Treasury out of the appropriation for the operating expenses of the Coast Guard for provisions excluding such claims unless they arise, are settled and paid while the Coast Guard is operating as a service of the Navy and authorizing Coast Guard officers to serve on claims commissions or to approve settlements, only for claims against the Coast Guard.

1958—Subsec. (a). Pub. L. 85–861, §1(55)(A)–(D), struck out ''arising in foreign countries'' after ''meritorious claims'', and substituted ''$15,000'' for ''$5,000'', ''outside the United States, or the Territories, Commonwealths, or possessions,'' for ''in that country'', and ''a foreign country'' for ''that country'' in cls. (1) and (2).

Subsec. (d). Pub. L. 85–861, §1(55)(A), substituted ''$15,000'' for ''$5,000''.

Subsec. (f). Pub. L. 85–861, §1(55)(E), substituted ''Upon'' for ''In time of war and upon''.

Subsec. (h). Pub. L. 85–861, §1(55)(F), added subsec. (h).

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.

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.

§ 2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is

legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Homeland Security or their designees may—

(1) reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

(2) pay the party to the agreement the agreed pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement.

(b) A claim arising out of an act of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of Homeland Security shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Homeland Security or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of appropriations as provided in section 2732 of this title, subject to reimbursement from the Department of Homeland Security.

(Added Pub. L. 87–651, title I, §113(a), Sept. 7, 1962, 76 Stat. 512; amended Pub. L. 90–521, §4, Sept. 26, 1968, 82 Stat. 874; Pub. L. 94–390, §1(1), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 98–525, title XIV, §1405(42)(A), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 101–510, div. A, title XIV, §1481(j)(4)(B), Nov. 5, 1990, 104 Stat. 1709; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734a(a) ...	31:224i–2 (less proviso).	Aug. 31, 1954, ch. 1152, §§1 (less proviso, as applicable to §2), 4 (as applicable to §1), 68 Stat. 1006, 1007.
2734a(b) ...	31:224i–2 (proviso, as applicable to 31:224i–2).	
2734a(c) ...	31:224i–5 (as applicable to 31–224i–2).	

In subsection (a), the following substitutions are made: ''Under'' for ''Pursuant to the terms''; ''country'' for ''government''; ''under its laws and regulations'' for ''in accordance with the laws and regulations of such foreign government''; ''may'' for ''is authorized''; ''amounts'' for ''sums''; and ''spent'' for ''expended''. The words ''now or may hereafter be'' are omitted as surplusage.

In subsection (b), the following substitutions are made: ''act'' for ''action'' and ''may'' for ''shall''.

In subsection (c), the words ''pro rata'' are omitted as surplusage. The following substitutions are made: ''under this section'' for ''by the United States with respect to a settlement, award, or compromise made pursuant to sections 224i–2 to 224i–5 of this title''; ''to buy'' for ''for the purchase of''; and ''needed'' for ''necessary''. The words ''which appropriations are authorized'' are omitted as unnecessary.

AMENDMENTS

2002—Subsecs. (a), (c), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

1990—Subsec. (c). Pub. L. 101–510, §1481(j)(4)(B)(i), substituted ''as provided in section 2732 of this title'' for ''for that purpose''.

Subsec. (d). Pub. L. 101–510, §1481(j)(4)(B)(ii), substituted ''appropriations as provided in section 2732 of this title'' for ''the appropriation for claims of the Department of Defense''.

1984—Pub. L. 98–525 substituted ''in foreign countries'' for ''; foreign countries'' in section catchline.

1976—Subsec. (a). Pub. L. 94–390 substituted provisions authorizing the Secretary of Defense or the Secretary of Transportation to reimburse or pay, including arbitration costs, claims arising under international agreements to which the United States is a party and providing for settlement or adjudication and cost sharing based on the responsibility of the United States under the law of the other party to the international agreement, for provisions authorizing the Secretary of Defense to reimburse or pay claims arising under international agreements to which the United States is a party and providing for adjudication by the other country under its laws and regulations.

1968—Subsec. (c). Pub. L. 90–521, §4(a), provided for payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation out of appropriations for operating expenses of the Coast Guard.

Subsec. (d). Pub. L. 90–521, §4(b), added subsec. (d).

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.

§ 2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.

(b) When a dispute arises in the settlement or adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle of the armed forces was authorized, the

dispute shall be decided under the international agreement with the foreign country concerned. Such a decision is final and conclusive. The Secretary of Defense may pay that part of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title.

(Added Pub. L. 87–651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512; amended Pub. L. 94–390, § 1(2), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 101–510, div. A, title XIV, § 1481(j)(4)(C), Nov. 5, 1990, 104 Stat. 1709.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734b(a) ...	31:224i–3.	Aug. 31, 1954, ch. 1152, §§ 1 (proviso, less applicability to § 1), 2, 3, 4 (less applicability to § 1), 68 Stat. 1006, 1007.
2734b(b) ...	31:224i–4.	
2734b(c) ...	31:224i–2 (proviso, less applicability to 31:224i–2).	
2734b(d) ...	31:224i–5 (less applicability to 31:224i–2).	

In subsection (a), the following omissions as surplusage are made: ''the terms of'' and ''now or may hereafter be''. The following substitutions are made: ''country'' for ''government''; ''in the United States, or a Territory, Commonwealth, or possession'' for ''within the territory of the United States''; ''under'' for ''in accordance with''; ''upon which they are based were the acts or omissions of'' for ''were performed''.

In subsection (b), the following substitutions are made: ''under this section'' for ''asserted under section 224i–3 of this title''; ''the dispute'' for ''such disputed question or questions''; ''under'' for ''in accordance with the terms of''; and the last sentence for the last sentence of 31:224i–4. The following omissions as surplusage are made: ''of a civilian employee or military personnel of a foreign country'' and ''of the armed forces for such party''.

In subsection (c), the word ''act'' is substituted for the word ''action''.

In subsection (d), the words ''under this section'' are substituted for the words ''by the United States with respect to a settlement, award, or compromise made pursuant to section 224i–2 to 224i–5 of this title''. The words ''which appropriations are authorized'' are omitted as unnecessary.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted ''as provided in section 2732 of this title'' for ''for that purpose''.

1976—Subsec. (a). Pub. L. 94–390 substituted provisions authorizing claims, for which another armed force is legally responsible under applicable United States law, to be prosecuted against the United States or settled by the United States in accordance with an international agreement providing for the settlement or adjudication by the United States under its laws and regulations as if the acts or omissions upon which the claims are based were of a member or a civilian employee of an armed force of the United States, for provisions authorizing claims to be prosecuted against the United States or settled by the United States by adjudication by the United States under its laws and regulations as if the acts or omissions upon which the claims are based were the acts or omissions in the performance of official duty of a civilian employee or a member of an armed force.

§ 2735. Settlement: final and conclusive

Notwithstanding any other provision of law, the settlement of a claim under section 2733, 2734, 2734a, 2734b, or 2737 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Pub. L. 88–558, § 5(1), Aug. 31, 1964, 78 Stat. 768; Pub. L. 92–413, Aug. 29, 1972, 86 Stat. 649.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2735	31:222c (1st sentence of (e)).	May 29, 1945, ch. 135, § 1 (e) (1st sentence); restated July 3, 1952, ch. 548, § 1 (1st sentence of last par.), 66 Stat. 323.
	31:223b (4th sentence).	July 3, 1943, ch. 189, § 1 (4th sentence), 57 Stat. 373.
	31:224d (last proviso).	Jan. 2, 1942, ch. 645, § 1 (last proviso); restated Apr. 22, 1943, ch. 67, § 1 (last proviso), 57 Stat. 67.

The words ''for all purposes'' and ''to the contrary'', in each source credit; ''by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Defense, or their designees'' and ''such regulations as they, respectively, may prescribe hereunder'', in 31:222c(e); ''by the Secretary of the Army, or his designee'' and ''such regulations as he may prescribe hereunder'', in 31:223b; and ''by such Commissions'', in 31:224d; are omitted as surplusage.

AMENDMENTS

1972—Pub. L. 92–413 inserted reference to sections 2734a, 2734b, and 2737 of this title.

1964—Pub. L. 88–558 struck out reference to section 2732.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–558, § 5, Aug. 31, 1964, 78 Stat. 768, provided that the amendment made by that section is effective two years from Aug. 31, 1964.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 88–558, Aug. 31, 1964, 78 Stat. 767, cited as a credit to this section and in the Effective Date of 1964 Amendment note above, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

§ 2736. Property loss; personal injury or death: advance payment

(a)(1) In the case of a person who is injured or killed, or whose property is damaged or lost, under circumstances for which the Secretary of a military department is authorized by law to allow a claim, the Secretary of the military department concerned may make a payment to or for the person, or the legal representatives of the person, in advance of the submission of such a claim or, if such a claim is submitted, in advance of the final settlement of the claim. The amount of such a payment may not exceed $100,000.

(2) Payments under this subsection are limited to payments which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.

(3) The Secretary of a military department may delegate the authority to make payments under this subsection to the Judge Advocate General of an armed force under the jurisdiction

of the Secretary. The Secretary may delegate such authority to any other officer or employee under the jurisdiction of the Secretary, but only with respect to the payment of amounts of $25,000 or less.

(4) Payments under this subsection shall be made under regulations prescribed by the Secretary of the military department concerned.

(b) Any amount paid under subsection (a) shall be deducted from any amount that may be allowed under any other provision of law to the person, or his legal representative, for injury, death, damage, or loss attributable to the accident concerned.

(c) So far as practicable, regulations prescribed under this section shall be uniform for the military departments.

(d) Payment of an amount under subsection (a) is not an admission by the United States of liability for the accident concerned.

(Added Pub. L. 87–212, §1(1), Sept. 8, 1961, 75 Stat. 488; amended Pub. L. 90–521, §2, Sept. 26, 1968, 82 Stat. 874; Pub. L. 98–564, §3, Oct. 30, 1984, 98 Stat. 2919; Pub. L. 100–456, div. A, title VII, §735(a), Sept. 29, 1988, 102 Stat. 2005.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Under such regulations as the Secretary of a military department may prescribe, payment of an amount not in excess of $10,000 may be made in advance of the submission of a claim to or for any person, or his legal representatives, who was injured or killed, or whose property was damaged or lost, under circumstances for which allowance of a claim is authorized by law. Payments under this subsection are limited to those which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.''

1984—Subsec. (a). Pub. L. 98–564 substituted ''$10,000'' for ''$1,000''.

1968—Pub. L. 90–521 substituted ''advance payment'' for ''incident to aircraft or missile operation'' in section catchline.

Subsec. (a). Pub. L. 90–521 substituted ''under circumstances'' for ''as the result of an accident involving an aircraft or missile under the control of that department''.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VII, §735(b), Sept. 29, 1988, 102 Stat. 2006, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any claim which would otherwise be payable under section 2733 or 2734 of title 10, United States Code, or under section 715 of title 32, United States Code, and which has not been finally settled on or before the date of the enactment of this Act [Sept. 29, 1988].''

§ 2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law

(a) Under such regulations as the Secretary concerned may prescribe, he or his designee may settle and pay, in an amount not more than $1,000, a claim against the United States, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of a military department or the Coast Guard, or a member of the armed forces, incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(b) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department with respect to a claim, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of the Department of Defense not covered by subsection (a), incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(c) A claim may not be allowed under subsection (a) or (b) if the damage to, or loss of, property, or the personal injury or death was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

(d) A claim for personal injury or death under this section may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

(e) No claim may be allowed under this section unless it is presented in writing within two years after it accrues.

(f) A claim may not be paid under subsection (a) or (b) unless the amount tendered is accepted by the claimant in full satisfaction.

(g) No claim or any part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract, may be paid under this section. No subrogated claim may be paid under this section.

(h) So far as practicable, regulations prescribed under this section shall be uniform. Regulations prescribed under this section by the Secretaries of the military departments must be approved by the Secretary of Defense.

(Added Pub. L. 87–769, §1(1)(A), Oct. 9, 1962, 76 Stat. 767, §2736; renumbered §2737, Pub. L. 89–718, §21(a), Nov. 2, 1966, 80 Stat. 1118.)

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.

§ 2738. Property loss: reimbursement of members for certain losses of household effects caused by hostile action

(a) AUTHORITY TO REIMBURSE.—The Secretary concerned may reimburse a member of the armed forces in an amount not more than $100,000 for a loss described in subsection (b).

(b) COVERED LOSSES.—This section applies with respect to a loss of household effects sustained during a move made incident to a change of permanent station when, as determined by

the Secretary, the loss was caused by a hostile action incident to war or a warlike action by a military force.

(c) LIMITATION.—The Secretary may provide reimbursement under this section for a loss described in subsection (b) only to the extent that the loss is not reimbursed under insurance or under the authority of another provision of law.

(d) APPLICABILITY OF OTHER AUTHORITIES AND REQUIREMENTS.—Subsections (b), (d), (e), (f), and (g) of section 2733 of this title shall apply to a request for a reimbursement under this section as if the request were a claim against the United States.

(Added Pub. L. 103–337, div. A, title V, § 557(a), Oct. 5, 1994, 108 Stat. 2775.)

EFFECTIVE DATE

Pub. L. 103–337, div. A, title V, § 557(c), Oct. 5, 1994, 108 Stat. 2776, provided that:

''(1) Section 2738 of title 10, United States Code, as added by subsection (a), applies with respect to losses incurred after June 30, 1990.

''(2) In the case of a loss incurred after June 30, 1990, and before the date of the enactment of this Act [Oct. 5, 1994], a request for reimbursement shall be filed with the Secretary of the military department concerned not later than two years after such date of enactment.''

§ 2739. Amounts recovered from third parties for loss or damage to personal property shipped or stored at Government expense: crediting to appropriations

(a) CREDITING OF COLLECTIONS.—Any qualifying military department third-party collection shall be credited to the appropriate current appropriation. Amounts so credited shall be merged with the funds in that appropriation and shall be available for the same period and purposes as the funds with which merged.

(b) APPROPRIATE CURRENT APPROPRIATION.—For purposes of subsection (a), the appropriate current appropriation with respect to a qualifying military department third-party collection is the appropriation currently available, as of the date of the collection, for the payment of claims by that military department for loss or damage of personal property shipped or stored at Government expense.

(c) QUALIFYING MILITARY DEPARTMENT THIRD-PARTY COLLECTIONS.—For purposes of subsection (a), a qualifying military department third-party collection is any amount that a military department collects under sections 3711, 3716, 3717, and 3721 of title 31 from a third party for a loss or damage to personal property that occurred during shipment or storage of the property at Government expense and for which the Secretary of the military department paid the owner in settlement of a claim.

(Added Pub. L. 105–261, div. A, title X, § 1010(a)(1), Oct. 17, 1998, 112 Stat. 2117.)

EFFECTIVE DATE

Pub. L. 105–261, div. A, title X, § 1010(b), Oct. 17, 1998, 112 Stat. 2117, provided that: ''Section 2739 of title 10, United States Code, as added by subsection (a), applies with respect to amounts collected by a military department on or after the date of the enactment of this Act [Oct. 17, 1998].''

§ 2740. Property loss: reimbursement of members and civilian employees for full replacement value of household effects when contractor reimbursement not available

The Secretary of Defense and the Secretaries of the military departments, in paying a claim under section 3721 of title 31 arising from loss or damage to household goods stored or transported at the expense of the Department of Defense, may pay the claim on the basis of full replacement value in any of the following cases in which reimbursement for the full replacement value for the loss or damage is not available directly from a carrier under section 2636a of this title:

(1) A case in which—

(A) the lost or damaged goods were stored or transported under a contract, tender, or solicitation in accordance with section 2636a of this title that requires the transportation service provider to settle claims on the basis of full replacement value; and

(B) the loss or damage occurred under circumstances that exclude the transportation service provider from liability.

(2) A case in which—

(A) the loss or damage occurred while the lost or damaged goods were in the possession of an ocean carrier that was transporting, loading, or unloading the goods under a Department of Defense contract for ocean carriage; and

(B) the land-based portions of the transportation were under contracts, in accordance with section 2636a of this title, that require the land carriers to settle claims on the basis of full replacement value.

(3) A case in which—

(A) the lost or damaged goods were transported or stored under a contract or solicitation that requires at least one of the transportation service providers or carriers that handled the shipment to settle claims on the basis of full replacement value pursuant to section 2636a of this title;

(B) the lost or damaged goods have been in the custody of more than one independent contractor or transportation service provider; and

(C) a claim submitted to the delivering transportation service provider or carrier is denied in whole or in part because the loss or damage occurred while the lost or damaged goods were in the custody of a prior transportation service provider or carrier or government entity.

(Added Pub. L. 111–383, div. A, title III, § 354(a)(1), Jan. 7, 2011, 124 Stat. 4194.)

EFFECTIVE DATE

Pub. L. 111–383, div. A, title III, § 354(b), Jan. 7, 2011, 124 Stat. 4195, provided that: ''Section 2740 of title 10, United States Code, as added by subsection (a), shall apply with respect to losses incurred after the date of the enactment of this Act [Jan. 7, 2011].''

CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
2771. Final settlement of accounts: deceased members.

Sec.
2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home.
2773. Designation, powers, and accountability of deputy disbursing officials.
2773a. Departmental accountable officials.
2773b. Parking of funds: prohibition; penalties.
2774. Claims for overpayment of pay and allowances and of travel and transportation allowances.
2775. Liability of members assigned to military housing.
2776. Use of receipts of public money for current expenditures.
2777. Requisitions for advances and removal of charges outstanding in accounts of advances.
[2778. Repealed.]
2779. Use of funds because of fluctuations in currency exchange rates of foreign countries.
2780. Debt collection.
2781. Availability of appropriations: exchange fees; losses in accounts.
2782. Damage to real property: disposition of amounts recovered.
2783. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds.
2784. Management of purchase cards.
2784a. Management of travel cards.
2785. Remittance addresses: regulation of alterations.
2786. Department of Defense payments by electronic transfers of funds: exercise of authority for waivers.
2787. Reports of survey.
2788. Property accountability: regulations.
2789. Individual equipment: unauthorized disposition.
2790. Recovery of improperly disposed of Department of Defense property.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title III, §355(b), Jan. 7, 2011, 124 Stat. 4197, added item 2790.

2008—Pub. L. 110–181, div. A, title III, §375(b), Jan. 28, 2008, 122 Stat. 83, added items 2788 and 2789.

2006—Pub. L. 109–364, div. A, title X, §1053(a)(2), Oct. 17, 2006, 120 Stat. 2396, added item 2773b.

2002—Pub. L. 107–314, div. A, title X, §§1005(b), 1006(a)(2), 1007(b)(2), 1008(b), Dec. 2, 2002, 116 Stat. 2632–2635, substituted ''purchase'' for ''credit'' in item 2784 and added items 2773a, 2784a, and 2787.

1999—Pub. L. 106–65, div. A, title IX, §933(a)(2), title X, §1008(a)(2), Oct. 5, 1999, 113 Stat. 730, 738, added items 2784 to 2786.

1996—Pub. L. 104–316, title I, §105(d), Oct. 19, 1996, 110 Stat. 3830, struck out item 2778 ''Accounts of the military departments''.

Pub. L. 104–106, div. B, title XXVIII, §2821(b), Feb. 10, 1996, 110 Stat. 556, added item 2782.

1993—Pub. L. 103–160, div. A, title XI, §1182(a)(8)(C), Nov. 30, 1993, 107 Stat. 1771, added item 2783.

1990—Pub. L. 101–510, div. A, title XIV, §1405(c)(2), title XV, §1533(a)(4)(B), Nov. 5, 1990, 104 Stat. 1680, 1734, substituted ''Retirement Home'' for ''retirement homes'' in item 2772 and struck out item 2782 ''Unobligated balances withdrawn from availability for obligation: limitations on restoration''.

1989—Pub. L. 101–189, div. A, title III, §342(a)(2), title XVI, §1603(a)(2), Nov. 29, 1989, 103 Stat. 1420, 1598, added items 2772 and 2782.

1988—Pub. L. 100–370, §1(m)(2), July 19, 1988, 102 Stat. 850, added item 2781.

1987—Pub. L. 100–26, §7(j)(7)(C), Apr. 21, 1987, 101 Stat. 283, substituted ''allowances and of'' for ''allowances, and'' in item 2774.

1986—Pub. L. 99–661, div. A, title XIII, §1309(b), Nov. 14, 1986, 100 Stat. 3983, added item 2780.

1985—Pub. L. 99–224, §2(b), Dec. 28, 1985, 99 Stat. 1742, substituted ''and'' for ''other than'' in item 2774.

Pub. L. 99–167, title VIII, §802(d)(2), Dec. 3, 1985, 99 Stat. 987, substituted ''assigned to military housing'' for ''for damage to housing and related equipment and furnishings'' in item 2775.

1984—Pub. L. 98–407, title VIII, §801(a)(2), Aug. 28, 1984, 98 Stat. 1518, substituted ''members for damage to housing and related equipment and furnishings'' for ''member for damages to family housing, equipment, and furnishings'' in item 2775.

1982—Pub. L. 97–258, §2(b)(7)(A), (8)(A), Sept. 13, 1982, 96 Stat. 1054, substituted ''Designation, powers, and accountability of deputy disbursing officials'' for ''Accountability for public money: disbursing officers; agent officers'' in item 2773 and added items 2776, 2777, 2778, and 2779.

1980—Pub. L. 96–513, title V, §511(96), Dec. 12, 1980, 94 Stat. 2928, struck out item 2772 ''Withholding pay of officers''.

Pub. L. 96–418, title V, §506(b), Oct. 10, 1980, 94 Stat. 1766, added item 2775.

1972—Pub. L. 92–453, §1(2), Oct. 2, 1972, 86 Stat. 759, added item 2774.

1962—Pub. L. 87–480, §1(1)(B), June 8, 1962, 76 Stat. 94, added item 2773.

§ 2771. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a deceased member of the armed forces, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform for the uniformed services.

(c) Payments under subsection (a) shall be made by the Secretary of Defense.

(d) A payment under this section bars recovery by any other person of the amount paid.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Pub. L. 85–861, §1(56), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 86–641, July 12, 1960, 74 Stat. 473; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §511(97), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 103–160, div. A, title XI, §1182(a)(11), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 104–316, title II, §202(f), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2771(a)	10:868 (less proviso). 34:941a (less proviso).	June 30, 1906, ch. 3914, §1 (last par. under ''State or Territorial Homes for Disabled Soldiers and Sailors''); restated Dec. 7, 1944, ch. 519; restated Feb. 25, 1946, ch. 35, §4, 60 Stat. 30.
2771(b)	10:868 (proviso). 34:941a (proviso).	

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		Feb. 25, 1946, ch. 35, §1, 60 Stat. 30; Aug. 4, 1949, ch. 393, §18, 63 Stat. 560.

In subsections (a) and (b), the words ''General Accounting Office'' are substituted for the words ''accounting officers'', for clarity.

In subsection (a), the word ''member'' is substituted for the words ''officers or enlisted persons'', in 10:868 and 34:941a. The words ''his legal representative'' are substituted for the words ''a duly appointed legal representative of the estate'', since an estate, being property and not an entity, has no representative. The words ''duly appointed'' are omitted as surplusage. The words ''highest on the following list'' are substituted for the words ''following order of precedence'', in 10:868 and 34:941a. Clauses (1)–(4) are substituted for the words between the first and second colons of 10:868 and 34:941a. The words ''Surviving spouse'' are substituted for the words ''widow or widower'' after the words ''First, to''.

In subsection (b), the words ''That this section shall not be so construed as to prevent'', ''or persons'', and ''actually'', in 10:868 and 34:941a, are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2771(a)	37:361. 37:362. 37:365.	July 12, 1955, ch. 328, §§1–3, 4 (less proviso), 5 (first sentence), 69 Stat. 295, 296.
2771(b)	37:364 (less proviso).	
2771(c)	37:363 (less last sentence).	
2771(d)	37:363 (last sentence).	

In subsection (a), the definition of the term ''Department'', in 37:361, is omitted as unnecessary, since the particular departments referred to are spelled out in the revised text. The definition of the term ''uniformed services'', in 37:361, is omitted as covered by the word ''member'' in this revised section and by sections 3 and 4 of the Act enacting this revised section. Clauses (1)–(6) are substituted for the last 5 clauses of 37:362. The words ''regulations to be prescribed by the Secretary concerned'' are substituted for the words ''regulations of the Department concerned'', since the ''Department'', as such, cannot issue regulations.

In subsection (a)(2), the words ''surviving spouse'' are substituted for the words ''widow or widower''. As defined in section 101(32), ''spouse'' includes a widower.

In subsection (b), the words ''are subject to'' are substituted for the words ''shall be made under''.

In subsection (c), the word ''Under'' is substituted for the words ''Subject to''. The words ''rules and'' are omitted as surplusage.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–316 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Under such regulations as the Comptroller General may prescribe, payments under subsection (a) shall be made by the military department concerned or the Department of Transportation, as the case may be. Payment under clause (6) of subsection (a) shall be made—

''(1) upon settlement by the General Accounting Office; or

''(2) as otherwise authorized by the Comptroller General.''

1993—Subsec. (a). Pub. L. 103–160, §1182(a)(11)(A), struck out ''who dies after December 31, 1955'' after ''armed forces'' in introductory provisions.

Subsec. (b). Pub. L. 103–160, §1182(a)(11)(B), substituted ''for the uniformed services'' for ''for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service''.

1980—Subsec. (b). Pub. L. 96–513, §511(97)(A), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsec. (c). Pub. L. 96–513, §511(97)(B), substituted ''Department of Transportation'' for ''Department of the Treasury''.

1966—Subsec. (b). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1960—Subsec. (c). Pub. L. 86–641 substituted provisions requiring payment under clause (6) of subsection (a) to be made upon settlement by the General Accounting Office or as otherwise authorized by the Comptroller General for provisions which permitted payments under clauses (2) to (6) of subsection (a) to be made only after settlement by the General Accounting Office.

1958—Subsec. (a). Pub. L. 85–861 amended subsec. (a) generally to restrict application of section to members of the armed forces who die after Dec. 31, 1955, and to permit payment to the designated beneficiaries, surviving spouse, children and their descendants, and to parents before payment to the legal representative.

Subsec. (b). Pub. L. 85–861 substituted provisions relating to designations and changes of designation of beneficiaries for provisions which authorized reimbursement of funeral expenses.

Subsecs. (c), (d). Pub. L. 85–861 added subsecs. (c) and (d).

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.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

FINAL SETTLEMENT OF ACCOUNTS OF MEMBERS WHO DIED BEFORE JANUARY 1, 1960

Pub. L. 85–861, §29, Sept. 2, 1958, 72 Stat. 1563, authorized the General Accounting Office, in the settlement of the accounts of a member of the Army, Navy, Air Force, or Marine Corps who died before Jan. 1, 1956, to allow any amount due to the person highest on a list of persons living on the date of settlement and to provide reimbursement for funeral expenses from the amount due the decedent's estate.

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Pub. L. 85–861, §31, Sept. 2, 1958, 72 Stat. 1563, provided that: ''The designation of a beneficiary made for the purposes of any six months' death gratuity, including the designation of a person whose right to the gratuity does not depend upon that designation, and received in the military department concerned, the Department of the Treasury, the Department of Commerce, or the Department of Health, Education, and Welfare, as the case may be, before January 1, 1956, is considered as the designation of a beneficiary for the purposes of section 2771 of title 10, United States Code [this section], section 714 of title 32, United States Code, and sections 3 and 4 of this Act [amending section 857a of Title 33, and section 213a of Title 42], in the absence of a designation under one of those sections, unless the member making the designation was missing, missing in action, in the hands of a hostile force, or interned in a foreign country any time after July 11, 1955, and before January 1, 1956.''

§ 2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home

(a) DEPOSIT REQUIRED.—The Secretary of the military department concerned or, in the case of the Coast Guard, the Commandant shall deposit in the Armed Forces Retirement Home Trust Fund a percentage (determined under subsection (b)) of the following amounts:

(1) The amount of forfeitures and fines adjudged against an enlisted member, warrant officer, or limited duty officer of the armed forces by sentence of a court martial or under authority of section 815 of this title (article 15) over and above any amount that may be due from the member, warrant officer, or limited duty officer for the reimbursement of the United States or any individual.

(2) The amount of forfeitures on account of the desertion of an enlisted member, warrant officer, or limited duty officer of the armed forces.

(b) DETERMINATION OF PERCENTAGE.—The Chief Operating Officer of the Armed Forces Retirement Home shall determine, on the basis of the financial needs of the Armed Forces Retirement Home, the percentage of the amounts referred to in subsection (a) to be deposited in the trust fund referred to in such subsection.

(Added Pub. L. 101–189, div. A, title III, §342(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended Pub. L. 101–510, div. A, title XV, §1533(a)(3), (4)(A), Nov. 5, 1990, 104 Stat. 1733; Pub. L. 111–281, title II, §205(b)(1), Oct. 15, 2010, 124 Stat. 2911; Pub. L. 112–81, div. A, title V, §567(b)(2)(B), Dec. 31, 2011, 125 Stat. 1425.)

PRIOR PROVISIONS

A prior section 2772, act Aug. 10, 1956, ch. 1041, 70A Stat. 156, authorized withholding of pay of officers of the Army, Navy, Air Force, or Marine Corps, and is covered by section 1007 of Title 37, Pay and Allowances of the Uniformed Services, prior to repeal by Pub. L. 87–649, §14c(3), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962.

AMENDMENTS

2011—Subsec. (b). Pub. L. 112–81 substituted ''Chief Operating Officer of the Armed Forces Retirement Home'' for ''Armed Forces Retirement Home Board''.

2010—Subsec. (a). Pub. L. 111–281, §205(b)(1)(A), inserted ''or, in the case of the Coast Guard, the Commandant'' after ''concerned'' in introductory provisions.

Subsec. (c). Pub. L. 111–281, §205(b)(1)(B), struck out subsec. (c). Text read as follows: ''In this section, the term 'armed forces' does not include the Coast Guard when it is not operating as a service in the Navy.''

1990—Pub. L. 101–510, §1533(a)(4)(A), substituted ''Retirement Home'' for ''retirement homes'' in section catchline and amended text generally, substituting subsecs. (a) to (c) relating to shares of fines and forfeitures to benefit the Armed Forces Retirement Home for former subsecs. (a) and (b) relating to shares of fines and forfeitures to benefit the Soldiers' Home and the Naval Home.

Pub. L. 101–510, §1533(a)(3), inserted ''and forfeitures'' after ''fines'' in subsecs. (a)(1)(A) and (b)(1)(A) and substituted '', warrant officer, or limited duty officer'' for ''or warrant officer'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title XV, §1533(a)(3), Nov. 5, 1990, 104 Stat. 1733, provided that the amendment by that section was effective Nov. 5, 1990, prior to repeal by Pub. L. 107–107, div. A, title XIV, §1409, Dec. 28, 2001, 115 Stat. 1265.

Amendment by section 1533(a)(4)(A) of Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE

Pub. L. 101–189, div. A, title III, §342(b), Nov. 29, 1989, 103 Stat. 1420, provided that:

''(1) Subsection (a) of section 2772 of such title [10 U.S.C. 2772(a)], as added by subsection (a), shall apply with respect to fines and forfeitures adjudged after the date of the enactment of this Act [Nov. 29, 1989].

''(2) Subsection (b) of such section shall apply with respect to fines and forfeitures adjudged after May 31, 1990.''

§ 2773. Designation, powers, and accountability of deputy disbursing officials

(a)(1) Subject to paragraph (3), a disbursing official of the Department of Defense may designate a deputy disbursing official—

(A) to make payments as the agent of the disbursing official;

(B) to sign checks drawn on disbursing accounts of the Secretary of the Treasury; and

(C) to carry out other duties required under law.

(2) The penalties for misconduct that apply to a disbursing official apply to a deputy disbursing official designated under this subsection.

(3) A disbursing official may make a designation under paragraph (1) only with the approval of the Secretary of Defense or, in the case of a disbursing official of a military department, the Secretary of that military department.

(b)(1) If a disbursing official of the Department of Defense dies, becomes disabled, or is separated from office, a deputy disbursing official may continue the accounts and payments in the name of the former disbursing official until the last day of the 2d month after the month in which the death, disability, or separation occurs. The accounts and payments shall be allowed, audited, and settled as provided by law. The Secretary of the Treasury shall honor checks signed in the name of the former disbursing official in the same way as if the former disbursing official had continued in office.

(2) The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official, is liable for the actions of the deputy disbursing official under this subsection.

(Added Pub. L. 87–480, §1(1)(A), June 8, 1962, 76 Stat. 94; amended Pub. L. 97–258, §2(b)(7)(B), Sept. 13, 1982, 96 Stat. 1054; Pub. L. 104–106, div. A, title IX, §913(a)(2), Feb. 10, 1996, 110 Stat. 410.)

HISTORICAL AND REVISION NOTES
1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2773(a)	10:2773. 31:103a.	July 3, 1926, ch. 775, 44 Stat. 888; June 6, 1972, Pub. L. 92–310, §231(bb), 86 Stat. 212.
2773(b)	31:103b.	July 31, 1953, ch. 300, 67 Stat. 296; June 6, 1972, Pub. L. 92–310, §231(ff), 86 Stat. 213.

In the section, the words ''disbursing official'' are substituted for ''disbursing officer'' for consistency with other titles of the United States Code. The words ''Secretary of the Treasury'' are substituted for ''Treasurer of the United States'' because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 10:2773 is omitted as being superseded by 31:103a and 103b.

In subsection (a)(1), before clause (A), the words ''With the approval of a Secretary of a military department when the Secretary considers it necessary'' are substituted for ''When, in the opinion of the Secretary of the Army, Navy, or Air Force, the exigencies of the service so require . . . with the approval of the head of their executive department'' in 31:103a because of 10:101(7), to eliminate unnecessary words, and for consistency. The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). The words ''deputy disbursing official'' are substituted for ''deputies'' for clarity. In clause (A), the words ''to make payments'' are substituted for ''for the purpose of having them make disbursements'' to eliminate unnecessary words. In clause (C), the words ''to be performed by such disbursing officers'' are omitted as unnecessary.

In subsection (a)(2), the words ''deputy disbursing official'' are substituted for ''agent officer'' for clarity and consistency.

In subsection (b)(1), the word ''disabled'' is substituted for ''incapacity'' for consistency in the title. The word ''until'' is substituted for ''for a period of time not to extend beyond'' to eliminate unnecessary words.

In subsection (b)(2), the words ''The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official'' are substituted for ''The former disbursing officer or his estate . . . but the deputy disbursing officer shall be responsible therefor'' for clarity and because of the restatement. The word ''liable'' is substituted for ''subject to any legal liability or penalty'' to eliminate unnecessary words. The word ''actions'' is substituted for ''official acts and defaults''. The words ''in the name or in the place of the former disbursing officer'' are omitted as unnecessary.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106, § 913(a)(2)(A)(i), substituted ''Subject to paragraph (3), a disbursing official of the Department of Defense'' for ''With the approval of a Secretary of a military department when the Secretary considers it necessary, a disbursing official of the military department''.

Subsec. (a)(3). Pub. L. 104–106, § 913(a)(2)(A)(ii), added par. (3).

Subsec. (b)(1). Pub. L. 104–106, § 913(a)(2)(B), substituted ''the Department of Defense'' for ''any military department''.

1982—Pub. L. 97–258 substituted provisions authorizing a disbursing official of a military department to designate a deputy disbursing official with the same duties and penalties for misconduct as those of the disbursing official and allowing a deputy disbursing official to continue the accounts and payments in the name of a former disbursing official for two months after the death, disability, or separation of the former disbursing official for provisions authorizing any officer of an armed force accountable for public money to entrust it to another officer of an armed force to make disbursement as his agent, with both officers pecuniarily responsible to the United States for that money.

§ 2773a. Departmental accountable officials

(a) DESIGNATION BY SECRETARY OF DEFENSE.—The Secretary of Defense may designate any civilian employee of the Department of Defense or member of the armed forces under the Secretary's jurisdiction who is described in subsection (b) as an employee or member who, in addition to any other potential accountability, may be held accountable through personal monetary liability for an illegal, improper, or incorrect payment made by the Department of Defense described in subsection (c). Any such designation shall be in writing. Any employee or member who is so designated may be referred to as a ''departmental accountable official''.

(b) COVERED EMPLOYEES AND MEMBERS.—An employee or member of the armed forces described in this subsection is an employee or member who—

(1) is responsible in the performance of the employee's or member's duties for providing to a certifying official of the Department of Defense information, data, or services that are directly relied upon by the certifying official in the certification of vouchers for payment; and

(2) is not otherwise accountable under subtitle III of title 31 or any other provision of law for payments made on the basis of such vouchers.

(c) PECUNIARY LIABILITY.—(1) The Secretary of Defense may subject a departmental accountable official to pecuniary liability for an illegal, improper, or incorrect payment made by the Department of Defense if the Secretary determines that such payment—

(A) resulted from information, data, or services that that official provided to a certifying official and upon which that certifying official directly relies in certifying the voucher supporting that payment; and

(B) was the result of fault or negligence on the part of that departmental accountable official.

(2) Pecuniary liability under this subsection shall apply in the same manner and to the same extent as applies to an official accountable under subtitle III of title 31.

(3) Any pecuniary liability of a departmental accountable official under this subsection for a loss to the United States resulting from an illegal, improper, or incorrect payment is joint and several with that of any other officer or employee of the United States or member of the uniformed services who is pecuniarily liable for such loss.

(d) CERTIFYING OFFICIAL DEFINED.—In this section, the term ''certifying official'' means an employee who has the responsibilities specified in section 3528(a) of title 31.

(Added Pub. L. 107–314, div. A, title X, § 1005(a), Dec. 2, 2002, 116 Stat. 2631; amended Pub. L. 109–163, div. A, title X, § 1056(c)(8), Jan. 6, 2006, 119 Stat. 3440.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 inserted ''by'' after ''incorrect payment made''.

§ 2773b. Parking of funds: prohibition; penalties

(a) PROHIBITION.—An officer or employee of the Department of Defense may not direct the designation of funds for a particular purpose in the budget of the President, as submitted to Congress pursuant to section 1105 of title 31, or the supporting documents of the Department of Defense component of such budget, with the knowledge or intent that such funds, if made available to the Department, will not be used for the purpose for which they are designated.

(b) PENALTIES.—The direction of the designation of funds in violation of the prohibition in subsection (a) shall be treated for purposes of chapter 13 of title 31 as a violation of section 1341(a)(1)(A) of such title.

(Added Pub. L. 109–364, div. A, title X, § 1053(a)(1), Oct. 17, 2006, 120 Stat. 2396.)

EFFECTIVE DATE

Pub. L. 109–364, div. A, title X, § 1053(b), Oct. 17, 2006, 120 Stat. 2396, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [enacting this section] shall take effect on the date that is 31 days after the date of the enactment of this Act [Oct. 17, 2006].

''(2) MODIFICATION OF CERTAIN POLICIES AND REGULATIONS.—Not later than 30 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall modify the policies and regulations of the Department of Defense regarding the preparation and submittal to Congress of budget materials for the Department of Defense to take into account section 2773b of title 10, United States Code, as added by subsection (a).''

§ 2774. Claims for overpayment of pay and allowances and of travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the uniformed services, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Director of the Office of Management and Budget; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $10,000; and

(B) the waiver is made in accordance with standards which the Director of the Office of Management and Budget shall prescribe.

(b) The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or

(2) if application for waiver is received in his office after the expiration of five years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added Pub. L. 92–453, § 1(1), Oct. 2, 1972, 86 Stat. 758; amended Pub. L. 96–513, title V, § 511(98), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 99–224, § 2(a), Dec. 28, 1985, 99 Stat. 1741; Pub. L. 100–26, § 7(j)(7)(A), (B), Apr. 21, 1987, 101 Stat. 283; Pub. L. 102–190, div. A, title VI, § 657(b), Dec. 5, 1991, 105 Stat. 1393; Pub. L. 104–316, title I, § 105(b), Oct. 19, 1996, 110 Stat. 3830; Pub. L. 109–364, div. A, title VI, § 671(a), Oct. 17, 2006, 120 Stat. 2270.)

AMENDMENTS

2006—Subsec. (a)(2)(A). Pub. L. 109–364, § 671(a)(1), substituted ''$10,000'' for ''$1,500''.

Subsec. (b)(2). Pub. L. 109–364, § 671(a)(2), substituted ''five years'' for ''three years''.

1996—Subsec. (a). Pub. L. 104–316, § 105(b)(1), substituted ''Director of the Office of Management and Budget'' for ''Comptroller General'' in par. (1), and in par. (2) inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B) and substituted ''Director of the Office of Management and Budget'' for ''Comptroller General'', and struck out former subpar. (B) which read as follows ''the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and''.

Subsec. (b). Pub. L. 104–316, § 105(b)(2), substituted ''Director of the Office of Management and Budget'' for ''Comptroller General''.

1991—Subsec. (a)(2)(A). Pub. L. 102–190 substituted ''$1,500'' for ''$500''.

1987—Pub. L. 100–26, § 7(j)(7)(A), substituted ''allowances and of'' for ''allowances, and'' in section catchline.

Subsec. (a). Pub. L. 100–26, § 7(j)(7)(B), struck out ''as defined in section 101(3) of title 37,'' after ''uniformed services,''.

1985—Pub. L. 99–224, § 2(a)(1), substituted ''and'' for ''other than'' in section catchline.

Subsec. (a). Pub. L. 99–224, § 2(a)(2), substituted ''made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances'' for '', other than travel and transportation allowances, made before or after October 2, 1972''.

Subsec. (b)(2). Pub. L. 99–224, § 2(a)(3), struck out ''of pay or allowances, other than travel and transportation allowances,'' after ''payment''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''October 2, 1972'' for ''the effective date of this section''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VI, § 671(c), Oct. 17, 2006, 120 Stat. 2270, provided that: ''The amendments made

by this section [amending this section and section 716 of Title 32, National Guard] shall take effect on March 1, 2007.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–316 effective 60 days after Oct. 19, 1996, see section 101(e) of Pub. L. 104–316, set out as a note under section 4593 of Title 2, The Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–224 applicable to any claim arising out of an erroneous payment of travel and transportation allowances made on or after Dec. 28, 1985, see section 4 of Pub. L. 99–224, set out as a note under section 5584 of Title 5, Government Organization and Employees.

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.

CANCELLATION OF DEBTS UP TO $2,500 OF UNIFORMED SERVICE MEMBERS INCURRED IN CONNECTION WITH OPERATION DESERT SHIELD/STORM

Pub. L. 104–61, title VIII, § 8052, Dec. 1, 1995, 109 Stat. 662, provided that: ''Notwithstanding any other provision of law, the Secretary of Defense may, when he considers it in the best interest of the United States, cancel any part of an indebtedness, up to $2,500, that is or was owed to the United States by a member or former member of a uniformed service if such indebtedness, as determined by the Secretary, was incurred in connection with Operation Desert Shield/Storm: *Provided*, That the amount of an indebtedness previously paid by a member or former member and cancelled under this section shall be refunded to the member.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, § 8060, Sept. 30, 1994, 108 Stat. 2633.

Pub. L. 103–139, title VIII, § 8071, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, § 9100, Oct. 6, 1992, 106 Stat. 1926.

Pub. L. 102–172, title VIII, § 8138, Nov. 26, 1991, 105 Stat. 1212.

§ 2775. Liability of members assigned to military housing

(a)(1) A member of the armed forces shall be liable to the United States for damage to any family housing unit or unaccompanied personnel housing unit, or damage to or loss of any equipment or furnishings of any family housing unit or unaccompanied personnel housing unit, assigned to or provided such member if (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) the damage or loss was caused by the abuse or negligence of the member (or a dependent of the member) or of a guest of the member (or a dependent of the member).

(2) A member of the armed forces—

(A) who is assigned or provided a family housing unit; and

(B) who fails to clean satisfactorily that housing unit (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) upon termination of the assignment or provision of that housing unit, shall be liable to the United States for the cost of cleaning made necessary as a result of that failure.

(b) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may establish limitations on liability under this section, including (in the case of liability under subsection (a)(1)) different limitations based upon the degree of abuse or negligence involved, and may compromise or waive a claim of the United States under this section.

(c)(1) The Secretary concerned may deduct from a member's pay an amount sufficient to pay for the cost of any repair or replacement made necessary as the result of any abuse or negligence referred to in subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2), for which the member is liable. Regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means.

(2) The final determination of an amount to be deducted from the pay of an officer of an armed force in accordance with regulations prescribed under this section shall be deemed to be a special order authorizing such deduction for the purposes of section 1007 of title 37.

(d) Amounts received under this section shall be credited to the family housing operations and maintenance account, in the case of damage to a family housing unit (or the equipment or furnishings of a family housing unit) or failure to clean satisfactorily a family housing unit, or to the operations and maintenance account, in the case of damage to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit), of the military department or defense agency concerned, or the operating expenses account of the Coast Guard, as appropriate. Amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in those accounts.

(e) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include—

(1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence for which a member is liable under subsection (a)(1);

(2) regulations for determining the cost of cleaning made necessary as a result of the failure to clean satisfactorily for which a member is liable under subsection (a)(2); and

(3) provisions for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.

(Added Pub. L. 96–418, title V, § 506(a), Oct. 10, 1980, 94 Stat. 1765; amended Pub. L. 97–214, § 10(a)(6), July 12, 1982, 96 Stat. 175; Pub. L. 98–407, title VIII, § 801(a)(1), Aug. 28, 1984, 98 Stat. 1517; Pub. L. 99–167, title VIII, § 802(a)–(d)(1), Dec. 3, 1985, 99 Stat. 986; Pub. L. 99–661, div. A, title XIII, § 1343(a)(19), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a)(1), (2)(B), (b), (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1986—Subsec. (a)(1). Pub. L. 99–661, §1343(a)(19)(A), substituted ''(as determined under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) the'' for ''it is determined, under regulations prescribed by the Secretary of Defense and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, that the''.

Subsec. (b). Pub. L. 99–661, §1343(a)(19)(B), inserted a comma after ''Secretary of Defense'', substituted ''with respect to the Coast Guard when it'' for ''when the Coast Guard'', and inserted a comma after ''Navy''.

Subsec. (e). Pub. L. 99–661, §1343(a)(19)(C), substituted ''with respect to the Coast Guard when it'' for ''when the Coast Guard''.

1985—Pub. L. 99–167, §802(d)(1), substituted ''assigned to military housing'' for ''for damage to housing and related equipment and furnishings'' in section catchline.

Subsec. (a). Pub. L. 99–167, §802(a), (b)(1), designated existing provisions as par. (1), and in par. (1) as so designated, inserted ''and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy'', and added par. (2).

Subsec. (b). Pub. L. 99–167, §802(b)(1), (c)(1), inserted ''and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy'' and ''(in the case of liability under subsection (a)(1))''.

Subsec. (c)(1). Pub. L. 99–167, §802(c)(2), substituted ''subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2),'' for ''subsection (a)''.

Subsec. (d). Pub. L. 99–167, §802(b)(2), (c)(3), inserted ''or failure to clean satisfactorily a family housing unit'' and '', or the operating expenses account of the Coast Guard, as appropriate''.

Subsec. (e). Pub. L. 99–167, §802(c)(4), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Secretary of Defense shall prescribe regulations to carry out the provisions of this section, including (1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence referred to in subsection (a), and (2) regulations providing for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.''

1984—Pub. L. 98–407 substituted ''Liability of members for damage to housing and related equipment and furnishings'' for ''Liability of member for damages to family housing, equipment, and furnishings'' in section catchline.

Subsec. (a). Pub. L. 98–407 amended subsec. (a) generally, inserting references to unaccompanied personnel housing units, and expanding liability of members of the Armed Forces to include damages caused by the abuse or negligence of a guest of the member or of a dependent of the member.

Subsec. (b). Pub. L. 98–407 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98–407 redesignated former subsec. (b) as (c), in subsec. (c)(1) as so redesignated substituted reference to any abuse or negligence for which the member is liable for reference to any abuse or negligence on the part of such member or any dependent of such member, inserted provision that regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means, and in subsec. (c)(2), as so redesignated, substituted reference to regulations prescribed under this section for reference to regulations issued under this section. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–407 redesignated former subsec. (c) as (d) and substituted provisions requiring that amounts received under this section be credited either to the family housing operations and maintenance account of the department or agency concerned, (in the case of damage to family housing or equipment or furnishings therein) or the operations and maintenance account of the department or agency concerned (in the case of damage to an unaccompanied personnel housing unit or equipment or furnishings therein) for provisions that amounts deducted from members' pay under this section had to be credited to the Department of Defense Military Family Housing Management Account provided for in section 2831 of this title. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–407 redesignated former subsec. (d) as (e)(1), substituted reference to abuse or negligence referred to in subsec. (a) for reference to abuse or negligence on the part of a member or dependent of a member, and added par. (2).

1982—Subsec. (c). Pub. L. 97–214, §10(a)(6), substituted ''Military Family Housing Management Account provided for in section 2831 of this title'' for ''family housing management account established under section 501 of Public Law 87–554 (76 Stat. 236; 42 U.S.C. 1594a–1)''.

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.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 608 of title VI of Pub. L. 96–418, set out as an Effective Date of 1980 Amendment note under section 2675 of this title.

PROMULGATION OF REGULATIONS AND APPLICABILITY OF 1984 AMENDMENTS

Pub. L. 98–407, title VIII, §801(b), Aug. 28, 1984, 98 Stat. 1518, provided that:

''(1) Regulations shall be prescribed under subsection (e) of section 2775 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Aug. 28, 1984]. That section shall apply with respect to the liability of a member under such section for damage or loss to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit) or for damage or loss caused by a guest of the member or of a dependent of the member to a family housing unit (or the equipment or furnishings of a family housing unit) only in the case of damage or loss caused on or after the date that such regulations take effect.

''(2) The authority of the Secretary of Defense under subsection (b) of such section is applicable to any claim of the United States under such section, whether such claim arose before, on, or after the date of the enactment of this Act [Aug. 28, 1984].''

§ 2776. Use of receipts of public money for current expenditures

Without deposit to the credit of the Secretary of the Treasury and without withdrawal on money requisitions, a disbursing official of the Department of Defense may use receipts of public money charged in the disbursing official's accounts (except receipts to be credited to river, harbor, and flood control appropriations) for current expenditures, with necessary bookkeeping adjustments being made.

(Added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2776	31:493a.	Aug. 1, 1953, ch. 305, § 611, 67 Stat. 350.

The words ''disbursing official'' are substituted for ''officer . . . on disbursing duty'' for consistency with other titles of the United States Code. The words ''On and after August 1, 1953'' are omitted as executed. The words ''Secretary of the Treasury'' are substituted for ''Treasury of the United States'' because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated in section 321 of the revised title contained in section 1 of the bill. The words ''from sales or other sources'' are omitted as surplus. The words ''with'' and ''being'' are added because of the restatement. The words ''of appropriations, funds, and accounts to be . . . in the settlement of their disbursing accounts'' are omitted as unnecessary.

PRIOR PROVISIONS

Act Aug. 1, 1953, cited as the source of this section in the Historical and Revision Notes above, is known as the Department of Defense Appropriation Act, 1954. Similar provisions were contained in the following appropriation acts:

July 10, 1952, ch. 630, title VI, § 613, 66 Stat. 532.
Oct. 18, 1951, ch. 512, title VI, § 613, 65 Stat. 446.
Sept. 6, 1950, ch. 896, Ch. X, title VI, § 615, 64 Stat. 753.
Oct. 29, 1949, ch. 787, title VI, § 618, 63 Stat. 1020.
June 24, 1948, ch. 632, 62 Stat. 651.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 551.
July 16, 1946, ch. 583, § 1, 60 Stat. 543.
July 3, 1945, ch. 265, § 1, 59 Stat. 386.
June 28, 1944, ch. 303, § 1, 58 Stat. 575.
July 1, 1943, ch. 185, § 1, 57 Stat. 349.
July 2, 1942, ch. 477, § 1, 56 Stat. 613.
June 30, 1941, ch. 262, § 1, 55 Stat. 369.
June 13, 1940, ch. 343, § 1, 54 Stat. 355.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 597.
June 11, 1938, ch. 347, § 1, 52 Stat. 646.
July 1, 1937, ch. 423, § 1, 50 Stat. 446.

§ 2777. Requisitions for advances and removal of charges outstanding in accounts of advances

(a) The Secretary of a military department may issue to a disbursing official or agent of the department a requisition for an advance of not more than the total appropriation for the department. The amount advanced shall be—

(1) under an ''account of advances'' for the department;

(2) on a proper voucher;

(3) only for obligations payable under specific appropriations;

(4) charged to, and within the limits of, each specific appropriation; and

(5) returned to the account of advances.

(b) A charge outstanding in an account of advances of a military department shall be removed by crediting the account of advances of the department and deducting the amount of the charge from an appropriation made available for advances to the department when—

(1) relief has been granted or may be granted later to a disbursing official or agent of the department operating under an account of advances and under a law having no provision for removing charges outstanding in an account of advances; or

(2) the charge has been—

(A) outstanding in the account of advances of the department for 2 complete fiscal years; and

(B) certified by the head of the department as uncollectable.

(c) Subsection (b) does not affect the financial liability of a disbursing official or agent.

(Added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055; amended Pub. L. 98–525, title XIV, § 1405(43), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 104–316, title I, § 105(c), Oct. 19, 1996, 110 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2777(a)	31:536, 537.	June 5, 1920, ch. 240 (1st, 2d pars. under heading ''Advances to Disbursing Officers''), 41 Stat. 975.
	31:539, 540.	June 19, 1878, ch. 312, §§ 1, 2, 20 Stat. 167.
2777(b), (c).	31:95b (related to Army, Navy, Air Force).	June 4, 1954, ch. 264, § 1 (related to Army, Navy, Air Force), 68 Stat. 175; June 6, 1972, Pub. L. 92–310, § 231(gg), 86 Stat. 213.

In the section, the words ''disbursing official'' are substituted for ''disbursing officers'' for consistency with other titles of the United States Code.

In subsection (a), before clause (1), the words ''Secretary of a military department'' are substituted for ''Secretary of the Army'' in 31:536 and for ''Secretary of the Navy'' in 31:539 because of 10:101(7). The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). In clause (1), the word ''General'' in 31:539 is omitted as surplus. In clause (3), the words ''and 'Pay of the Navy' shall be used only for its legitimate purpose, as provided by law'' are omitted as unnecessary. In clause (5), the words ''by pay and counterwarrant'' in 31:537 and 540 are omitted as unnecessary.

In subsection (b), before clause (1), the word ''appropriate'' is omitted as surplus. The words ''deducting the amount of the charge from'' are substituted for ''debiting'' for clarity. In clause (2)(B), the word ''concerned'' is omitted as surplus.

In subsection (c), the words ''in any way'' and ''of the United States'' are omitted as surplus.

AMENDMENTS

1996—Subsec. (b)(2)(B). Pub. L. 104–316 struck out ''to the Comptroller General'' after ''head of the department''.

1984—Subsec. (c). Pub. L. 98–525 struck out ''of this section'' after ''Subsection (b)''.

[§ 2778. Repealed. Pub. L. 104–316, title I, § 105(d), Oct. 19, 1996, 110 Stat. 3830]

Section, added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055, related to management of accounts of military departments by Comptroller General.

§ 2779. Use of funds because of fluctuations in currency exchange rates of foreign countries

(a) TRANSFERS BACK TO FOREIGN CURRENCY FLUCTUATIONS APPROPRIATION.—(1) Funds trans-

ferred from the appropriation ''Foreign Currency Fluctuations, Defense'' may be transferred back to the appropriation—

(A) when the funds are not needed to pay obligations incurred because of fluctuations in currency exchange rates of foreign countries in the appropriation to which the funds were originally transferred; and

(B) because of subsequent favorable fluctuations in the rates or because other funds are, or become, available to pay the obligations.

(2) A transfer back to the Foreign Currency Fluctuations, Defense appropriation may not be made after the end of the second fiscal year after the fiscal year that the appropriation to which the funds were originally transferred is available for obligation.

(b) FUNDING FOR LOSSES IN MILITARY CONSTRUCTION AND FAMILY HOUSING.—(1) One hundred million dollars, plus $25,000,000 from Family Housing, Defense, are appropriated to the Secretary of Defense, to remain available until spent. The appropriation is available only to provide funds to eliminate losses in military construction or expenses of family housing for the Department of Defense caused by fluctuations in currency exchange rates of foreign countries that changed after a budget request was submitted to Congress.

(2) Funds provided under this subsection are merged with and are available for the same purpose and for the same time period as the appropriation to which they are applied. An authorization or limitation limiting the amount that may be obligated or spent is increased to the extent necessary to reflect fluctuations in exchange rates from those used in preparing the budget submission.

(3) An obligation payable in the currency of a foreign country may be recorded as an obligation based on exchange rates used in preparing a budget submission. A change reflecting fluctuations in the exchange rate may be recorded as a disbursement is made.

(c) TRANSFERS TO MILITARY PERSONNEL ACCOUNTS.—The Secretary of Defense may transfer funds to military personnel appropriations for a fiscal year out of funds available to the Department of Defense for that fiscal year under the appropriation ''Foreign Currency Fluctuations, Defense''.

(d) TRANSFERS TO FOREIGN CURRENCY FLUCTUATIONS ACCOUNT.—(1) The Secretary of Defense may transfer to the appropriation ''Foreign Currency Fluctuations, Defense'' unobligated amounts of funds appropriated for operation and maintenance and unobligated amounts of funds appropriated for military personnel.

(2) Any transfer from an appropriation under paragraph (1) shall be made not later than the end of the second fiscal year following the fiscal year for which the appropriation is provided.

(3) Any transfer made pursuant to the authority provided in this subsection shall be limited so that the amount in the appropriation ''Foreign Currency Fluctuations, Defense'' does not exceed $970,000,000 at the time the transfer is made.

(e) CONDITIONS OF AVAILABILITY FOR TRANSFERRED FUNDS.—Amounts transferred under subsection (c) or (d) shall be merged with and be available for the same purposes and for the same period as the appropriations to which transferred.

(Added Pub. L. 97–258, §2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1056; amended Pub. L. 101–510, div. A, title XIII, §1301(15), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 104–106, div. A, title IX, §911(a)–(c), (e), Feb. 10, 1996, 110 Stat. 406, 407.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2779(a)	31:628–2.	July 25, 1979, Pub. L. 96–38, §100 (last par. under heading ''General Provisions''), 93 Stat. 100.
2779(b)	31:628–3.	Nov. 30, 1979, Pub. L. 96–130, §100 (par. under heading ''Foreign Currency Fluctuation, Construction, Defense''), 93 Stat. 1019.

In subsection (a)(1), before clause (A), the words ''during the current fiscal year or on and after July 25, 1979'' are omitted as executed. The words ''from an appropriation to which they were transferred'' are omitted as surplus. In clause (A), the words ''of foreign countries'' are added for consistency.

In subsection (a)(2), the words ''back to the Foreign Currency Fluctuations, Defense appropriation'' are substituted for ''authorized by this provision'' for clarity.

In subsection (b)(1), the words ''the sum of'', ''which shall be derived'', and ''to appropriations and funds'' are omitted as surplus. The word ''only'' is added for clarity. The words ''for those appropriations or funds'' are omitted as surplus. The words ''available during fiscal year 1980, or thereafter'' are omitted as executed. The words ''Department of Defense'' are substituted for ''military departments and Defense agencies'' because of 10:101(5).

In subsection (b)(2), the words ''or fund'' are omitted as surplus. The words ''now or on and after November 30, 1979'' are omitted as executed. The words ''contained within appropriations or other provisions of law'', ''hereby'', and ''applicable'' are omitted as surplus.

In subsection (b)(3), the words ''contracts or other . . . entered into'' are omitted as surplus.

PRIOR PROVISIONS

Provisions similar to those in subsec. (d) of this section were contained in Pub. L. 97–377, title I, §101(c) [title VII, §791], Dec. 21, 1982, 96 Stat. 1865, which was set out as a note under section 114 of this title, prior to repeal by Pub. L. 104–106, §911(d)(2).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, §911(e)(1), inserted heading.

Subsec. (a)(2). Pub. L. 104–106, §911(e)(2), substituted ''second fiscal year'' for ''2d fiscal year''.

Subsec. (b). Pub. L. 104–106, §911(e)(3), inserted heading.

Subsec. (c). Pub. L. 104–106, §911(a), added subsec. (c).

Subsec. (d). Pub. L. 104–106, §911(b), added subsec. (d).

Subsec. (e). Pub. L. 104–106, §911(c), added subsec. (e).

1990—Subsec. (b)(4). Pub. L. 101–510 struck out par. (4) which read as follows: ''The Secretary each year shall report to Congress on funds made available under this subsection.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title IX, §911(f), Feb. 10, 1996, 110 Stat. 407, provided that: ''Subsections (c) and (d) of section 2779 of title 10, United States Code, as added by subsections (a) and (b), and the repeals made by subsection (d) [repealing provisions set out as a note under section 114 of this title], shall apply only with respect

to amounts appropriated for a fiscal year after fiscal year 1995.''

§ 2780. Debt collection

(a)(1) Subject to paragraph (2), the Secretary of Defense shall enter into one or more contracts with a person for collection services to recover indebtedness owed to the United States (arising out of activities related to Department of Defense) that is delinquent by more than three months.

(2) The authority of the Secretary to enter into a contract under this section for any fiscal year is subject to the availability of appropriations.

(3) Any such contract shall provide that the person submit to the Secretary a status report on the person's success in collecting such debts at least once each six months. Section 3718 of title 31 shall apply to any such contract, to the extent not inconsistent with this subsection.

(b)(1) Except as provided in paragraph (2), the Secretary of Defense shall disclose to consumer reporting agencies, in accordance with paragraph (1) of section 3711(e) of title 31, information concerning any debt described in subsection (a) of more than $100 that is delinquent by more than 31 days.

(2) No disclosure shall be made under paragraph (1) with respect to an indebtedness while a decision regarding waiver of collection of the indebtedness is pending under section 2774 of this title or section 716 of title 32, or while a decision regarding remission or cancellation of the indebtedness is pending under section 4837, 6161, or 9837 of this title, unless the Secretary concerned (as defined in section 101(5) of title 37) determines that disclosure under that paragraph pending such decision is in the best interests of the United States.

(Added Pub. L. 99–661, div. A, title XIII, § 1309(a), Nov. 14, 1986, 100 Stat. 3982; amended Pub. L. 104–316, title I, § 115(g)(2)(C), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 109–364, div. A, title VI, § 672(a), Oct. 17, 2006, 120 Stat. 2270.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–364 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the Secretary of Defense'' for ''The Secretary'', and added par. (2).

1996—Subsec. (b). Pub. L. 104–316 substituted ''section 3711(e)'' for ''section 3711(f)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VI, § 672(b), Oct. 17, 2006, 120 Stat. 2270, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect on March 1, 2007.

''(2) APPLICATION TO PRIOR ACTIONS.—Paragraph (2) of section 2780(b) of title 10, United States Code, as added by subsection (a), shall not be construed to apply to or invalidate any action taken under such section before March 1, 2007.''

CONTRACTS FOR RECOVERY OF INDEBTEDNESS

Pub. L. 101–165, title IX, § 9019, Nov. 21, 1989, 103 Stat. 1133, provided that: ''During the current fiscal year and hereafter, the Department of Defense may enter into contracts to recover indebtedness to the United States pursuant to section 3718 of title 31, United States Code.''

§ 2781. Availability of appropriations: exchange fees; losses in accounts

Amounts appropriated to the Department of Defense may be used for—

(1) exchange fees; and

(2) losses in the accounts of disbursing officials and agents in accordance with law.

(Added Pub. L. 100–370, § 1(m)(1), July 19, 1988, 102 Stat. 849.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8006(c)], Dec. 19, 1985, 99 Stat. 1185, 1203.

§ 2782. Damage to real property: disposition of amounts recovered

Except as provided in section 2775 of this title, amounts recovered for damage caused to real property under the jurisdiction of the Secretary of a military department or, with respect to the Defense Agencies, under the jurisdiction of the Secretary of Defense shall be credited to the account available for the repair or replacement of the real property at the time of recovery. In such amounts as are provided in advance in appropriation Acts, amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in the account.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2821(a), Feb. 10, 1996, 110 Stat. 556.)

PRIOR PROVISIONS

A prior section 2782, added Pub. L. 101–189, div. A, title XVI, § 1603(a)(1), Nov. 29, 1989, 103 Stat. 1597, related to limits on restoration of unobligated balances withdrawn from availability for obligation, prior to repeal by Pub. L. 101–510, div. A, title XIV, § 1405(c)(1), Nov. 5, 1990, 104 Stat. 1680.

§ 2783. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds

(a) REGULATION OF MANAGEMENT AND USE OF NONAPPROPRIATED FUNDS.—The Secretary of Defense shall prescribe regulations governing—

(1) the purposes for which nonappropriated funds of a nonappropriated fund instrumentality of the United States within the Department of Defense may be expended; and

(2) the financial management of such funds to prevent waste, loss, or unauthorized use.

(b) PENALTIES FOR VIOLATIONS.—(1) A civilian employee of the Department of Defense who is paid from nonappropriated funds and who commits a substantial violation of the regulations prescribed under subsection (a) shall be subject to the same penalties as are provided by law for misuse of appropriations by a civilian employee of the Department of Defense paid from appropriated funds. The Secretary of Defense shall prescribe regulations to carry out this paragraph.

(2) The Secretary shall provide in regulations that a violation of the regulations prescribed under subsection (a) by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(c) NOTIFICATION OF VIOLATIONS.—(1) A civilian employee of the Department of Defense (whether paid from nonappropriated funds or from appropriated funds), and a member of the armed forces, whose duties include the obligation of nonappropriated funds, shall notify the Secretary of Defense of information which the person reasonably believes evidences—

(A) a violation by another person of any law, rule, or regulation regarding the management of such funds; or

(B) other mismanagement or gross waste of such funds.

(2) The Secretary of Defense shall designate civilian employees of the Department of Defense or members of the armed forces to receive a notification described in paragraph (1) and ensure the prompt investigation of the validity of information provided in the notification.

(3) The Secretary shall prescribe regulations to protect the confidentiality of a person making a notification under paragraph (1).

(Added Pub. L. 102–484, div. A, title III, §362(a), Oct. 23, 1992, 106 Stat. 2379, §2490a; renumbered §2783 and amended Pub. L. 103–160, div. A, title XI, §1182(a)(8)(A), Nov. 30, 1993, 107 Stat. 1771.)

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 2490a of this title as this section.

Subsec. (b)(2). Pub. L. 103–160, §1182(a)(8)(A)(i), substituted ''chapter 47 of this title'' for ''chapter 47 of title 10, United States Code'', ''Justice) is'' for ''Justice), is'', and ''section 892 of this title'' for ''section 892 of such title''.

Subsec. (c)(1). Pub. L. 103–160, §1182(a)(8)(A)(ii), substituted ''armed forces'' for ''Armed Forces''.

STANDARDIZATION OF CERTAIN PROGRAMS AND ACTIVITIES OF MILITARY EXCHANGES

Pub. L. 102–484, div. A, title III, §361, Oct. 23, 1992, 106 Stat. 2379, provided that:

''(a) STANDARDIZATION OF EXCHANGES.—The Secretary of Defense shall standardize among the military departments the following programs and activities of the military exchanges of the military departments:

''(1) Accounting (including account titles and item descriptions).

''(2) Financial reporting formats.

''(3) Automatic data processing and telecommunications data in order to facilitate the transfer of information among military exchanges.

''(b) TIME AND MANNER.—The standardization of programs and activities required by subsection (a) shall be completed not later than March 31, 1994, and shall be carried out in the most efficient manner practicable.

''(c) REPORT.—Not later than March 31, 1993, the Secretary of Defense shall submit to the Congress a report on other programs and activities of the military exchanges, if any, that the Secretary determines can be economically and efficiently managed through standardization or consolidation under a single nonappropriated fund instrumentality.''

§2784. Management of purchase cards

(a) MANAGEMENT OF PURCHASE CARDS.—The Secretary of Defense shall prescribe regulations governing the use and control of all purchase cards and convenience checks that are issued to Department of Defense personnel for official use. Those regulations shall be consistent with regulations that apply Government-wide regarding use of purchase cards by Government personnel for official purposes.

(b) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—Regulations under subsection (a) shall include safeguards and internal controls to ensure the following:

(1) That there is a record in the Department of Defense of each holder of a purchase card issued by the Department of Defense for official use, annotated with the limitations on amounts that are applicable to the use of each such card by that purchase card holder.

(2) That each purchase card holder and individual issued a convenience check is assigned an approving official other than the card holder with the authority to approve or disapprove transactions.

(3) That the holder of a purchase card and each official with authority to authorize expenditures charged to the purchase card are responsible for—

(A) reconciling the charges appearing on each statement of account for that purchase card with receipts and other supporting documentation; and

(B) forwarding that statement after being so reconciled to the designated disbursing office in a timely manner.

(4) That any disputed purchase card charge, and any discrepancy between a receipt and other supporting documentation and the purchase card statement of account, is resolved in the manner prescribed in the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(5) That payments on purchase card accounts are made promptly within prescribed deadlines to avoid interest penalties.

(6) That rebates and refunds based on prompt payment on purchase card accounts are properly recorded.

(7) That records of each purchase card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

(8) That periodic reviews are performed to determine whether each purchase card holder has a need for the purchase card.

(9) That appropriate training is provided to each purchase card holder and each official with responsibility for overseeing the use of purchase cards issued by the Department of Defense.

(10) That the Department of Defense has specific policies regarding the number of purchase cards issued by various organizations and categories of organizations, the credit limits authorized for various categories of card holders, and categories of employees eligible to be issued purchase cards, and that those policies are designed to minimize the financial risk to the Federal Government of the issuance of the purchase cards and to ensure the integrity of purchase card holders.

(11) That the Department of Defense uses effective systems, techniques, and technologies to prevent or identify potential fraudulent purchases.

(12) That the Department of Defense takes appropriate steps to invalidate the purchase card of each card holder who—

(A) in the case of an employee of the Department—

(i) ceases to be employed by the Department, immediately upon termination of the employment of the employee; or

(ii) transfers to another unit of the Department, immediately upon the transfer of the employee unless the Secretary of Defense determines that the units are covered by the same purchase card authority; and

(B) in the case of a member of the armed forces, is separated or released from active duty or full-time National Guard duty.

(13) That the Department of Defense takes steps to recover the cost of any illegal, improper, or erroneous purchase made with a purchase card or convenience check by an employee or member of the armed forces, including, as necessary, through salary offsets.

(14) That the Inspector General of the Department of Defense, the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force perform periodic audits to identify—

(A) potentially fraudulent, improper, and abusive uses of purchase cards;

(B) any patterns of improper card holder transactions, such as purchases of prohibited items; and

(C) categories of purchases that should be made by means other than purchase cards in order to better aggregate purchases and obtain lower prices.

(15) That the Inspector General of the Department of Defense conducts periodic audits or reviews of purchase card or convenience check programs to identify and analyze risks of illegal, improper, or erroneous purchases and payments and that the findings of such audits or reviews, along with recommendations to prevent abuse of purchase cards or convenience checks, are reported to the Director of the Office of Management and Budget and Congress.

(c) PENALTIES FOR VIOLATIONS.—The regulations prescribed under subsection (a) shall—

(1) provide—

(A) for the reimbursement of charges for unauthorized or erroneous purchases, in appropriate cases; and

(B) for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the Department of Defense violate such regulations or are negligent or engage in misuse, abuse, or fraud with respect to a purchase card, including removal in appropriate cases; and

(2) provide that a violation of such regulations by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(Added Pub. L. 106–65, div. A, title IX, § 933(a)(1), Oct. 5, 1999, 113 Stat. 728; amended Pub. L. 107–314, div. A, title X, § 1007(a), (b)(1), Dec. 2, 2002, 116 Stat. 2633, 2634; Pub. L. 110–417, [div. A], title X, § 1003(a), Oct. 14, 2008, 122 Stat. 4582; Pub. L. 112–194, § 2(b), Oct. 5, 2012, 126 Stat. 1447.)

AMENDMENTS

2012—Subsec. (b)(2) to (15). Pub. L. 112–194 added pars. (2), (11) to (13), and (15) and redesignated former pars. (2) to (7) and (8) as (3) to (8) and (14), respectively.

2008—Subsec. (c)(1). Pub. L. 110–417 substituted ''provide—'' for ''provide'', added subpar. (A), and substituted ''(B) for'' for ''for''.

2002—Pub. L. 107–314, § 1007(b)(1)(A), substituted ''purchase'' for ''credit'' in section catchline.

Subsec. (a). Pub. L. 107–314, § 1007(a)(1), (b)(1)(B), (C), substituted ''Purchase'' for ''Credit'' in heading and ''purchase'' for ''credit'' in two places in text and struck out '', acting through the Under Secretary of Defense (Comptroller),'' after ''Secretary of Defense''.

Subsec. (b)(1) to (6). Pub. L. 107–314, § 1007(b)(1)(C), substituted ''purchase'' for ''credit'' wherever appearing.

Subsec. (b)(7) to (10). Pub. L. 107–314, § 1007(a)(2), added pars. (7) to (10).

Subsec. (c). Pub. L. 107–314, § 1007(a)(2), added subsec. (c).

REGULATIONS

Pub. L. 106–65, div. A, title IX, § 933(b)(1), Oct. 5, 1999, 113 Stat. 730, provided that: ''Regulations under section 2784 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].''

CREDITING OF REFUNDS

Pub. L. 110–116, div. A, title VIII, § 8067, Nov. 13, 2007, 121 Stat. 1329, provided that: ''Beginning in the current fiscal year and hereafter, refunds attributable to the use of the Government travel card, refunds attributable to the use of the Government Purchase Card and refunds attributable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance, and research, development, test and evaluation accounts of the Department of Defense which are current when the refunds are received.''

GOVERNMENT CHARGE CARD ACCOUNTS: LIMITATION ON NUMBER; REQUIREMENTS FOR ISSUANCE; DISCIPLINARY ACTION FOR MISUSE; REPORT

Pub. L. 107–248, title VIII, § 8149, Oct. 23, 2002, 116 Stat. 1572, as amended by Pub. L. 108–87, title VIII, § 8144, Sept. 30, 2003, 117 Stat. 1108, provided that:

''(a) LIMITATION ON NUMBER OF GOVERNMENT CHARGE CARD ACCOUNTS DURING FISCAL YEAR 2003.—The total number of accounts for government purchase charge cards and government travel charge cards for Department of Defense personnel during fiscal year 2003 may not exceed 1,500,000 accounts.

''(b) REQUIREMENT FOR CREDITWORTHINESS FOR ISSUANCE OF GOVERNMENT CHARGE CARD.—(1) The Secretary of Defense shall evaluate the creditworthiness of an individual before issuing the individual a government purchase charge card or government travel charge card.

''(2) An individual may not be issued a government purchase charge card or government travel charge card if the individual is found not credit worthy as a result of the evaluation under paragraph (1).

''(3) This subsection shall remain in effect for fiscal year 2004.

''(c) DISCIPLINARY ACTION FOR MISUSE OF GOVERNMENT CHARGE CARD.—(1) The Secretary shall establish guidelines and procedures for disciplinary actions to be taken against Department personnel for improper, fraudulent, or abusive use of government purchase charge cards and government travel charge cards.

''(2) The guidelines and procedures under this subsection shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or with applicable standards of conduct.

''(3) The disciplinary actions under this subsection may include—

''(A) the review of the security clearance of the individual involved; and

''(B) the modification or revocation of such security clearance in light of the review.

''(4) The guidelines and procedures under this subsection shall apply uniformly among the Armed Forces and among the elements of the Department.

''(d) REPORT.—Not later than June 30, 2003, the Secretary shall submit to the congressional defense committees a report on the implementation of the requirements and limitations in this section, including the guidelines and procedures established under subsection (c).''

§ 2784a. Management of travel cards

(a) DISBURSEMENT OF TRAVEL ALLOWANCES DIRECTLY TO CREDITORS.—(1) The Secretary of Defense shall require that any part of a travel or transportation allowance of an employee of the Department of Defense or a member of the armed forces be disbursed directly to the issuer of a Defense travel card if the amount is disbursed to the issuer in payment of amounts of expenses of official travel that are charged by the employee or member on the Defense travel card.

(2) The Secretary of Defense may waive the requirement for a direct payment to a travel card issuer under paragraph (1) in any case the Secretary determines appropriate.

(3) For the purposes of this subsection, the travel and transportation allowances referred to in paragraph (1) are amounts to which an employee of the Department of Defense is entitled under section 5702 of title 5 or a member of the armed forces is entitled under section 474 of title 37.

(b) OFFSETS FOR DELINQUENT TRAVEL CARD CHARGES.—(1) The Secretary of Defense may require that there be deducted and withheld from any basic pay payable to an employee of the Department of Defense or a member of the armed forces any amount that is owed by the employee or member to a creditor by reason of one or more charges of expenses of official travel of the employee or member on a Defense travel card issued by the creditor if the employee or member—

(A) is delinquent in the payment of such amount under the terms of the contract under which the card is issued; and

(B) does not dispute the amount of the delinquency.

(2) The amount deducted and withheld from pay under paragraph (1) with respect to a debt owed a creditor as described in that paragraph shall be disbursed to the creditor to reduce the amount of the debt.

(3) The amount of pay deducted and withheld from the pay owed to an employee or member with respect to a pay period under paragraph (1) may not exceed 15 percent of the disposable pay of the employee or member for that pay period, except that a higher amount may be deducted and withheld with the written consent of the employee or member.

(4) The Secretary of Defense shall prescribe procedures for deducting and withholding amounts from pay under this subsection. The procedures shall be substantially equivalent to the procedures under section 3716 of title 31.

(c) OFFSETS OF RETIRED PAY.—In the case of a former employee of the Department of Defense or a retired member of the armed forces who is receiving retired pay and who owes an amount to a creditor by reason of one or more charges on a Defense travel card that were made before the retirement of the employee or member, the Secretary may require amounts to be deducted and withheld from any retired pay of the former employee or retired member in the same manner and subject to the same conditions as the Secretary deducts and withholds amounts from basic pay payable to an employee or member under subsection (b).

(d) DETERMINATIONS OF CREDITWORTHINESS FOR ISSUANCE OF DEFENSE TRAVEL CARD.—(1) The Secretary of Defense shall evaluate the creditworthiness of an employee of the Department of Defense or a member of armed forces before issuing a Defense travel card to such an employee or member. The evaluation may include an examination of the individual's credit history in available credit records.

(2) An individual may not be issued a Defense travel card if the individual is found not creditworthy as a result of the evaluation required under paragraph (1).

(e) REGULATIONS ON DISCIPLINARY ACTION.—(1) The Secretary of Defense shall prescribe regulations for making determinations regarding the taking of disciplinary action, including assessment of penalties, against Department of Defense personnel for improper, fraudulent, or abusive use of Defense travel cards by such personnel.

(2) The regulations prescribed under paragraph (1) shall—

(A) provide for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the Department of Defense violate such regulations or are negligent or engage in misuse, abuse, or fraud with respect to a Defense travel card, including removal in appropriate cases; and

(B) provide that a violation of such regulations by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(f) DEFINITIONS.—In this section:

(1) The term ''Defense travel card'' means a charge or credit card that—

(A) is issued to an employee of the Department of Defense or a member of the armed forces under a contract entered into by the Department of Defense with the issuer of the card; and

(B) is to be used for charging expenses incurred by the employee or member in connection with official travel.

(2) The term ''disposable pay'', with respect to a pay period, means the amount equal to the excess of the amount of basic pay or retired pay, as the case may be, payable for the pay period over the total of the amounts deducted and withheld from such pay.

(3) The term ''retired pay'' means—

(A) in the case of a former employee of the Department of Defense, any retirement benefit payable to that individual, out of the Civil Service Retirement and Disability

Fund, based (in whole or in part) on service performed by such individual as a civilian employee of the Department of Defense; and

(B) in the case of a retired member of the armed forces or member of the Fleet Reserve or Fleet Marine Corps Reserve, retired or retainer pay to which the member is entitled.

(g) EXCLUSION OF COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 107–314, div. A, title X, § 1008(a), Dec. 2, 2002, 116 Stat. 2634; amended Pub. L. 108–136, div. A, title X, § 1009(a)–(c)(1), Nov. 24, 2003, 117 Stat. 1587, 1588; Pub. L. 109–364, div. A, title X, § 1071(a)(25), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–81, div. A, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948.)

AMENDMENTS

2013—Subsec. (a)(3). Pub. L. 112–239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (a)(3). Pub. L. 112–81, § 631(f)(4)(A), as amended by Pub. L. 112–239, § 1076(a)(9), substituted ''474'' for ''404''.

2006—Subsec. (a)(2). Pub. L. 109–364 substituted ''card'' for ''care''.

2003—Subsec. (a)(1). Pub. L. 108–136, § 1009(a)(1), substituted ''The Secretary of Defense shall require'' for ''The Secretary of Defense may require''.

Subsec. (a)(2), (3). Pub. L. 108–136, § 1009(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsecs. (d) to (g). Pub. L. 108–136, § 1009(b), (c)(1), added subsecs. (d) and (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

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.

§ 2785. Remittance addresses: regulation of alterations

The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall prescribe regulations setting forth controls on alteration of remittance addresses. Those regulations shall ensure that—

(1) a remittance address for a disbursement that is provided by an officer or employee of the Department of Defense authorizing or requesting the disbursement is not altered by any officer or employee of the department authorized to prepare the disbursement; and

(2) a remittance address for a disbursement is altered only if the alteration—

(A) is requested by the person to whom the disbursement is authorized to be remitted; and

(B) is made by an officer or employee authorized to do so who is not an officer or employee referred to in paragraph (1).

(Added Pub. L. 106–65, div. A, title IX, § 933(a)(1), Oct. 5, 1999, 113 Stat. 729.)

REGULATIONS

Pub. L. 106–65, div. A, title IX, § 933(b)(2), Oct. 5, 1999, 113 Stat. 730, provided that: ''Regulations under section 2785 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].''

§ 2786. Department of Defense payments by electronic transfers of funds: exercise of authority for waivers

With respect to any Federal payment of funds covered by section 3332(f) of title 31 (relating to electronic funds transfers) for which payment is made or authorized by the Department of Defense, the waiver authority provided in paragraph (2)(A)(i) of that section shall be exercised by the Secretary of Defense. The Secretary of Defense shall carry out the authority provided under the preceding sentence in consultation with the Secretary of the Treasury.

(Added Pub. L. 106–65, div. A, title X, § 1008(a)(1), Oct. 5, 1999, 113 Stat. 737.)

SAVINGS PROVISION

Pub. L. 106–65, div. A, title X, § 1008(a)(3), Oct. 5, 1999, 113 Stat. 738, provided that: ''Any waiver in effect on the date of the enactment of this Act [Oct. 5, 1999] under paragraph (2)(A)(i) of section 3332(f) of title 31, United States Code, shall remain in effect until otherwise provided by the Secretary of Defense under section 2786 of title 10, United States Code, as added by paragraph (1).''

§ 2787. Reports of survey

(a) ACTION ON REPORTS OF SURVEY.—Under regulations prescribed pursuant to subsection (c), any officer of the Army, Navy, Air Force, or Marine Corps or any civilian employee of the Department of Defense designated in accordance with those regulations may act upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of the United States under the control of the Department of Defense.

(b) FINALITY OF ACTION.—(1) Action taken under subsection (a) is final except as provided in paragraph (2).

(2) An action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by a person designated to do so by the Secretary of a military department, commander of a combatant command, or Director of a Defense Agency, as the case may be, who has jurisdiction of the person held pecuniarily liable. The person designated to provide final approval shall be an officer of an armed force, or a civilian employee, under the jurisdiction of the official making the designation.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 107–314, div. A, title X, § 1006(a)(1), Dec. 2, 2002, 116 Stat. 2632.)

EFFECTIVE DATE

Pub. L. 107–314, div. A, title X, § 1006(d), Dec. 2, 2002, 116 Stat. 2633, provided that: ''The amendments made

by this section [enacting this section, amending section 1007 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4835 and 9835 of this title] shall apply with respect to the loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of the United States under the control of the Department of Defense occurring on or after the effective date of regulations prescribed pursuant to section 2787 of title 10, United States Code, as added by subsection (a).''

§ 2788. Property accountability: regulations

The Secretary of a military department may prescribe regulations for the accounting for the property of that department and the fixing of responsibility for that property.

(Added Pub. L. 110–181, div. A, title III, § 375(a), Jan. 28, 2008, 122 Stat. 83.)

§ 2789. Individual equipment: unauthorized disposition

(a) PROHIBITION.—No member of the armed forces may sell, lend, pledge, barter, or give any clothing, arms, or equipment furnished to such member by the United States to any person other than a member of the armed forces or an officer of the United States who is authorized to receive it.

(b) SEIZURE OF IMPROPERLY DISPOSED PROPERTY.—If a member of the armed forces has disposed of property in violation of subsection (a) and the property is in the possession of a person who is neither a member of the armed forces nor an officer of the United States who is authorized to receive it, that person has no right to or interest in the property, and any civil or military officer of the United States may seize the property, wherever found, subject to applicable regulations. Possession of such property furnished by the United States to a member of the armed forces by a person who is neither a member of the armed forces, nor an officer of the United States, is prima facie evidence that the property has been disposed of in violation of subsection (a).

(c) DELIVERY OF SEIZED PROPERTY.—If an officer who seizes property under subsection (b) is not authorized to retain it for the United States, the officer shall deliver the property to a person who is authorized to retain it.

(Added Pub. L. 110–181, div. A, title III, § 375(a), Jan. 28, 2008, 122 Stat. 83.)

§ 2790. Recovery of improperly disposed of Department of Defense property

(a) PROHIBITION.—No member of the armed forces, civilian employee of the United States Government, contractor personnel, or other person may sell, lend, pledge, barter, or give any clothing, arms, articles, equipment, or other military or Department of Defense property except in accordance with the statutes and regulations governing Government property.

(b) TRANSFER OF TITLE OR INTEREST INEFFECTIVE.—If property has been disposed of in violation of subsection (a), the person holding the property has no right or title to, or interest in, the property.

(c) AUTHORITY FOR SEIZURE OF IMPROPERLY DISPOSED OF PROPERTY.—If any person is in the possession of military or Department of Defense property without right or title to, or interest in, the property because it has been disposed of in material violation of subsection (a), any Federal, State, or local law enforcement official may seize the property wherever found. Unless an exception to the warrant requirement under the fourth amendment to the Constitution applies, seizure may be made only—

(1) pursuant to—

(A) a warrant issued by the district court of the United States for the district in which the property is located, or for the district in which the person in possession of the property resides or is subject to service; or

(B) pursuant to an order by such court, issued after a determination of improper transfer under subsection (e); and

(2) after such a court has issued such a warrant or order.

(d) INAPPLICABILITY TO CERTAIN PROPERTY.—Subsections (b) and (c) shall not apply to—

(1) property on public display by public or private collectors or museums in secured exhibits; or

(2) property in the collection of any museum or veterans organization or held in a private collection for the purpose of public display, provided that any such property, the possession of which could undermine national security or create a hazard to public health or safety, has been fully demilitarized.

(e) DETERMINATIONS OF VIOLATIONS.—(1) The district court of the United States for the district in which the property is located, or the district in which the person in possession of the property resides or is subject to service, shall have jurisdiction, regardless of the current approximated or estimated value of the property, to determine whether property was disposed of in violation of subsection (a). Any such determination shall be by a preponderance of the evidence.

(2) Except as provided in paragraph (3), in the case of property, the possession of which could undermine national security or create a hazard to public health or safety, the determination under paragraph (1) may be made after the seizure of the property, as long as the United States files an action seeking such determination within 90 days after seizure of the property. If the person from whom the property is seized is found to have been lawfully in possession of the property and the return of the property could undermine national security or create a hazard to public health or safety, the Secretary of Defense shall reimburse the person for the market value for the property.

(3) Paragraph (2) shall not apply to any firearm, ammunition, or ammunition component, or firearm part or accessory that is not prohibited for commercial sale.

(f) DELIVERY OF SEIZED PROPERTY.—Any law enforcement official who seizes property under subsection (c) and is not authorized to retain it for the United States shall deliver the property to an authorized member of the armed forces or other authorized official of the Department of Defense or the Department of Justice.

(g) SCOPE OF ENFORCEMENT.—This section shall apply to the following:

(1) Any military or Department of Defense property disposed of after January 6, 2011, in a manner that is not in accordance with statutes and regulations governing Government property in effect at the time of the disposal of such property.

(2) Any significant military equipment disposed of on or after January 1, 2002, in a manner that is not in accordance with statutes and regulations governing Government property in effect at the time of the disposal of such significant military equipment.

(h) RULE OF CONSTRUCTION.—The authority of this section is in addition to any other authority of the United States with respect to property to which the United States may have right or title.

(i) DEFINITIONS.—In this section:

(1) The term ''significant military equipment'' means defense articles on the United States Munitions List for which special export controls are warranted because of their capacity for substantial military utility or capability.

(2) The term ''museum'' has the meaning given that term in section 273(1) of the Museum Services Act (20 U.S.C. 9172(1)).

(3) The term ''fully demilitarized'' means, with respect to equipment or material, the destruction of the military offensive or defensive advantages inherent in the equipment or material, including, at a minimum, the destruction or disabling of key points of such equipment or material, such as the fuselage, tail assembly, wing spar, armor, radar and radomes, armament and armament provisions, operating systems and software, and classified items.

(4) The term ''veterans organization'' means any organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38.

(Added Pub. L. 111–383, div. A, title III, §355(a), Jan. 7, 2011, 124 Stat. 4195; amended Pub. L. 112–239, div. A, title X, §1076(e)(5), Jan. 2, 2013, 126 Stat. 1951.)

AMENDMENTS

2013—Subsec. (g)(1). Pub. L. 112–239 substituted ''after January 6, 2011,'' for ''on or after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011''.

[CHAPTER 167—REPEALED]

[§ 2791. Repealed. Pub. L. 104–201, div. A, title XI, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]

Section, added Pub. L. 97–295, §1(50)(C), Oct. 12, 1982, 96 Stat. 1299, related to establishment and duties of Defense Mapping Agency.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

[§ 2792. Renumbered § 451]

[§ 2793. Renumbered § 452]

[§ 2794. Renumbered § 453]

[§ 2795. Renumbered § 454]

[§ 2796. Renumbered § 455]

[§ 2797. Repealed. Pub. L. 104–201, div. A, title XI, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]

Section, added Pub. L. 103–337, div. A, title X, §1074(a), Oct. 5, 1994, 108 Stat. 2861, related to unauthorized use of Defense Mapping Agency name, initials, or seal.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

[§ 2798. Renumbered § 456]

CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Subchapter		Sec.
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II.	Military Family Housing	2821
III.	Administration of Military Construction and Military Family Housing.	2851
IV.	Alternative Authority for Acquisition and Improvement of Military Housing	2871

AMENDMENTS

1996—Pub. L. 104–106, div. B, title XXVIII, §2801(a)(2), Feb. 10, 1996, 110 Stat. 551, added item for subchapter IV.

SUBCHAPTER I—MILITARY CONSTRUCTION

Sec.	
2801.	Scope of chapter; definitions.
2802.	Military construction projects.
2803.	Emergency construction.
2804.	Contingency construction.
2805.	Unspecified minor construction.
2806.	Contributions for North Atlantic Treaty Organizations Security Investment.
2807.	Architectural and engineering services and construction design.
2808.	Construction authority in the event of a declaration of war or national emergency.
2809.	Long-term facilities contracts for certain activities and services.
[2810.	Repealed.]
2811.	Repair of facilities.
2812.	Lease-purchase of facilities.
2813.	Acquisition of existing facilities in lieu of authorized construction.
2814.	Special authority for development of Ford Island, Hawaii.
[2815.	Repealed.]

AMENDMENTS

2011—Pub. L. 112–81, div. A, title X, §1061(23)(B), Dec. 31, 2011, 125 Stat. 1584, struck out item 2815 ''Joint use military construction projects: annual evaluation''.

2002—Pub. L. 107–314, div. A, title III, §313(d)(2), Dec. 2, 2002, 116 Stat. 2508, struck out item 2810 ''Construction projects for environmental response actions''.

2000—Pub. L. 106–398, §1 [div. B, title XXVIII, §2801(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–412, added item 2815.

1999—Pub. L. 106–65, div. B, title XXVIII, §2802(a)(2), Oct. 5, 1999, 113 Stat. 848, added item 2814.

1996—Pub. L. 104–201, div. B, title XXVIII, §2802(c)(2), Sept. 23, 1996, 110 Stat. 2787, substituted ''Organizations

Security Investment'' for ''Organization Infrastructure'' in item 2806.

Pub. L. 104–106, div. A, title XV, §1503(a)(31), Feb. 10, 1996, 110 Stat. 512, inserted period at end of item 2811.

1994—Pub. L. 103–337, div. B, title XXVIII, §2801(b), Oct. 5, 1994, 108 Stat. 3050, substituted ''Repair'' for ''Renovation'' in item 2811.

1993—Pub. L. 103–160, div. B, title XXVIII, §2805(a)(2), Nov. 30, 1993, 107 Stat. 1887, added item 2813.

1991—Pub. L. 102–190, div. B, title XXVIII, §2805(a)(2), Dec. 5, 1991, 105 Stat. 1538, substituted ''Long-term facilities contracts for certain activities and services'' for ''Test of long-term facilities contracts'' in item 2809.

1989—Pub. L. 101–189, div. B, title XXVIII, §2809(b), Nov. 29, 1989, 103 Stat. 1650, added item 2812.

1987—Pub. L. 100–26, §7(e)(3), Apr. 21, 1987, 101 Stat. 281, redesignated item 2810 ''Renovation of facilities'' as item 2811.

1986—Pub. L. 99–661, div. A, title III, §315(b), Nov. 14, 1986, 100 Stat. 3854, added item 2810 ''Renovation of facilities''.

Pub. L. 99–499, title II, §211(b)(2), Oct. 17, 1986, 100 Stat. 1726, added item 2810 ''Construction projects for environmental response actions''.

1985—Pub. L. 99–167, title VIII, §811(b), Dec. 3, 1985, 99 Stat. 991, added item 2809.

§ 2801. Scope of chapter; definitions

(a) The term ''military construction'' as used in this chapter or any other provision of law includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements, or any acquisition of land or construction of a defense access road (as described in section 210 of title 23).

(b) A military construction project includes all military construction work, or any contribution authorized by this chapter, necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility (or to produce such portion of a complete and usable facility or improvement as is specifically authorized by law).

(c) In this chapter and chapter 173 of this title:

(1) The term ''appropriate committees of Congress'' means the congressional defense committees and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(2) The term ''facility'' means a building, structure, or other improvement to real property.

(3) The term ''life-cycle cost-effective'', with respect to a project, product, or measure, means that the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and replacement costs, as estimated for the lifetime of the project, product, or measure, does not exceed the base case (current or standard) for the practice, product, or measure.

(4) The term ''military installation'' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense, without regard to the duration of operational control.

(5) The term ''Secretary concerned'' includes the Secretary of Defense with respect to matters concerning the Defense Agencies.

(d) This chapter (other than sections 2830, 2835, and 2836 of this chapter) does not apply to the Coast Guard or to civil works projects of the Army Corps of Engineers.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 153; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VI, §632(b)(1), title XII, §1231(15), div. B, subdiv. 3, title I, §2306(b), Dec. 4, 1987, 101 Stat. 1105, 1160, 1216; Pub. L. 102–484, div. A, title X, §1052(37), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 102–496, title IV, §403(b), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 104–106, div. A, title XV, §1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §1043(b)(16), div. B, title XXVIII, §2801, Nov. 24, 2003, 117 Stat. 1611, 1719; Pub. L. 109–163, div. A, title X, §1056(c)(9), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109–364, div. B, title XXVIII, §2851(b)(4), Oct. 17, 2006, 120 Stat. 2495; Pub. L. 110–181, div. B, title XXVIII, §2802(b), Jan. 28, 2008, 122 Stat. 539; Pub. L. 110–417, div. B, title XXVIII, §2801(a), Oct. 14, 2008, 122 Stat. 4719.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 inserted '', or any acquisition of land or construction of a defense access road (as described in section 210 of title 23)'' before period at end.

Subsec. (c). Pub. L. 110–417 added par. (3) and redesignated former pars. (4), (1), (2), and (3) as (1), (2), (4), and (5), respectively.

2006—Subsec. (c). Pub. L. 109–364 inserted ''and chapter 173 of this title'' after ''this chapter'' in introductory provisions.

Subsec. (d). Pub. L. 109–163 substituted ''sections 2830, 2835, and 2836 of this chapter'' for ''sections 2830 and 2835''.

2003—Subsec. (a). Pub. L. 108–136, §2801(a), inserted before period at end '', whether to satisfy temporary or permanent requirements''.

Subsec. (c)(2). Pub. L. 108–136, §2801(b), inserted before period at end '', without regard to the duration of operational control''.

Subsec. (c)(4). Pub. L. 108–136, §1043(b)(16), substituted ''the congressional defense committees'' for ''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—Subsec. (c)(4). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c)(4). Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

1992—Subsec. (c)(4). Pub. L. 102–496 inserted before period at end ''and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate''.

Subsec. (d). Pub. L. 102–484 substituted ''sections 2830 and 2835'' for ''sections 2828(g) and 2830''.

1987—Subsec. (c). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1), (2), and (4) and substituted lowercase letter.

Subsec. (c)(3). Pub. L. 100–180, § 1231(15), substituted ''Defense Agencies'' for ''defense agencies''.

Subsec. (d). Pub. L. 100–180, § 2306(b), substituted ''(other than sections 2828(g) and 2830)'' for ''(other than section 2830)''.

Pub. L. 100–180, § 632(b)(1), inserted ''(other than section 2830)'' after ''This chapter''.

EFFECTIVE DATE

Pub. L. 97–214, § 12, July 12, 1982, 96 Stat. 176, provided: ''(a) Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1982 Amendment note below] shall take effect on October 1, 1982, and shall apply to military construction projects, and to construction and acquisition of military family housing, authorized before, on, or after such date.

''(b) The amendment made by section 4 [amending section 138(f)(1) [now 114(b)] of this title] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1983.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–214, § 1, July 12, 1982, 96 Stat. 153, provided that: ''This Act [see Tables for classification] may be cited as the 'Military Construction Codification Act'.''

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.

§ 2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects, land acquisitions, and defense access road projects (as described under section 210 of title 23) as are authorized by law.

(b) Authority provided by law to carry out a military construction project includes authority for—

(1) surveys and site preparation;

(2) acquisition, conversion, rehabilitation, and installation of facilities;

(3) acquisition and installation of equipment and appurtenances integral to the project;

(4) acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and

(5) planning, supervision, administration, and overhead incident to the project.

(c) In determining the scope of a proposed military construction project, the Secretary concerned shall submit to the President such recommendations as the Secretary considers to be appropriate regarding the incorporation and inclusion of life-cycle cost-effective practices as an element in the project documents submitted to Congress in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which a contract is proposed to be awarded for the project.

(d)(1) The requirement under subsection (a) that a military construction project must be authorized by law includes military construction projects funded through payment-in-kind contributions pursuant to a bilateral agreement with a host country.

(2) The Secretary of Defense or the Secretary concerned shall include military construction projects covered under paragraph (1) in the budget justification documents for the Department of Defense submitted to Congress in connection with the budget for a fiscal year submitted under 1105 of title 31.

(3) This subsection does not apply to a military construction project that—

(A) was specified in a bilateral agreement with a host country that was entered into prior to the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014;

(B) was accepted as payment-in-kind for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101–510; 10 U.S.C. 2687 note) prior to the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014; or

(C) will cost less than the cost specified in subsection (a)(2) of section 2805 of this title for certain unspecified minor military construction projects.

(4) In the case of a military construction project excluded pursuant to paragraph (3)(C) whose cost will exceed the cost specified in subsection (b) of section 2805 of this title for certain unspecified minor military construction projects, the congressional notification requirements and waiting period specified in paragraph (2) of such subsection shall apply.

(e)(1) If a construction project, land acquisition, or defense access road project described in paragraph (2) will be carried out pursuant to a provision of law other than a Military Construction Authorization Act, the Secretary concerned shall—

(A) comply with the congressional notification requirement contained in the provision of law under which the construction project, land acquisition, or defense access road project will be carried out; or

(B) in the absence of such a congressional notification requirement, submit to the congressional defense committees, in an electronic medium pursuant to section 480 of this title, a report describing the construction project, land acquisition, or defense access road project at least 15 days before commencing the construction project, land acquisition, or defense access road project.

(2) Except as provided in paragraph (3), a construction project, land acquisition, or defense access road project subject to the notification requirement imposed by paragraph (1) is a construction project, land acquisition, or defense access road project that—

(A) is not specifically authorized in a Military Construction Authorization Act;

(B) will be carried out by a military department, Defense Agency, or Department of Defense Field Activity; and

(C) will be located on a military installation.

(3) This subsection does not apply to a construction project, land acquisition, or defense access road project described in paragraph (2) whose cost is less than or equal to the threshold amount specified in section 2805(b) of this title.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 110–181, div. B, title XXVIII, §2802(a), Jan. 28, 2008, 122 Stat. 539; Pub. L. 110–417, div. B, title XXVIII, §2801(b), Oct. 14, 2008, 122 Stat. 4719; Pub. L. 113–66, div. B, title XXVIII, §2807(c), Dec. 26, 2013, 127 Stat. 1012; Pub. L. 113–291, div. B, title XXVIII, §§2801, 2803(b), Dec. 19, 2014, 128 Stat. 3695, 3697.)

AMENDMENT OF SUBSECTION (d)

Pub. L. 113–291, div. B, title XXVIII, §2803(b), (d), Dec. 19, 2014, 128 Stat. 3697, provided that, effective on the later of Sept. 30, 2016, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2017, subsection (d) of this section is amended as follows:

(1) in paragraph (1), by striking ''payment-in-kind contributions'' and inserting ''payments-in-kind or in-kind contributions'';

(2) by striking paragraph (3) and inserting the following:

''(3) This subsection does not apply to a military construction project covered by one of the exceptions in section 2687a(f)(4) of this title.''; and

(3) in paragraph (4), by striking ''paragraph (3)(C)'' and inserting ''paragraph (3), by reference to section 2687a(f)(4)(D) of this title,''.

See 2014 Amendment notes below.

REFERENCES IN TEXT

The date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014, referred to in subsec. (d)(3)(A) and (B), is the date of enactment of div. B of Pub. L. 113–66, which was approved Dec. 26, 2013.

AMENDMENTS

2014—Subsec. (d)(1). Pub. L. 113–291, §2803(b)(1), substituted ''payments-in-kind or in-kind contributions'' for ''payment-in-kind contributions''.

Subsec. (d)(3). Pub. L. 113–291, §2803(b)(2), added par. (3) and struck out former par. (3) which described certain military construction projects to which subsec. (d) did not apply.

Subsec. (d)(4). Pub. L. 113–291, §2803(b)(3), substituted ''paragraph (3), by reference to section 2687a(f)(4)(D) of this title,'' for ''paragraph (3)(C)''.

Subsec. (e). Pub. L. 113–291, §2801, added subsec. (e).

2013—Subsec. (d). Pub. L. 113–66 added subsec. (d).

2008—Subsec. (a). Pub. L. 110–181 inserted '', land acquisitions, and defense access road projects (as described under section 210 of title 23)'' after ''military construction projects''.

Subsec. (c). Pub. L. 110–417 added subsec. (c).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 2803(b) of Pub. L. 113–291 effective on the later of Sept. 30, 2016, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2017, see section 2803(d) of Pub. L. 113–291, set out as a note under section 2687a of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

REQUIREMENTS RELATED TO PROVIDING WORLD CLASS MILITARY MEDICAL CENTERS

Pub. L. 111–383, div. B, title XXVIII, §2852, Jan. 7, 2011, 124 Stat. 4475, provided that:

''(a) UNIFIED CONSTRUCTION STANDARD FOR MILITARY CONSTRUCTION AND REPAIRS TO MILITARY MEDICAL CENTERS.—Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall establish a unified construction standard for military construction and repairs for military medical centers that provides a single standard of care. This standard shall also include—

''(1) size standards for operating rooms and patient recovery rooms; and

''(2) such other construction standards that the Secretary considers necessary to support military medical centers.

''(b) INDEPENDENT REVIEW PANEL.—

''(1) ESTABLISHMENT; PURPOSE.—The Secretary of Defense shall establish an independent advisory panel for the purpose of—

''(A) reviewing the unified construction standards established pursuant to subsection (a) to determine the standards consistency with industry practices and benchmarks for world class medical construction;

''(B) reviewing ongoing construction programs within the Department of Defense to ensure medical construction standards are uniformly applied across applicable military medical centers;

''(C) assessing the approach of the Department of Defense approach to planning and programming facility improvements with specific emphasis on—

''(i) facility selection criteria and proportional assessment system; and

''(ii) facility programming responsibilities between the Assistant Secretary of Defense for Health Affairs and the Secretaries of the military departments;

''(D) assessing whether the Comprehensive Master Plan for the National Capital Region Medical, dated April 2010, is adequate to fulfill statutory requirements, as required by section 2714 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2656), to ensure that the facilities and organizational structure described in the plan result in world class military medical centers in the National Capital Region; and

''(E) making recommendations regarding any adjustments of the master plan referred to in subparagraph (D) that are needed to ensure the provision of world class military medical centers and delivery system in the National Capital Region.

''(2) MEMBERS.—

''(A) APPOINTMENTS BY SECRETARY.—The panel shall be composed of such members as determined by the Secretary of Defense, except that the Secretary shall include as members—

''(i) medical facility design experts;

''(ii) military healthcare professionals;

''(iii) representatives of premier health care centers in the United States; and

''(iv) former retired senior military officers with joint operational and budgetary experience.

''(B) CONGRESSIONAL APPOINTMENTS.—The chairmen and ranking members of the Committees on the Armed Services of the Senate and House of Representatives may each designate one member of the panel.

''(C) TERM.—Members of the panel may serve on the panel until the termination date specified in paragraph (7).

''(D) COMPENSATION.—While performing duties on behalf of the panel, a member and any adviser referred to in paragraph (4) shall be reimbursed under Government travel regulations for necessary travel expenses.

''(3) MEETINGS.—The panel shall meet not less than quarterly. The panel or its members may make other

visits to military treatment centers and military headquarters in connection with the duties of the panel.

''(4) STAFF AND ADVISORS.—The Secretary of Defense shall provide necessary administrative staff support to the panel. The panel may call in advisers for consultation.

''(5) REPORTS.—

''(A) INITIAL REPORT.—Not later than 120 days after the first meeting of the panel, the panel shall submit to the Secretary of Defense a written report containing—

''(i) an assessment of the adequacy of the plan of the Department of Defense to address the items specified in subparagraphs (A) through (E) of paragraph (1) relating to the purposes of the panel; and

''(ii) the recommendations of the panel to improve the plan.

''(B) ADDITIONAL REPORTS.—Not later than February 1, 2011, and each February 1 thereafter until termination of the panel, the panel shall submit to the Secretary of Defense a report on the findings and recommendations of the panel to address any deficiencies identified by the panel.

''(6) ASSESSMENT OF RECOMMENDATIONS.—Not later than 30 days after the date of the submission of each report under paragraph (5), 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) a copy of the panel's assessment;

''(B) an assessment by the Secretary of the findings and recommendations of the panel; and

''(C) the plans of the Secretary for addressing such findings and recommendations.

''(7) TERMINATION.—The panel shall terminate on September 30, 2015.

''(c) DEFINITIONS.—In this section:

''(1) NATIONAL CAPITAL REGION.—The term 'National Capital Region' has the meaning given the term in section 2674(f) of title 10, United States Code.

''(2) WORLD CLASS MILITARY MEDICAL CENTER.—The term 'world class military medical center' has the meaning given the term 'world class military medical facility' by the National Capital Region Base Realignment and Closure Health Systems Advisory Subcommittee of the Defense Health Board in appendix B of the report titled 'Achieving World Class—An Independent Review of the Design Plans for the Walter Reed National Military Medical Center and the Fort Belvoir Community Hospital' and published in May 2009, as required by section 2721 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4716).''

DAMAGE TO AVIATION FACILITIES CAUSED BY ALKALI SILICA REACTIVITY

Pub. L. 106–398, §1 [[div. A], title III, §389], Oct. 30, 2000, 114 Stat. 1654, 1654A–89, provided that:

''(a) ASSESSMENT OF DAMAGE AND PREVENTION AND MITIGATION TECHNOLOGY.—The Secretary of Defense shall require the Secretaries of the military departments to assess—

''(1) the damage caused to aviation facilities of the Armed Forces by alkali silica reactivity; and

''(2) the availability of technologies capable of preventing, treating, or mitigating alkali silica reactivity in hardened concrete structures and pavements.

''(b) EVALUATION OF TECHNOLOGIES.—(1) Taking into consideration the assessment under subsection (a), the Secretary of each military department may conduct a demonstration project at a location selected by the Secretary concerned to test and evaluate the effectiveness of technologies intended to prevent, treat, or mitigate alkali silica reactivity in hardened concrete structures and pavements.

''(2) The Secretary of Defense shall ensure that the locations selected for the demonstration projects represent the diverse operating environments of the Armed Forces.

''(c) NEW CONSTRUCTION.—The Secretary of Defense shall develop specific guidelines for appropriate testing and use of lithium salts to prevent alkali silica reactivity in new construction of the Department of Defense.

''(d) COMPLETION OF ASSESSMENT AND DEMONSTRATION.—The assessment conducted under subsection (a) and the demonstration projects, if any, conducted under subsection (b) shall be completed not later than September 30, 2006.

''(e) DELEGATION OF AUTHORITY.—The authority to conduct the assessment under subsection (a) may be delegated only to the Chief of Engineers of the Army, the Commander of the Naval Facilities Engineering Command, and the Civil Engineer of the Air Force.

''(f) LIMITATION ON EXPENDITURES.—The Secretary of Defense and the Secretaries of the military departments may not expend more than a total of $5,000,000 to conduct both the assessment under subsection (a) and all of the demonstration projects under subsection (b).''

REPORTS RELATING TO MILITARY CONSTRUCTION FOR FACILITIES SUPPORTING NEW WEAPON SYSTEMS

Pub. L. 102–190, div. B, title XXVIII, §2868, Dec. 5, 1991, 105 Stat. 1562, as amended by Pub. L. 108–136, div. A, title X, §1031(c)(2), Nov. 24, 2003, 117 Stat. 1604, which required the Secretary of Defense to submit to Congress a report relating to the permanent basing of a new weapon system not later than 30 days after selecting a site or sites for such permanent basing, was repealed by Pub. L. 112–81, div. A, title X, §1062(m), Dec. 31, 2011, 125 Stat. 1586.

§ 2803. Emergency construction

(a) Subject to subsections (b) and (c), the Secretary concerned may carry out a military construction project not otherwise authorized by law if the Secretary determines (1) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and (2) that the requirement for the project is so urgent that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the seven-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c)(1) The maximum amount that the Secretary concerned may obligate in any fiscal year under this section is $50,000,000.

(2) A project carried out under this section shall be carried out within the total amount of funds appropriated for military construction that have not been obligated.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 102–190, div. B, title

XXVIII, §§ 2803, 2870(2), Dec. 5, 1991, 105 Stat. 1537, 1562; Pub. L. 102–484, div. A, title X, § 1053(9), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 108–136, div. A, title X, § 1031(a)(34), div. B, title XXVIII, § 2802, Nov. 24, 2003, 117 Stat. 1600, 1719; Pub. L. 109–364, div. B, title XXVIII, § 2801, Oct. 17, 2006, 120 Stat. 2466; Pub. L. 112–81, div. A, title X, § 1064(9), Dec. 31, 2011, 125 Stat. 1587.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 112–81 substituted ''after the end of the seven-day period'' for ''after the end of the 21-day period''.

2006—Subsec. (c)(1). Pub. L. 109–364 substituted ''$50,000,000'' for ''$45,000,000''.

2003—Subsec. (b). Pub. L. 108–136, § 1031(a)(34), inserted before period at end ''or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

Subsec. (c)(1). Pub. L. 108–136, § 2802, substituted ''$45,000,000'' for ''$30,000,000''.

1992—Subsec. (b). Pub. L. 102–484 made technical amendment to directory language of Pub. L. 102–190, § 2870(2). See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102–190, § 2803, substituted ''or to the protection of health, safety, or the quality of the environment, and'' for '', and'' in cl. (1) and inserted ''or the protection of health, safety, or environmental quality, as the case may be'' before period at end of cl. (2).

Subsec. (b). Pub. L. 102–190, § 2870(2), as amended by Pub. L. 102–484, struck out '', or after each such committee has approved the project, if the committee approves the project before the end of that period'' after ''by such committees''.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title X, § 1053, Oct. 23, 1992, 106 Stat. 2501, provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2804. Contingency construction

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, and (2) the justification for carrying out the project under this section. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 102–190, div. B, title XXVIII, § 2870(3), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108–136, div. A, title X, § 1031(a)(35), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109–163, div. B, title XXVIII, § 2801(a), Jan. 6, 2006, 119 Stat. 3504.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 substituted ''14-day period'' for ''21-day period'' and ''seven-day period'' for ''14-day period''.

2003—Subsec. (b). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

1991—Subsec. (b). Pub. L. 102–190 struck out before period at end '', or after each such committee has approved the project, if the committees approve the project before the end of that period''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $3,000,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than $4,000,000.

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—(1) An unspecified minor military construction project costing more than $1,000,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS.—The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than $1,000,000.

(d) LABORATORY REVITALIZATION.—(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend—

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than $4,000,000, notwithstanding subsection (c); or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note), amounts necessary to carry out an unspecified minor military construction project costing not more than $4,000,000.

(2) For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $4,000,000. The Secretary of Defense shall establish procedures for the review and approval of requests from the Secretary of a military department to carry out a construction project under this subsection.

(3) Not later than February 1, 2014, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority provided by this subsection. The report shall include a list and description of the construction projects carried out under this subsection, including the location and cost of each project.

(4) In this subsection, the term ''laboratory'' includes—

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

(5) The authority to carry out a project under this subsection expires on September 30, 2018.

(e) PROHIBITION ON USE FOR NEW HOUSING UNITS.—Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 99–167, title VIII, § 809, Dec. 3, 1985, 99 Stat. 989; Pub. L. 99–661, div. B, title VII, § 2702(a), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2310, Dec. 4, 1987, 101 Stat. 1217; Pub. L. 101–510, div. A, title XIII, § 1301(16), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. B, title XXVIII, §§ 2807, 2870(4), Dec. 5, 1991, 105 Stat. 1540, 1563; Pub. L. 104–106, div. B, title XXVIII, §§ 2811(a), 2812, Feb. 10, 1996, 110 Stat. 552; Pub. L. 104–201, div. B, title XXVIII, § 2801(a), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 105–85, div. B, title XXVIII, § 2801, Nov. 18, 1997, 111 Stat. 1989; Pub. L. 107–107, div. B, title XXVIII, § 2801, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108–136, div. A, title X, § 1031(a)(36), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 110–181, div. B, title XXVIII, §§ 2803, 2804, Jan. 28, 2008, 122 Stat. 539; Pub. L. 111–84, div. B, title XXVIII, § 2801(a)(1), (2), (b), Oct. 28, 2009, 123 Stat. 2660; Pub. L. 112–81, div. B, title XXVIII, § 2802(a), (b), Dec. 31, 2011, 125 Stat. 1684; Pub. L. 113–66, div. B, title XXVIII, § 2801(a), Dec. 26, 2013, 127 Stat. 1006; Pub. L. 113–291, div. B, title XXVIII, § 2802, Dec. 19, 2014, 128 Stat. 3695.)

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113–291, § 2802(a), substituted ''$3,000,000'' for ''$2,000,000'' in first sentence and ''$4,000,000'' for ''$3,000,000'' in second sentence.

Subsec. (b)(1). Pub. L. 113–291, § 2802(b), substituted ''$1,000,000'' for ''$750,000''.

Subsec. (c). Pub. L. 113–291, § 2802(c), substituted ''$1,000,000'' for ''$750,000''.

2013—Subsec. (d)(1)(A). Pub. L. 113–66, § 2801(a)(1), substituted ''not more than $4,000,000, notwithstanding subsection (c)'' for ''not more than $2,000,000''.

Subsec. (d)(2). Pub. L. 113–66, § 2801(a)(2), substituted ''For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $4,000,000.'' for ''For an unspecified minor military construction project conducted pursuant to this subsection, $2,000,000 shall be deemed to be the amount specified in subsection (b)(1) regarding when advance approval of the project by the Secretary concerned and congressional notification is required.''

Subsec. (d)(5). Pub. L. 113–66, § 2801(a)(3), substituted ''2018'' for ''2016''.

2011—Subsec. (c). Pub. L. 112–81, § 2802(a), substituted ''The'' for ''(1) Except as provided in paragraph (2), the'' and ''not more than $750,000.'' for ''not more than—

''(A) $1,500,000, in the case of an unspecified minor military construction project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

''(B) $750,000, in the case of any other unspecified minor military construction project.

''(2) The limitations specified in paragraph (1) shall not apply to an unspecified minor military construction project if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.''

Subsec. (d)(3). Pub. L. 112–81, § 2802(b)(1), substituted ''February 1, 2014'' for ''February 1, 2010''.

Subsec. (d)(5). Pub. L. 112–81, § 2802(b)(2), substituted ''September 30, 2016'' for ''September 30, 2012''.

2009—Subsec. (a). Pub. L. 111–84, § 2801(a)(1), substituted ''Within'' for ''Except as provided in paragraph (2), within'' in par. (1), redesignated the second and third sentences of par. (1) as par. (2), and struck out former par. (2) which read as follows: ''A Secretary may not use more than $5,000,000 for exercise-related unspecified minor military construction projects coordinated or directed by the Joint Chiefs of Staff outside the United States during any fiscal year.''

Subsec. (c). Pub. L. 111–84, § 2801(a)(2), substituted ''paragraph (2)'' for ''paragraphs (2) and (3)'' in par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''The authority provided in paragraph (1) may not be used with respect to any exercise-related unspecified minor military construction project coordinated or directed by the Joint Chiefs of Staff outside the United States.''

Subsec. (d)(1)(B). Pub. L. 111–84, § 2801(b)(1), inserted ''or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note)'' after ''authorized by law''.

Subsec. (d)(3) to (6). Pub. L. 111–84, § 2801(b)(2), (3), redesignated pars. (4) to (6) as (3) to (5), respectively, and struck out former par. (3) which read as follows: ''For purposes of this subsection, the total amount allowed to be applied in any one fiscal year to projects at any one laboratory shall be limited to the larger of the amounts applicable under paragraph (1).''

2008—Subsec. (a). Pub. L. 110–181, § 2804(b)(1), inserted subsec. heading.

Subsec. (a)(1). Pub. L. 110–181, § 2803, substituted ''$2,000,000'' for ''$1,500,000''.

Subsecs. (b), (c). Pub. L. 110–181, § 2804(b)(2), (3), inserted subsec. headings.

Subsecs. (d), (e). Pub. L. 110–181, § 2804(a), (b)(4), added subsec. (d), redesignated former subsec. (d) as (e), and inserted subsec. (e) heading.

2003—Subsec. (b)(2). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2001—Subsec. (b)(1). Pub. L. 107–107, § 2801(a), substituted ''$750,000'' for ''$500,000''.

Subsec. (c)(1)(A). Pub. L. 107–107, § 2801(b)(1), substituted ''$1,500,000'' for ''$1,000,000''.

Subsec. (c)(1)(B). Pub. L. 107–107, § 2801(b)(2), substituted ''$750,000'' for ''$500,000''.

1997—Subsec. (a)(1). Pub. L. 105–85, § 2801(c)(1), substituted ''unspecified minor military construction projects'' for ''minor military construction projects'', ''An unspecified minor'' for ''A minor'', and ''an unspecified minor'' for ''a minor''.

Subsec. (b)(1). Pub. L. 105–85, § 2801(c)(2), substituted ''An unspecified minor'' for ''A minor''.

Pub. L. 105–85, § 2801(a), inserted at end ''This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.''

Subsec. (b)(2). Pub. L. 105–85, § 2801(c)(3), substituted ''an unspecified minor'' for ''a minor''.

Subsec. (c)(1). Pub. L. 105–85, § 2801(c)(4), substituted ''unspecified minor military'' for ''unspecified military'' wherever appearing.

Pub. L. 105–85, § 2801(b)(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 105–85, § 2801(c)(4), substituted ''unspecified minor military'' for ''unspecified military''.

Subsec. (c)(3). Pub. L. 105–85, § 2801(b)(2), added par. (3).

1996—Subsec. (a)(1). Pub. L. 104–106, § 2812, in second sentence, struck out ''(1) that is for a single undertaking at a military installation, and (2)'' after ''is a military construction project''.

Pub. L. 104–106, § 2811(a)(1), inserted at end ''However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, a minor military construction project may have an approved cost equal to or less than $3,000,000.''

Subsec. (c)(1). Pub. L. 104–106, § 2811(a)(2), substituted ''not more than—'' for ''not more than $300,000.'' and added subpars. (A) and (B).

Subsec. (c)(1)(B). Pub. L. 104–201 substituted ''$500,000'' for ''$300,000''.

1991—Subsec. (a)(1). Pub. L. 102–190, § 2807(a), substituted ''$1,500,000'' for ''$1,000,000''.

Subsec. (b)(2). Pub. L. 102–190, § 2870(4), in second sentence struck out ''(A)'' after ''carried out only'' and '', or (B) after each such committee approves the project, if the committees approve the project before the end of that period'' before period at end.

Subsec. (c)(1). Pub. L. 102–190, § 2807(b), substituted ''$300,000'' for ''$200,000''.

1990—Subsec. (b)(3). Pub. L. 101–510 struck out par. (3) which read as follows: ''A project for the relocation of any activity from one installation to another that involves 25 or more full-time civilian employees of the Department of Defense but that is not subject to paragraph (1) may not be carried out under the authority of this section until the appropriate committees of Congress have been notified by the Secretary concerned of the intent to carry out such relocation under the authority of this section.''

1987—Subsec. (a). Pub. L. 100–180, § 2310(b), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), within'' for ''Within'', and added par. (2).

Subsec. (c). Pub. L. 100–180, § 2310(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the'' for ''The'', and added par. (2).

1986—Subsec. (a). Pub. L. 99–661, § 2702(a)(1), substituted ''$1,000,000'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (b)(1). Pub. L. 99–661, § 2702(a)(2), substituted ''$500,000'' for ''50 percent of the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (c). Pub. L. 99–661, § 2702(a)(3), substituted ''$200,000'' for ''20 percent of the amount specified by law as the maximum amount for a minor military construction project''.

1985—Subsec. (a). Pub. L. 99–167, § 809(1), inserted ''an amount equal to 125 percent of''.

Subsec. (c). Pub. L. 99–167, § 809(2), substituted ''The'' for ''Only funds authorized for minor construction projects may be used to accomplish unspecified minor construction projects, except that the''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

NO APPLICATION TO CURRENT PROJECTS

Pub. L. 113–66, div. B, title XXVIII, § 2801(b), Dec. 26, 2013, 127 Stat. 1006, provided that: ''The amendments made by subsection (a) [amending this section] do not apply to any laboratory revitalization project for which the design phase has been completed as of the date of the enactment of this Act [Dec. 26, 2013].''

RELATION TO OTHER AUTHORITIES

Pub. L. 108–136, div. B, title XXVIII, § 2808(e), Nov. 24, 2003, 117 Stat. 1724, provided that: ''The temporary authority provided by this section [117 Stat. 1723], and the limited authority provided by section 2805(c) of title 10, United States Code, to use appropriated funds available for operation and maintenance to carry out a construction project are the only authorities available to the Secretary of Defense and the Secretaries of the military departments to use appropriated funds available for operation and maintenance to carry out construction projects.''

DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM

Pub. L. 104–106, div. B, title XXVIII, § 2892, Feb. 10, 1996, 110 Stat. 590, as amended by Pub. L. 105–261, div. B, title XXVIII, § 2871, Oct. 17, 1998, 112 Stat. 2225; Pub. L. 108–375, div. B, title XXVIII, § 2891, Oct. 28, 2004, 118 Stat. 2154, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program (to be known as the 'Department of Defense Laboratory Revitalization Demonstration Program') for the revitalization of Department of Defense laboratories. Under the program, the Secretary may carry out minor military construction projects in accordance with subsection (b) and other applicable law to improve Department of Defense laboratories covered by the program.

''(b) INCREASED MAXIMUM AMOUNTS APPLICABLE TO MINOR CONSTRUCTION PROJECTS.—For purpose of any military construction project carried out under the program—

''(1) the amount provided in the second sentence of subsection (a)(1) of section 2805 of title 10, United States Code, shall be deemed to be $3,000,000;

''(2) the amount provided in subsection (b)(1) of such section shall be deemed to be $1,500,000; and

''(3) the amount provided in subsection (c)(1)(B) of such section shall be deemed to be $1,000,000.

''(c) PROGRAM REQUIREMENTS.—(1) Not later than 30 days before commencing the program, the Secretary shall establish procedures for the review and approval of requests from Department of Defense laboratories for construction under the program.

''(2) The laboratories at which construction may be carried out under the program may not include Department of Defense laboratories that are contractor-owned.

''(d) REPORT.—Not later than February 1, 2003, the Secretary shall submit to Congress a report on the program. The report shall include the Secretary's conclusions and recommendation regarding the desirability of making the authority set forth under subsection (b) permanent.

''(e) EXCLUSIVITY OF PROGRAM.—Nothing in this section may be construed to limit any other authority provided by law for any military construction project at a Department of Defense laboratory covered by the program.

''(f) DEFINITIONS.—In this section:

''(1) The term 'laboratory' includes—

''(A) a research, engineering, and development center;

''(B) a test and evaluation activity owned, funded, and operated by the Federal Government through the Department of Defense; and

''(C) a supporting facility of a laboratory.

''(2) The term 'supporting facility', with respect to a laboratory, means any building or structure that is used in support of research, development, test, and evaluation at the laboratory.

''(g) EXPIRATION OF AUTHORITY.—The Secretary may not commence a construction project under the program after September 30, 2005.''

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of $1,000,000 for unspecified minor military construction project under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(1) of Pub. L. 97–214, set out as a note under section 2828 of this title.

§ 2806. Contributions for North Atlantic Treaty Organizations Security Investment

(a) Within amounts authorized by law for such purpose, the Secretary of Defense may make contributions for the United States share of the cost of multilateral programs for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area.

(b) Funds may not be obligated or expended in connection with the North Atlantic Treaty Organization Security Investment program in any year unless such funds have been authorized by law for such program.

(c)(1) The Secretary may make contributions in excess of the amount appropriated for contribution under subsection (a) if the amount of the contribution in excess of that amount does not exceed 200 percent of the amount specified by section 2805(a) of this title as the maximum amount for a minor military construction project.

(2) If the Secretary determines that the amount appropriated for contribution under subsection (a) in any fiscal year must be exceeded by more than the amount authorized under paragraph (1), the Secretary may make contributions in excess of such amount, but not in excess of 125 percent of the amount appropriated (A) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of the funds to be used for the increase, and (B) after a period of 21 days has elapsed from the date of receipt of the report or, if earlier, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 97–321, title VIII, § 805(b)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–661, div. B, title V, § 2503(a), Nov. 14, 1986, 100 Stat. 4039; Pub. L. 100–26, § 7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–190, div. B, title XXVIII, § 2870(5), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 104–201, div. B, title XXVIII, § 2802(a), (c)(1), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 111–84, div. B, title XXVIII, § 2801(a)(3), Oct. 28, 2009, 123 Stat. 2660; Pub. L. 111–383, div. B, title XXVIII, § 2803(b), Jan. 7, 2011, 124 Stat. 4459.)

AMENDMENTS

2011—Subsec. (c)(2)(B). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title''.

2009—Subsec. (c)(1). Pub. L. 111–84 substituted ''section 2805(a)'' for ''section 2805(a)(2)''.

1996—Pub. L. 104–201, § 2802(c)(1), substituted ''Organizations Security Investment'' for ''Organization Infrastructure'' in section catchline.

Subsec. (b). Pub. L. 104–201, § 2802(a), substituted ''Security Investment program'' for ''Infrastructure program''.

1991—Subsec. (c)(2)(B). Pub. L. 102–190 substituted ''after'' for ''after either'' and struck out before period at end ''or after each such committee has indicated approval of the increased contribution''.

1987—Subsec. (c)(1). Pub. L. 100–26 substituted ''specified by section 2805(a)(2) of this title'' for ''specified by law''.

1986—Subsec. (a). Pub. L. 99–661 inserted ''and for related expenses'' after ''headquarters)''.

1982—Pub. L. 97–321 substituted ''Infrastructure'' for ''infrastructure'' in section catchline.

CHANGE OF NAME

Pub. L. 104–201, div. B, title XXVIII, § 2802(b), Sept. 23, 1996, 110 Stat. 2787, provided that: ''Any reference to the North Atlantic Treaty Organization Infrastructure program in any Federal law, Executive order, regulation, delegation of authority, or document of or pertaining to the Department of Defense shall be deemed to refer to the North Atlantic Treaty Organization Security Investment program.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. B, title V, § 2503(b), Nov. 14, 1986, 100 Stat. 4039, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to contributions made with funds appropriated for fiscal years after fiscal year 1986.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

RESTRICTION ON CERTAIN FUNDING

Pub. L. 99–661, div. B, title V, § 2504, Nov. 14, 1986, 100 Stat. 4039, prohibited Secretary of Defense from obligating or expending any funds after fiscal year 1987 with respect to NATO infrastructure program under this section until Secretary submitted to Committees on Armed Services of Senate and House (1) a compre-

hensive master plan for establishing adequate active defenses for air bases in Europe at which operations of United States aircraft are planned, sites in Europe used by United States for logistic support of NATO or for prepositioned overseas matériel configured to unit sets, and (2) a report containing a certification by Secretary that sufficient funds have been budgeted by Department of Defense in fiscal year 1988 five-year defense plan to meet objectives of such comprehensive master plan.

§ 2807. Architectural and engineering services and construction design

(a) Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds $1,000,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services before the initial obligation of funds for such services. The Secretary may then obligate funds for such services only after the end of the 21-day period beginning on the date on which the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level (1) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of funds to be used for the increase, and (2) after a period of 21 days has elapsed from the date of receipt of the report or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) For architectural and engineering services and construction design related to military construction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing appropriations from different fiscal years to the extent that those appropriations are available for obligation.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 98–115, title VIII, §804, Oct. 11, 1983, 97 Stat. 785; Pub. L. 99–661, div. B, title VII, §§2702(b), 2712(a), Nov. 14, 1986, 100 Stat. 4040, 4041; Pub. L. 102–190, div. B, title XXVIII, §2870(6), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 105–261, div. B, title XXVIII, §2801, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 108–136, div. A, title X, §1031(a)(37), Nov. 24, 2003, 117 Stat. 1601.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136, §1031(a)(37)(A), substituted ''$1,000,000'' for ''$500,000'', struck out ''not less than 21 days'' after ''of such services'', and inserted last sentence.

Subsec. (c)(2). Pub. L. 108–136, §1031(a)(37)(B), inserted before period at end ''or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title''.

1998—Subsec. (b). Pub. L. 105–261, §2801(a), substituted ''$500,000'' for ''$300,000''.

Subsec. (d). Pub. L. 105–261, §2801(b), substituted ''architectural and engineering services and construction design'' for ''study, planning, design, architectural, and engineering services''.

1991—Subsec. (c)(2). Pub. L. 102–190 substituted ''after'' for ''after either'' and struck out before period at end ''or after each such committee has indicated approval of the increased level of activity''.

1986—Subsec. (b). Pub. L. 99–661, §2702(b), substituted ''$300,000'' for ''the maximum amount specified by law for the purposes of this section''.

Subsec. (d). Pub. L. 99–661, §2712(a), added subsec. (d).

1983—Subsec. (a). Pub. L. 98–115 substituted ''Within amounts appropriated for military construction and military family housing'' for ''Within amounts appropriated for such purposes'' and inserted '', family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are'' after ''in connection with military construction projects''.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. B, title VII, §2712(b), Nov. 14, 1986, 100 Stat. 4041, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to funds appropriated for fiscal years after fiscal year 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN CONTRACTS FOR MILITARY CONSTRUCTION PROJECTS

Pub. L. 98–212, title VII, §796, Dec. 8, 1983, 97 Stat. 1455, provided that: ''No funds appropriated for the Departments of Defense, Army, Navy, or the Air Force shall be obligated by their respective Secretaries for architectural and engineering services and construction design contracts for Military Construction projects in the amount of $85,000 and over, unless competition for such contracts is open to all firms regardless of size in accordance with 40 U.S.C. §541, et seq. [now chapter 11 of Title 40, Public Buildings, Property, and Works.]''

SMALL BUSINESS SET-ASIDE FOR ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN

Pub. L. 98–115, title VIII, §806, Oct. 11, 1983, 97 Stat. 786, provided that:

''(a) The Secretary of Defense shall conduct a comprehensive review of current policies and practices of the Department of Defense with regard to the award of contracts for architectural and engineering services and construction design for military construction projects. The Secretary shall conduct such review with a view to determining whether current policies and

practices of the Department of Defense result in a reasonable distribution of such contracts to firms of all sizes throughout the architect-engineer community.

''(b) Upon the completion of such review, the Secretary shall modify current policies and practices of the Department to the extent necessary to ensure—

''(1) that small business concerns (as defined in section 3 of the Small Business Act [15 U.S.C. 632]) are assured of a reasonable share of such contracts; and

''(2) that large architect-engineer firms are not precluded from competing for such contracts when the estimated amount of such contracts is greater than a reasonable threshold amount prescribed by the Secretary.

''(c) Not later than March 1, 1984, the Secretary shall submit to the appropriate committees of Congress a written report on the results of the review required by subsection (a) and on any changes made to current policies and practices as required by subsection (b).

''(d) For the purposes of this section:

''(1) The term 'reasonable share' means an appropriate percentage share of all contracts referred to in subsection (a) as determined by the Secretary of Defense after consultation with the Admininstrator [sic] of the Small Business Administration and representatives of the architect-engineer community.

''(2) The term 'reasonable threshold amount' means an appropriate estimated contract dollar amount determined by the Secretary of Defense after consultation with the Administrator of the Small Business Administration and representatives of the architect-engineer community.''

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Amounts of $300,000 or more for contracts for architectural and engineering services or construction design subject to the reporting requirement under this section during the period beginning on Oct. 1, 1982, and ending on the date of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(2) of Pub. L. 97–214, set out as a note under section 2828 of this title.

§ 2808. Construction authority in the event of a declaration of war or national emergency

(a) In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

(b) When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.

(c) The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157.)

REFERENCES IN TEXT

The National Emergencies Act (50 U.S.C. 1601 et seq.), referred to in subsec. (a), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 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 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97–99, title IX, § 903, Dec. 23, 1981, 95 Stat. 1382, which was set out as a note under section 140 [now 127] of this title, prior to repeal by Pub. L. 97–214, § 7(18).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

EXECUTIVE ORDER NO. 12734

Ex. Ord. No. 12734, Nov. 14, 1990, 55 F.R. 48099, which related to national emergency construction authority, was revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055, listed in a table under section 1701 of Title 50, War and National Defense.

EX. ORD. NO. 13235. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

Ex. Ord. No. 13235, Nov. 16, 2001, 66 F.R. 58343, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I declared a national emergency that requires the use of the Armed Forces of the United States, by Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], because of the terrorist attacks on the World Trade Center and the Pentagon, and because of the continuing and immediate threat to the national security of the United States of further terrorist attacks. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

GEORGE W. BUSH.

§ 2809. Long-term facilities contracts for certain activities and services

(a) SUBMISSION AND AUTHORIZATION OF PROPOSED PROJECTS.—The Secretary concerned may enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of an activity or service described in subsection (b) if—

(1) the Secretary concerned has identified the proposed project for that facility in the budget material submitted to Congress by the Secretary of Defense in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which the contract is proposed to be awarded;

(2) the Secretary concerned has determined that the services to be provided at that facility can be more economically provided through the use of a long-term contract than through the use of conventional means; and

(3) the project has been authorized by law.

(b) AUTHORIZED PURPOSES OF CONTRACT.—The activities and services referred to in subsection (a) are as follows:

(1) Child care services.

(2) Utilities, including potable and waste water treatment services.

(3) Depot supply activities.

(4) Troop housing.

(5) Transient quarters.

(6) Hospital or medical facilities.

(7) Other logistic and administrative services, other than depot maintenance.

(c) CONDITIONS ON OBLIGATION OF FUNDS.—A contract entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment given under the authority of this section does not constitute an obligation of the United States.

(d) COMPETITIVE PROCEDURES.—Each contract entered into under this section shall be awarded through the use of competitive procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary concerned shall solicit bids or proposals for a contract for each project that has been authorized by law.

(e) TERM OF CONTRACT.—A contract under this section may be for any period not in excess of 32 years, excluding the period for construction.

(f) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into under this section until—

(1) the Secretary concerned submits to the appropriate committees of Congress, in writing, a justification of the need for the facility for which the contract is to be awarded and an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility; and

(2) a period of 21 days has expired following the date on which the justification and the economic analysis are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 99–167, title VIII, §811(a), Dec. 3, 1985, 99 Stat. 990; amended Pub. L. 99–661, div. A, title XIII, §1343(a)(20), div. B, title VII, §2711, Nov. 14, 1986, 100 Stat. 3994, 4041; Pub. L. 100–180, div. B, subdiv. 3, title I, §2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 100–456, div. B, title XXVIII, §2801, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, §2803, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, §2805(a)(1), Dec. 5, 1991, 105 Stat. 1537; Pub. L. 108–136, div. A, title X, §1031(a)(38), Nov. 24, 2003, 117 Stat. 1601.)

AMENDMENTS

2003—Subsec. (f)(2). Pub. L. 108–136 struck out ''calendar'' after ''21'' and inserted before period at end ''or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title''.

1991—Pub. L. 102–190 substituted section catchline for one which read ''Test of long-term facilities contracts'' and amended text generally, substituting present provisions for provisions authorizing contracts for construction, management, and operation of facilities on or near military installations for the provision of certain enumerated activities or services, setting out procedures, terms, and other limits for such contracts, providing that no more than 5 contracts may be entered into under this section other than contracts for child care centers, and providing that authority to enter into such contracts was to expire on Sept. 30, 1991.

1989—Subsec. (a)(1)(B)(ii). Pub. L. 101–189, §2803(1), substituted ''Utilities, including potable'' for ''Potable''.

Subsec. (b). Pub. L. 101–189, §2803(2), substituted ''activities and services described in clause (i) or (ii) of subsection (a)(1)(B)'' for ''child care centers''.

Subsec. (c). Pub. L. 101–189, §2803(3), substituted ''1991'' for ''1989''.

1988—Subsec. (a)(3). Pub. L. 100–456 substituted ''32'' for ''20''.

1987—Subsec. (a)(1)(B)(vi), (vii). Pub. L. 100–180, §2302(a), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (c). Pub. L. 100–180, §2302(b), substituted ''1989'' for ''1987''.

1986—Subsec. (a)(1). Pub. L. 99–661, §2711, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary concerned may enter into a contract for the construction, management, and operation of a facility on or near a military installation in the United States for the provision of child care services, waste water treatment, or depot supply activities in a case in which the Secretary concerned determines that the facility can be more efficiently and more economically provided under a long-term contract than by other appropriate means.''

Pub. L. 99–661, §1343(a)(20)(A), substituted ''a contract'' for ''contracts'', ''a facility'' for ''facilities'', ''a military installation'' for ''military installations'', ''a case'' for ''cases'', ''facility'' for ''facilities'', and ''a long-term contract'' for ''long-term contracts'' and inserted a comma after ''waste water treatment''.

Subsec. (a)(2). Pub. L. 99–661, §1343(a)(20)(B), substituted ''this section'' for ''subsection (a)''.

Subsec. (a)(3). Pub. L. 99–661, §1343(a)(20)(C), substituted ''20'' for ''twenty''.

Subsec. (a)(4)(A). Pub. L. 99–661, §1343(a)(20)(D), struck out ''the'' before ''Congress''.

Subsec. (b). Pub. L. 99–661, §1343(a)(20)(E), struck out ''the authority of subsection (a) of'' after ''under''.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div B, title XXVIII, §2805(b), Dec. 5, 1991, 105 Stat. 1538, provided that: ''Section 2809 of title 10, United States Code, as amended by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

DEMONSTRATION PROGRAM ON REDUCTION IN LONG-TERM FACILITY MAINTENANCE COSTS

Pub. L. 107–107, div. B, title XXVIII, § 2814, Dec. 28, 2001, 115 Stat. 1310, as amended by Pub. L. 107–314, div. B, title XXVIII, § 2813(a)–(d)(1), Dec. 2, 2002, 116 Stat. 2709, 2710, provided that:

''(a) AUTHORITY TO CARRY OUT PROGRAM.—The Secretary of Defense or the Secretary of a military department may conduct a demonstration program to assess the feasibility and desirability of including facility maintenance requirements in construction contracts for military construction projects for the purpose of determining whether such requirements facilitate reductions in the long-term facility maintenance costs of the military departments.

''(b) CONTRACTS.—(1) Not more than 12 contracts per military department may contain requirements referred to in subsection (a) for the purpose of the demonstration program.

''(2) The demonstration program may only cover contracts entered into on or after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314, approved Dec. 2, 2002], except that the Secretary of the Army shall treat any contract containing requirements referred to in subsection (a) that was entered into under the authority in such subsection between that date and December 28, 2001, as a contract for the purpose of the demonstration program.

''(c) EFFECTIVE PERIOD OF REQUIREMENTS.—The effective period of a requirement referred to in subsection (a) that is included in a contract for the purpose of the demonstration program may not exceed five years.

''(d) REPORTING REQUIREMENTS.—Not later than January 31, 2005, the Secretary of Defense shall submit to Congress a report on the demonstration program, including the following:

''(1) A description of all contracts that contain requirements referred to in subsection (a) for the purpose of the demonstration program.

''(2) An evaluation of the demonstration program and a description of the experience of the Secretary with respect to such contracts.

''(3) Any recommendations, including recommendations for the termination, continuation, or expansion of the demonstration program, that the Secretary considers appropriate.

''(e) EXPIRATION.—The authority under subsection (a) to include requirements referred to in that subsection in contracts under the demonstration program shall expire on September 30, 2006.

''(f) FUNDING.—Amounts authorized to be appropriated for the military departments or defense-wide for a fiscal year for military construction shall be available for the demonstration program under this section in such fiscal year.''

[Pub. L. 107–314, div. B, title XXVIII, § 2813(d)(2), Dec. 2, 2002, 116 Stat. 2710, provided that: ''The amendment made by paragraph (1) [amending section 2814(f) of Pub. L. 107–107, set out above] shall not affect the availability for the purpose of the demonstration program under section 2814 of the Military Construction Authorization Act for Fiscal Year 2002, as amended by this section, of any amounts authorized to be appropriated before the date of the enactment of this Act [Dec. 2, 2002] for the Army for military construction that have been obligated for the demonstration program, but not expended, as of that date.'']

REPORT

Pub. L. 100–180, div. B, subdiv. 3, title I, § 2302(c), Dec. 4, 1987, 101 Stat. 1215, directed each Secretary who has entered into a contract under this section to submit a report to Committees on Armed Services of Senate and House of Representatives by Feb. 15, 1989, containing date and duration of, other party to, and nature of activities carried out under each such contract, and recommendations, and reasons therefor, concerning whether authority to enter into contracts under this section should be extended.

[§ 2810. Repealed. Pub. L. 107–314, div. A, title III, § 313(b), Dec. 2, 2002, 116 Stat. 2507]

Section, added Pub. L. 99–499, title II, § 211(b)(1), Oct. 17, 1986, 100 Stat. 1725, related to military construction projects for environmental response actions.

§ 2811. Repair of facilities

(a) REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) APPROVAL REQUIRED FOR MAJOR REPAIRS.—A repair project costing more than $7,500,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(d) CONGRESSIONAL NOTIFICATION.—When a decision is made to carry out a repair project under this section with an estimated cost in excess of $7,500,000, the Secretary concerned shall submit to the appropriate committees of Congress a report containing—

(1) the justification for the repair project and the current estimate of the cost of the project, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project;

(2) if the current estimate of the cost of the repair project exceeds 75 percent of the estimated cost of a military construction project to replace the facility, an explanation of the reasons why replacement of the facility is not in the best interest of the Government; and

(3) a description of the elements of military construction, including the elements specified in section 2802(b) of this title, incorporated into the repair project.

(e) REPAIR PROJECT DEFINED.—In this section, the term ''repair project'' means a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose.

(Added Pub. L. 99–661, div. A, title III, § 315(a), Nov. 14, 1986, 100 Stat. 3854, § 2810; renumbered § 2811, Pub. L. 100–26, § 7(e)(3), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 103–337, div. B, title XXVIII, § 2801(a), Oct. 5, 1994, 108 Stat. 3050; Pub. L. 105–85, div. B, title XXVIII, § 2802, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 108–375, div. B, title XXVIII, § 2801, Oct. 28, 2004, 118 Stat. 2119; Pub. L. 111–84, div. B, title XXVIII, § 2802, Oct. 28, 2009, 123 Stat. 2661.)

AMENDMENTS

2009—Subsec. (d)(2), (3). Pub. L. 111–84 added pars. (2) and (3) and struck out former par. (2) which read as fol-

lows: ''the justification for carrying out the project under this section.''

2004—Subsec. (b). Pub. L. 108–375, § 2801(a), substituted ''$7,500,000'' for ''$5,000,000''.

Subsec. (d). Pub. L. 108–375, § 2801(b), substituted ''$7,500,000'' for ''$10,000,000'' in introductory provisions.

Subsec. (d)(1). Pub. L. 108–375, § 2801(c), inserted before semicolon '', including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project''.

1997—Subsecs. (d), (e). Pub. L. 105–85 added subsecs. (d) and (e).

1994—Pub. L. 103–337 substituted ''Repair'' for ''Renovation'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary concerned may carry out renovation projects that combine maintenance, repair, and minor construction projects for an entire single-purpose facility, or one or more functional areas of a multipurpose facility, using funds available for operations and maintenance.

''(b) The amount obligated on such a renovation project may not exceed the maximum amount specified by law for a minor construction project under section 2805 of this title.

''(c) Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.''

§ 2812. Lease-purchase of facilities

(a)(1) The Secretary concerned may enter into an agreement with a private contractor for the lease of a facility of the kind specified in paragraph (2) if the facility is provided at the expense of the contractor on a military installation under the jurisdiction of the Department of Defense.

(2) The facilities that may be leased pursuant to paragraph (1) are as follows:

(A) Administrative office facilities.

(B) Troop housing facilities.

(C) Energy production facilities.

(D) Utilities, including potable and waste water treatment facilities.

(E) Hospital and medical facilities.

(F) Transient quarters.

(G) Depot or storage facilities.

(H) Child care centers.

(I) Classroom and laboratories.

(b) Leases entered into under subsection (a)—

(1) may not exceed a term of 32 years;

(2) shall provide that, at the end of the term of the lease, title to the leased facility shall vest in the United States; and

(3) shall include such other terms and conditions as the Secretary concerned determines are necessary or desirable to protect the interests of the United States.

(c)(1) The Secretary concerned may not enter into a lease under this section until—

(A) the Secretary submits to the appropriate committees of Congress a justification of the need for the facility for which the proposed lease is being entered into and an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility; and

(B) a period of 21 days has expired following the date on which the justification and economic analysis are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title.

(2) Each Secretary concerned may, under this section, enter into—

(A) not more than three leases in fiscal year 1990; and

(B) not more than five leases in each of the fiscal years 1991 and 1992.

(d) Each lease entered into under this section shall include a provision that the obligation of the United States to make payments under the lease in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 101–189, div. B, title XXVIII, § 2809(a), Nov. 29, 1989, 103 Stat. 1649; amended Pub. L. 101–510, div. B, title XXVIII, § 2864, Nov. 5, 1990, 104 Stat. 1806; Pub. L. 108–136, div. A, title X, § 1031(a)(39), Nov. 24, 2003, 117 Stat. 1601.)

AMENDMENTS

2003—Subsec. (c)(1)(B). Pub. L. 108–136 inserted before period at end ''or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title''.

1990—Subsec. (a)(2)(I). Pub. L. 101–510 added subpar. (I).

§ 2813. Acquisition of existing facilities in lieu of authorized construction

(a) ACQUISITION AUTHORITY.—Using funds appropriated for a military construction project authorized by law for a military installation, the Secretary of the military department concerned may acquire an existing facility (including the real property on which the facility is located) at or near the military installation instead of carrying out the authorized military construction project if the Secretary determines that—

(1) the acquisition of the facility satisfies the requirements of the military department concerned for the authorized military construction project; and

(2) it is in the best interests of the United States to acquire the facility instead of carrying out the authorized military construction project.

(b) MODIFICATION OR CONVERSION OF ACQUIRED FACILITY.—(1) As part of the acquisition of an existing facility under subsection (a), the Secretary of the military department concerned may carry out such modifications, repairs, or conversions of the facility as the Secretary considers to be necessary so that the facility satisfies the requirements for which the military construction project was authorized.

(2) The costs of anticipated modifications, repairs, or conversions under paragraph (1) are required to remain within the authorized amount of the military construction project. The Secretary concerned shall consider such costs in determining whether the acquisition of an existing facility is—

(A) more cost effective than carrying out the authorized military construction project; and

(B) in the best interests of the United States.

(c) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the acquisition of a facility under subsection (a) until the Secretary concerned transmits to the appropriate committees of Congress a written notification of the determination to acquire an existing facility instead of carrying out the authorized military construction project. The notification shall include the reasons for acquiring the facility. After the notification is transmitted, the Secretary may then enter into the contract only after the end of the 21-day period beginning on the date on which the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 103–160, div. B, title XXVIII, § 2805(a)(1), Nov. 30, 1993, 107 Stat. 1886; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(25), Feb. 10, 1996, 110 Stat. 506; Pub. L. 108–136, div. A, title X, § 1031(a)(40), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 109–163, div. B, title XXVIII, § 2801(b), Jan. 6, 2006, 119 Stat. 3504.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–163 substituted ''21-day period'' for ''30-day period'' and ''14-day period'' for ''21-day period''.

2003—Subsec. (c). Pub. L. 108–136 struck out ''the end of the 30-day period beginning on the date'' after ''until'' and inserted last sentence.

1996—Subsec. (c). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives''.

EFFECTIVE DATE

Pub. L. 103–160, div. B, title XXVIII, § 2805(b), Nov. 30, 1993, 107 Stat. 1887, provided that: ''Section 2813 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects authorized on or after the date of the enactment of this Act [Nov. 30, 1993].''

§ 2814. Special authority for development of Ford Island, Hawaii

(a) IN GENERAL.—(1) Subject to paragraph (2), the Secretary of the Navy may exercise any authority or combination of authorities in this section for the purpose of developing or facilitating the development of Ford Island, Hawaii, to the extent that the Secretary determines the development is compatible with the mission of the Navy.

(2) The Secretary of the Navy may not exercise any authority under this section until—

(A) the Secretary submits to the appropriate committees of Congress a master plan for the development of Ford Island, Hawaii; and

(B) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

(b) CONVEYANCE AUTHORITY.—(1) The Secretary of the Navy may convey to any public or private person or entity all right, title, and interest of the United States in and to any real property (including any improvements thereon) or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is excess to the needs of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A conveyance under this subsection may include such terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(c) LEASE AUTHORITY.—(1) The Secretary of the Navy may lease to any public or private person or entity any real property or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is not needed for current operations of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A lease under this subsection shall be subject to section 2667(b)(1) of this title and may include such other terms as the Secretary considers appropriate to protect the interests of the United States.

(3) A lease of real property under this subsection may provide that, upon termination of the lease term, the lessee shall have the right of first refusal to acquire the real property covered by the lease if the property is then conveyed under subsection (b).

(4)(A) The Secretary may provide property support services to or for real property leased under this subsection.

(B) To the extent provided in appropriations Acts, any payment made to the Secretary for services provided under this paragraph shall be credited to the appropriation, account, or fund from which the cost of providing the services was paid.

(d) ACQUISITION OF LEASEHOLD INTEREST BY SECRETARY.—(1) The Secretary of the Navy may acquire a leasehold interest in any facility constructed under subsection (f) as consideration for a transaction authorized by this section upon such terms as the Secretary considers appropriate to promote the purpose of this section.

(2) The term of a lease under paragraph (1) may not exceed 10 years, unless the Secretary of Defense approves a term in excess of 10 years for purposes of this section.

(3) A lease under this subsection may provide that, upon termination of the lease term, the United States shall have the right of first refusal to acquire the facility covered by the lease.

(e) REQUIREMENT FOR COMPETITION.—The Secretary of the Navy shall use competitive procedures for purposes of selecting the recipient of real or personal property under subsection (b) and the lessee of real or personal property under subsection (c).

(f) CONSIDERATION.—(1) As consideration for the conveyance of real or personal property under subsection (b), or for the lease of real or personal property under subsection (c), the Secretary of the Navy shall accept cash, real property, personal property, or services, or any combination thereof, in an aggregate amount equal to not less than the fair market value of the real or personal property conveyed or leased.

(2) Subject to subsection (i), the services accepted by the Secretary under paragraph (1) may include the following:

(A) The construction or improvement of facilities at Ford Island.

(B) The restoration or rehabilitation of real property at Ford Island.

(C) The provision of property support services for property or facilities at Ford Island.

(g) NOTICE AND WAIT REQUIREMENTS.—The Secretary of the Navy may not carry out a transaction authorized by this section until—

(1) the Secretary submits to the appropriate committees of Congress a notification of the transaction, including—

(A) a detailed description of the transaction; and

(B) a justification for the transaction specifying the manner in which the transaction will meet the purposes of this section; and

(2) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees or, if earlier, a period of 20 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(h) FORD ISLAND IMPROVEMENT ACCOUNT.—(1) There is established on the books of the Treasury an account to be known as the ''Ford Island Improvement Account''.

(2) There shall be deposited into the account the following amounts:

(A) Amounts authorized and appropriated to the account.

(B) Except as provided in subsection (c)(4)(B), the amount of any cash payment received by the Secretary for a transaction under this section.

(i) USE OF ACCOUNT.—(1) Subject to paragraph (2), to the extent provided in advance in appropriations Acts, funds in the Ford Island Improvement Account may be used as follows:

(A) To carry out or facilitate the carrying out of a transaction authorized by this section.

(B) To carry out improvements of property or facilities at Ford Island.

(C) To obtain property support services for property or facilities at Ford Island.

(2) To extent that the authorities provided under subchapter IV of this chapter are available to the Secretary of the Navy, the Secretary may not use the authorities in this section to acquire, construct, or improve family housing units, military unaccompanied housing units, or ancillary supporting facilities related to military housing.

(3)(A) The Secretary may transfer funds from the Ford Island Improvement Account to the following funds:

(i) The Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of this title.

(ii) The Department of Defense Military Unaccompanied Housing Improvement Fund established by section 2883(a)(2) of this title.

(B) Amounts transferred under subparagraph (A) to a fund referred to in that subparagraph shall be available in accordance with the provisions of section 2883 of this title for activities authorized under subchapter IV of this chapter at Ford Island.

(j) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.—Except as otherwise provided in this section, transactions under this section shall not be subject to the following:

(1) Sections 2667 and 2696 of this title.

(2) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(3) Subchapter II of chapter 5 and sections 541–555 of title 40.

(k) SCORING.—Nothing in this section shall be construed to waive the applicability to any lease entered into under this section of the budget scorekeeping guidelines used to measure compliance with the Balanced Budget and Emergency Deficit Control Act of 1985.

(*l*) PROPERTY SUPPORT SERVICE DEFINED.—In this section, the term 'property support service' means the following:

(1) Any utility service or other service listed in section 2686(a) of this title.

(2) Any other service determined by the Secretary to be a service that supports the operation and maintenance of real property, personal property, or facilities.

(Added Pub. L. 106–65, div. B, title XXVIII, § 2802(a)(1), Oct. 5, 1999, 113 Stat. 845; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(16)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(18), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 111–383, div. B, title XXVIII, § 2803(c), Jan. 7, 2011, 124 Stat. 4459.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (k), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

AMENDMENTS

2011—Subsec. (g)(2). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 20 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2002—Subsec. (j)(3). Pub. L. 107–217 substituted ''Subchapter II of chapter 5 and sections 541–555 of title 40'' for ''Sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484)''.

2001—Subsec. (j)(2). Pub. L. 107–107 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

2000—Subsec. (k). Pub. L. 106–398 inserted ''and'' after ''Balanced Budget''.

[§ 2815. Repealed. Pub. L. 112–81, div. A, title X, § 1061(23)(A), Dec. 31, 2011, 125 Stat. 1584]

Section, added Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2801(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–412; amended Pub. L. 107–314, div. A, title X, § 1062(a)(14), Dec. 2, 2002, 116 Stat. 2650, related to annual evaluation of joint use military construction projects.

SUBCHAPTER II—MILITARY FAMILY HOUSING

Sec.
2821. Requirement for authorization of appropriations for construction and acquisition of military family housing.
2822. Requirement for authorization of number of family housing units.
[2823. Repealed.]
2824. Authorization for acquisition of existing family housing in lieu of construction.
2825. Improvements to family housing units.
2826. Military family housing: local comparability of room patterns and floor areas.
2827. Relocation of military family housing units.
2828. Leasing of military family housing.
2829. Multi-year contracts for supplies and services.
2830. Occupancy of substandard family housing units.
2831. Military family housing management account.
2832. Homeowners assistance program.
2833. Family housing support.
2834. Participation in Department of State housing pools.
2835. Long-term leasing of military family housing to be constructed.
2835a. Use of military family housing constructed under build and lease authority to house other members.
2836. Military housing rental guarantee program.
[2837. Repealed.]
2838. Leasing of military family housing to Secretary of Defense.

AMENDMENTS

2013—Pub. L. 113–66, div. B, title XXVIII, § 2802(a)(2), Dec. 26, 2013, 127 Stat. 1006, struck out item 2837 ''Limited partnerships with private developers of housing''.

2008—Pub. L. 110–417, div. B, title XXVIII, §§ 2803(b), 2804(b), Oct. 14, 2008, 122 Stat. 4720, 4721, added items 2835a and 2838.

2006—Pub. L. 109–364, div. B, title XXVIII, § 2803(b), Oct. 17, 2006, 120 Stat. 2467, struck out item 2823 ''Determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing''.

2000—Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2803(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413, substituted ''Military family housing: local comparability of room patterns and floor areas'' for ''Limitations on space by pay grade'' in item 2826.

1994—Pub. L. 103–337, div. B, title XXVIII, § 2803(b), Oct. 5, 1994, 108 Stat. 3053, added item 2837.

1991—Pub. L. 102–190, div. B, title XXVIII, §§ 2806(a)(2), 2809(a)(2), Dec. 5, 1991, 105 Stat. 1540, 1543, added items 2835 and 2836.

1985—Pub. L. 99–167, title VIII, §§ 804(b)(2), 808(b), Dec. 3, 1985, 99 Stat. 987, 989, added items 2833 and 2834.

§ 2821. Requirement for authorization of appropriations for construction and acquisition of military family housing

(a) Except as provided in subsection (b), funds may not be appropriated for the construction, acquisition, leasing, addition, extension, expansion, alteration, relocation, or operation and maintenance of family housing under the jurisdiction of the Department of Defense unless the appropriation of such funds has been authorized by law.

(b) In addition to the funds authorized to be appropriated by law in any fiscal year for the purposes described in subsection (a), there are authorized to be appropriated such additional sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds appropriated for the purposes described in such subsection.

(c) Amounts authorized by law for construction of military family housing units include amounts for (1) site preparation (including demolition), (2) installation of utilities, (3) ancillary supporting facilities, (4) shades, screens, ranges, refrigerators, and all other equipment and fixtures installed in such units, and (5) construction supervision, inspection, and overhead.

(d) Amounts authorized by law for construction and acquisition of military family housing and facilities include amounts for—

(1) minor construction;

(2) improvements to existing military family housing units and facilities;

(3) relocation of military family housing units under section 2827 of this title; and

(4) architectural and engineering services and construction design.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 99–145, title XIII, § 1303(a)(18), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–167, title VIII, § 804(a), Dec. 3, 1985, 99 Stat. 987.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99–145 substituted ''such subsection'' for ''such paragraph''.

Subsec. (d). Pub. L. 99–167 added subsec. (d).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

REPAIR AND MAINTENANCE OF FAMILY HOUSING UNITS

Pub. L. 114–113, div. J, title I, § 119, Dec. 18, 2015, 129 Stat. 2681, provided that: ''Notwithstanding any other provision of law, funds made available in this title [see Tables for classification] for operation and maintenance of family housing shall be the exclusive source of funds for repair and maintenance of all family housing units, including general or flag officer quarters: *Provided*, That not more than $35,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days prior notification, or 14 days for a notification provided in an electronic medium pursuant to sections 480 and 2883 of title 10, United States Code, to the Committees on Appropriations of both Houses of Congress, except that an after-the-fact notification shall be submitted if the limitation is exceeded solely due to costs associated with environmental remediation that could not be reasonably anticipated at the time of the budget submission: *Provided further*, That the Under Secretary of Defense (Comptroller) is to report annually to the Committees on Appropriations of both Houses of Congress all operation and maintenance expenditures for each individual general or flag officer quarters for the prior fiscal year.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 113–235, div. I, title I, § 121, Dec. 16, 2014, 128 Stat. 2550.

Pub. L. 113–76, div. J, title I, § 121, Jan. 17, 2014, 128 Stat. 445.

Pub. L. 113–6, div. E, title I, § 121, Mar. 26, 2013, 127 Stat. 391.

Pub. L. 112–74, div. H, title I, § 121, Dec. 23, 2011, 125 Stat. 1144.

Pub. L. 111–117, div. E, title I, §123, Dec. 16, 2009, 123 Stat. 3295.
Pub. L. 110–329, div. E, title I, §123, Sept. 30, 2008, 122 Stat. 3700.
Pub. L. 110–161, div. I, title I, §123, Dec. 26, 2007, 121 Stat. 2261.
Pub. L. 109–114, title I, §124, Nov. 30, 2005, 119 Stat. 2380, as amended by Pub. L. 109–148, div. B, title V, §5013, Dec. 30, 2005, 119 Stat. 2815.
Pub. L. 108–324, div. A, §124, Oct. 13, 2004, 118 Stat. 1228.
Pub. L. 108–132, §125, Nov. 22, 2003, 117 Stat. 1382.
Pub. L. 107–249, §127, Oct. 23, 2002, 116 Stat. 1586.
Pub. L. 107–64, §127, Nov. 5, 2001, 115 Stat. 482.
Pub. L. 106–246, div. A, §127, July 13, 2000, 114 Stat. 518.
Pub. L. 106–52, §128, Aug. 17, 1999, 113 Stat. 267.

PILOT PROGRAM FOR MILITARY FAMILY HOUSING

Pub. L. 100–180, div. B, subdiv. 3, title II, §2321, Dec. 4, 1987, 101 Stat. 1218, required Secretary of Defense, using $1,000,000 of funds appropriated pursuant to authorization in subsection (a)(10)(B) of section 2145 of Pub. L. 100–180, to establish and carry out, during fiscal years 1988, 1989, and 1990, a pilot program for purpose of assisting units of general local government to increase amount of affordable family housing available to military personnel; required Secretary, establishing and carrying out such programs, to select at least five units of general local government severely impacted by presence of military bases and personnel; set forth criteria for selection of units of general local government, authority to make grants, cooperative agreements, etc., and uses of available funds; and required Secretary to report to Committees on Armed Services of Senate and House no later than Mar. 15 of 1988, 1989, 1990, and 1991 with respect to activities carried out under this section.

MILITARY HOUSING RENTAL GUARANTEE PROGRAM

Pub. L. 98–115, title VIII, §802, Oct. 11, 1983, 97 Stat. 783, as amended by Pub. L. 98–407, title VIII, §806(b), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, §801(a), Dec. 3, 1985, 99 Stat. 985; Pub. L. 99–661, div. B, title VII, §2713(a), Nov. 14, 1986, 100 Stat. 4042; Pub. L. 100–180, div. B, subdiv. 3, title I, §2307, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–189, div. B, title XXVIII, §2801, Nov. 29, 1989, 103 Stat. 1646; Pub. L. 101–510, div. B, title XXVIII, §2811, Nov. 5, 1990, 104 Stat. 1788, provided for agreements and contracts relating to military housing rental guarantee program, prior to repeal by Pub. L. 102–190, div. B, title XXVIII, §2809(b), (c), Dec. 5, 1991, 105 Stat. 1543, such repeal not to affect the validity of any contract entered into before Dec. 5, 1991, under section 802 of Pub. L. 98–115 as in effect on Dec. 4, 1991. See section 2836 of this title.

FAMILY HOUSING CONSTRUCTED OVERSEAS

Pub. L. 98–115, title VIII, §803, Oct. 11, 1983, 97 Stat. 784, as amended by Pub. L. 98–407, title VIII, §812, Aug. 28, 1984, 98 Stat. 1524; Pub. L. 101–510, div. A, title XIII, §1302(f), Nov. 5, 1990, 104 Stat. 1669, provided that any contract entered into for the construction of military family housing for the Department of Defense in a foreign country was to require the use of housing fabricated in the United States by a United States contractor or, in the case of concrete housing, the use of housing produced in a plant that was fabricated in the United States by a United States company, and for which the materials, fixtures, and equipment used in the construction (other than cement, sand, and aggregates) were manufactured in the United States, prior to repeal by Pub. L. 107–314, div. B, title XXVIII, §2804, Dec. 2, 2002, 116 Stat. 2705.

§ 2822. Requirement for authorization of number of family housing units

(a) Except as otherwise provided in subsection (b) or as otherwise authorized by law, the Secretary concerned may not construct or acquire military family housing units unless the number of units to be constructed or acquired has been specifically authorized by law.

(b) Subsection (a) does not apply to the following:

(1) Housing units acquired under section 404 of the Housing Amendments of 1955 (42 U.S.C. 1594a).

(2) Housing units leased under section 2828 of this title.

(3) Housing units acquired under the Homeowners Assistance Program referred to in section 2832 of this title.

(4) Housing units acquired without consideration.

(5) Replacement housing units constructed under section 2825(c) of this title.

(6) Housing units constructed or provided under section 2869 of this title.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 98–525, title XIV, §1405(44), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 100–180, div. B, subdiv. 3, title I, §2308, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–510, div. A, title XIII, §1301(17), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–25, title VII, §701(j)(9), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. B, title XXVIII, §2802(b), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 108–136, div. B, title XXVIII, §2805(b), Nov. 24, 2003, 117 Stat. 1721.)

AMENDMENTS

2003—Subsec. (b)(6). Pub. L. 108–136 added par. (6).
1992—Subsec. (b)(5). Pub. L. 102–484 added par. (5).
1991—Subsec. (b)(4). Pub. L. 102–25 realigned margin of par. (4).
1990—Subsec. (b)(4). Pub. L. 101–510 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Housing units acquired without consideration, if—

''(A) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed acquisition; and

''(B) a period of 21 days elapses after the notification is received by those committees.''

1987—Subsec. (b)(4). Pub. L. 100–180 added par. (4).
1984—Subsec. (b)(3). Pub. L. 98–525 substituted ''section 2832'' for ''section 2833''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

[§ 2823. Repealed. Pub. L. 109–364, div. B, title XXVIII, § 2803(a), Oct. 17, 2006, 120 Stat. 2467]

Section, added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 105–85, div. A, title X, §1041(b), Nov. 18, 1997, 111 Stat. 1885, related to determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing.

§ 2824. Authorization for acquisition of existing family housing in lieu of construction

(a) In lieu of constructing any family housing units authorized by law to be constructed, the Secretary concerned may acquire sole interest in existing family housing units that are privately owned or that are held by the Department of Housing and Urban Development, except that in foreign countries the Secretary con-

cerned may acquire less than sole interest in existing family housing units.

(b) When authority provided by law to construct military family housing units is used to acquire existing family housing units under subsection (a), the authority includes authority to acquire interests in land.

(c) The net floor area of a family housing unit acquired under the authority of this section may not exceed the applicable limitation specified in section 2826 of this title. The Secretary concerned may waive the limitation set forth in the preceding sentence to family housing units acquired under this section during the five-year period beginning on February 10, 1996.

(d) Family housing units may not be acquired under this section through the exercise of eminent domain authority.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 104–106, div. B, title XXVIII, § 2813, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104–201, div. A, title X, § 1074(a)(17), Sept. 23, 1996, 110 Stat. 2659.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 substituted ''February 10, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106 inserted at end ''The Secretary concerned may waive the limitation set forth in the preceding sentence to family housing units acquired under this section during the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2825. Improvements to family housing units

(a)(1) Authority provided by law to improve existing military family housing units and ancillary family housing support facilities is authority to make alterations, additions, expansions, and extensions.

(2) In this section, the term ''improvement'' includes rehabilitation of a housing unit and major maintenance or repair work to be accomplished concurrently with an improvement project. Such term does not include day-to-day maintenance and repair work.

(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (A) $50,000 multiplied by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (B) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, $60,000 multiplied by such index. The Secretary concerned may waive the limitations contained in the preceding sentence if such Secretary determines that, considering the useful life of the structure to be improved and the useful life of a newly constructed unit and the cost of construction and of operation and maintenance of each kind of unit over its useful life, the improvement will be cost-effective. If the Secretary concerned makes a determination under the preceding sentence with respect to an improvement, the waiver under that sentence with respect to that improvement may take effect only after the Secretary transmits a notice of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective, to the appropriate committees of Congress and a period of 21 days has elapsed after the date on which the notification is received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

(2) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of major maintenance or repair work undertaken in connection with the improvement.

(B) Any cost, other than the cost of activities undertaken beyond a distance of five feet from the unit or units concerned, in connection with—

(i) the furnishing of electricity, gas, water, and sewage disposal;

(ii) the construction or repair of roads, drives, and walks; and

(iii) grading and drainage work.

(3) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall not include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of the installation of communications, security, or antiterrorism equipment required by an occupant of the unit or units to perform duties assigned to the occupant as a member of the armed forces.

(B) The cost of the maintenance or repair of equipment described in subparagraph (A) installed for the purpose specified in such subparagraph.

(4) The limitation contained in the first sentence of paragraph (1) does not apply to a project for the improvement of a family housing unit or units referred to in that sentence if the project (including the amount requested for the project) is identified in the budget materials submitted to Congress by the Secretary of Defense in connection with the submission to Congress of the budget for a fiscal year pursuant to section 1105 of title 31.

(c)(1) The Secretary concerned may construct replacement military family housing units in lieu of improving existing military family housing units if—

(A) the improvement of the existing housing units has been authorized by law; and

(B) the Secretary determines that the improvement project is no longer cost-effective after a review of post-design or bid cost estimates.

(2) The amount that may be expended to construct replacement military family housing units under this subsection may not exceed the

amount that is otherwise available to carry out the previously authorized improvement project.

(d) This section does not apply to projects authorized for restoration or replacement of housing units that have been damaged or destroyed.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 99–661, div. B, title VII, §2702(c), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, §2305, Dec. 4, 1987, 101 Stat. 1215; Pub. L. 101–189, div. B, title XXVIII, §2804, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 101–510, div. B, title XXVIII, §2812, Nov. 5, 1990, 104 Stat. 1788; Pub. L. 102–484, div. B, title XXVIII, §2802(a), Oct. 23, 1992, 106 Stat. 2605; Pub. L. 103–337, div. B, title XXVIII, §2802, Oct. 5, 1994, 108 Stat. 3050; Pub. L. 104–106, div. A, title XV, §1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 104–201, div. B, title XXVIII, §2803, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106–398, §1 [div. B, title XXVIII, §2802], Oct. 30, 2000, 114 Stat. 1654, 1654A–413; Pub. L. 108–136, div. A, title X, §1031(a)(41), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 112–81, div. A, title X, §1061(24), Dec. 31, 2011, 125 Stat. 1584.)

AMENDMENTS

2011—Subsec. (c)(1). Pub. L. 112–81 inserted ''and'' at end of subpar. (A), substituted period for semicolon at end of subpar. (B), and struck out subpars. (C) and (D), which read as follows:

''(C) the Secretary submits to the committees referred to in subsection (b)(1) a notice containing—

''(i) an economic analysis demonstrating that the improvement project would exceed 70 percent of the cost of constructing replacement housing units intended for members of the armed forces in the same pay grade or grades as those members who occupy the existing housing units; and

''(ii) if the replacement housing units are intended for members of the armed forces in a different pay grade or grades, a justification of the need for the replacement housing units based upon the long-term requirements of the armed forces in the location concerned; and

''(D) a period of 21 days elapses after the date on which the Secretary submits the notice required by subparagraph (C) or, if over sooner, a period of 14 days elapses after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.''

2003—Subsec. (b)(1). Pub. L. 108–136, §1031(a)(41)(A), struck out ''(i)'' before ''such Secretary determines'' and substituted period and last sentence for '', and (ii) a period of 21 days elapses after the date on which the appropriate committees of Congress receive a notice from such Secretary of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.''.

Subsec. (c)(1)(D). Pub. L. 108–136, §1031(a)(41)(B), inserted before period at end ''or, if over sooner, a period of 14 days elapses after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title''.

2000—Subsec. (b)(3), (4). Pub. L. 106–398 added par. (3) and redesignated former par. (3) as (4).

1996—Subsec. (a)(2). Pub. L. 104–201, §2803(a), inserted ''major'' before ''maintenance or repair'' and ''Such term does not include day-to-day maintenance and repair work.'' at end.

Subsec. (b)(1). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives''.

Subsec. (b)(2). Pub. L. 104–201, §2803(b), added par. (2) and struck out former par. (2) which read as follows: ''In determining the applicability of the limitation contained in paragraph (1), there shall be included as part of the cost of the improvement the cost of repairs undertaken in connection with the improvement and any cost in connection with (A) the furnishing of electricity, gas, water and sewage disposal, (B) the construction or repair of roads and walks, and (C) grading and drainage work.''

1994—Subsec. (b)(3). Pub. L. 103–337 added par. (3).

1992—Subsecs. (c), (d). Pub. L. 102–484 added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsec. (b)(1). Pub. L. 101–510 substituted ''$50,000'' for ''$40,000'' in cl. (A) and inserted at end sentence authorizing Secretary concerned to waive limitations contained in preceding sentence.

1989—Subsec. (b)(1). Pub. L. 101–189 inserted ''(A)'' after ''will exceed'' and added cl. (B).

1987—Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

Subsec. (b)(1). Pub. L. 100–180 substituted ''$40,000'' for ''$30,000''.

1986—Subsec. (b)(1). Pub. L. 99–661 substituted ''$30,000'' for ''an amount specified by law for such purpose''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

PROVISION OF ADEQUATE STORAGE SPACE TO SECURE PERSONAL PROPERTY OUTSIDE OF ASSIGNED MILITARY FAMILY HOUSING UNIT

Pub. L. 109–364, div. A, title III, §362, Oct. 17, 2006, 120 Stat. 2167, provided that: ''The Secretary of a military department shall ensure that a member of the Armed Forces under the jurisdiction of the Secretary who occupies a unit of military family housing is provided with adequate storage space to secure personal property that the member is unable to secure within the unit whenever—

''(1) the member is assigned to duty in an area for which special pay under section 310 of title 37, United States Code, is available and the assignment is pursuant to orders specifying an assignment of 180 days or more; and

''(2) the dependents of the member who otherwise occupy the unit of military family housing are absent from the unit for more than 30 consecutive days during the period of the assignment of the member.''

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of $30,000 per unit for an improvement project for family housing units under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(3) of Pub. L. 97–214, set out as a note under section 2828 of this title.

§ 2826. Military family housing: local comparability of room patterns and floor areas

(a) LOCAL COMPARABILITY.—In the construction, acquisition, and improvement of military family housing, the Secretary concerned shall ensure that the room patterns and floor areas of military family housing in a particular locality (as designated by the Secretary concerned for purposes of this section) are similar to room patterns and floor areas of similar housing in the private sector in that locality.

(b) REQUESTS FOR AUTHORITY FOR MILITARY FAMILY HOUSING.—(1) In submitting to Congress a request for authority to carry out the construction, acquisition, or improvement of military family housing, the Secretary concerned

shall include in the request information on the net floor area of each unit of military family housing to be constructed, acquired, or improved under the authority.

(2) In this subsection, the term ''net floor area'', in the case of a military family housing unit, means the total number of square feet of the floor space inside the exterior walls of the unit, excluding the floor area of an unfinished basement, an unfinished attic, a utility space, a garage, a carport, an open or insect-screened porch, a stairwell, and any space used for a solar-energy system.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102–190, div. B, title XXVIII, § 2808, Dec. 5, 1991, 105 Stat. 1540; Pub. L. 104–106, div. B, title XXVIII, §§ 2814, 2815, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104–201, div. A, title X, § 1074(a)(17), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2803(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413.)

AMENDMENTS

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (i) which limited the net floor area allowed in the construction, acquisition, and improvement of military family housing units.

1996—Subsec. (e). Pub. L. 104–106, § 2814, struck out at end ''The authority provided by this subsection shall expire on September 30, 1994.''

Subsec. (i). Pub. L. 104–106, § 2815, added subsec. (i).

Subsec. (i)(1). Pub. L. 104–201 substituted ''February 10, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

1991—Subsecs. (d) to (h). Pub. L. 102–190 added subsecs. (d) and (e) and redesignated former subsecs. (d) to (f) as (f) to (h), respectively.

1987—Subsec. (f). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2803(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2001, but the Secretary of Defense shall anticipate the requirements of section 2826 of title 10, United States Code, as added by such subsection, when preparing the budget request for new construction, acquisition, or improvement of military family housing for fiscal year 2002.

''(2) Section 2826 of title 10, United States Code, as in effect on September 30, 2001, shall continue to apply with respect to the construction, acquisition, or improvement of military family housing commenced on or before that date.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2827. Relocation of military family housing units

(a) Subject to subsection (b), the Secretary concerned may relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

(b) A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary concerned has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 160; amended Pub. L. 108–136, div. A, title X, § 1031(a)(42), Nov. 24, 2003, 117 Stat. 1602.)

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–136 inserted before period at end ''or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

CONVEYANCE TO INDIAN TRIBES OF RELOCATABLE MILITARY HOUSING UNITS AT MILITARY INSTALLATIONS IN THE UNITED STATES

Pub. L. 114–92, div. B, title XXVIII, § 2805, Nov. 25, 2015, 129 Stat. 1171, provided that:

''(a) DEFINITIONS.—In this section:

''(1) EXECUTIVE DIRECTOR.—The term 'Executive Director' means the Executive Director of Walking Shield, Inc.

''(2) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe included on the list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

''(b) REQUESTS FOR CONVEYANCE.—

''(1) IN GENERAL.—The Executive Director may submit to the Secretary of the military department concerned, on behalf of any Indian tribe, a request for conveyance of any relocatable military housing unit located at a military installation in the United States.

''(2) CONFLICTS.—The Executive Director shall resolve any conflict among requests of Indian tribes for housing units described in paragraph (1) before submitting a request to the Secretary of the military department concerned under this subsection.

''(c) CONVEYANCE BY A SECRETARY.—Notwithstanding any other provision of law, on receipt of a request under subsection (b)(1), the Secretary of the military department concerned may convey to the Indian tribe that is the subject of the request, at no cost to such military department and without consideration, any relocatable military housing unit described in subsection (b)(1) that, as determined by such Secretary, is in excess of the needs of the military.''

§ 2828. Leasing of military family housing

(a)(1) Subject to paragraph (2), the Secretary of the military department concerned may lease housing facilities at or near a military installation in the United States, Puerto Rico, or Guam for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with fair market rental charge, as family housing to civilian employees of the Department of Defense stationed at such installation.

(2) A lease may only be made under paragraph (1) if the Secretary concerned finds that there is

a shortage of adequate housing at or near such military installation and that—

(A) the requirement for such housing is temporary;

(B) leasing would be more cost effective than construction or acquisition of new housing;

(C) family housing is required for personnel attending service school academic courses on permanent change of station orders;

(D) construction of family housing at such installation has been authorized by law but is not yet completed; or

(E) a military construction authorization bill pending in Congress includes a request for authorization of construction of family housing at such installation.

(b)(1) Not more than 10,000 family housing units may be leased at any one time under subsection (a).

(2) Except as provided in paragraphs (3), (4), and (7), expenditures for the rental of housing units under subsection (a) (including the cost of utilities, maintenance, and operation) may not exceed $12,000 per unit per year, as adjusted from time to time under paragraph (5).

(3) Not more than 500 housing units may be leased under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed $14,000 per unit per year, as adjusted from time to time under paragraph (5).

(4)(A) The Secretary of the Army may lease not more than eight housing units in the vicinity of Miami, Florida, for key and essential personnel, as designated by the Secretary, for the United States Southern Command for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation, including security enhancements) exceeds the expenditure limitations in paragraphs (2) and (3).

(B) The amount of all leases under this paragraph may not exceed $280,000 per year, as adjusted from time to time under paragraph (6).

(C) The term of any lease under this paragraph may not exceed 5 years.

(D) Until September 30, 2008, the Secretary of the Army may authorize family members of a member of the armed forces on active duty who is assigned to a family-member-restricted area and who, before such assignment, was occupying a housing unit leased under this paragraph, to remain in the leased housing unit until the member completes the assignment. Costs incurred for the leased housing unit during the assignment shall be included in the costs subject to the limitation under subparagraph (B).

(5) At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for leases under paragraphs (2), (3), and (7) for the previous fiscal year by the percentage (if any) by which the national average monthly cost of housing (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the national average monthly cost of housing (as so calculated) for the fiscal year before such preceding fiscal year.

(6) At the beginning of each fiscal year, the Secretary of the Army shall adjust the maximum aggregate amount for leases under paragraph (4) for the previous fiscal year by the percentage (if any) by which the annual average cost of housing for the Miami Military Housing Area (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the annual average cost of housing for the Miami Military Housing Area (as so calculated) for the fiscal year before such preceding fiscal year.

(7)(A) Not more than 600 housing units may be leased by the Secretary of the Army under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed $35,000 per unit per year, as adjusted from time to time under paragraph (5).

(B) The maximum lease amount provided in subparagraph (A) shall apply only to Army family housing in areas designated by the Secretary of the Army.

(C) The term of a lease under subparagraph (A) may not exceed 2 years.

(c) The Secretary concerned may lease housing facilities in foreign countries for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with or without rental charge, as family housing to civilian employees of the Department of Defense—

(1) under circumstances specified in clause (A), (B), (D), or (E) of subsection (a)(2);

(2) for incumbents of special command positions (as determined by the Secretary of Defense);

(3) in countries where excessive costs of housing or other lease terms would cause undue hardship on Department of Defense personnel; and

(4) in countries that prohibit leases by individual military or civilian personnel of the United States.

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of 10 years, or 15 years in the case of leases in Korea, and the costs of such leases for any year may be paid out of annual appropriations for that year.

(2) The Secretary may enter into an agreement under this paragraph in connection with a lease entered into under subsection (c). Such an agreement—

(A) shall be for the purpose of compensating a developer for any costs resulting from the termination of the lease during the construction of the housing units that are to be occupied pursuant to the lease;

(B) may be for a period not in excess of three years; and

(C) shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

(e)(1) Expenditures for the rental of family housing in foreign countries (including the costs

of utilities, maintenance, and operation) may not exceed $20,000 per unit per year, except that 450 units may be leased in foreign countries for not more than $25,000 per unit per year. These maximum lease amounts may be waived by the Secretary concerned with respect to not more than a total of 350 such units that are leased for incumbents of special positions or for personnel assigned to Defense Attache Offices or that are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

(2) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretaries of the military departments may lease not more than 3,300 units of family housing in Italy, subject to that maximum lease amount.

(3) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 1,175 units of family housing in Korea subject to that maximum lease amount.

(4) In addition to the units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 2,800 units of family housing in Korea subject to a maximum lease amount of $35,000 per unit per year.

(5) The Secretary concerned shall adjust the maximum lease amounts provided for under paragraphs (1), (2), (3), and (4) for the previous fiscal year—

(A) for foreign currency fluctuations from October 1, 1987; and

(B) at the beginning of each fiscal year, by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.

(6) The maximum number of family housing units that may be leased in foreign countries under this section at any one time is 55,775.

(f) A lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds $1,000,000 may not be made under this section until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed lease, and (2) a period of 21 days elapses after the notification is received by those committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(g) Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 161; amended Pub. L. 97–321, title VIII, §805(b)(2), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 98–115, title VIII, §801, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98–407, title VIII, §806(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, §§801(b), 803, 805, Dec. 3, 1985, 99 Stat. 985, 987, 988; Pub. L. 99–661, div. B, title VII, §§2702(d)–(g), 2713(b), 2714, Nov. 14, 1986, 100 Stat. 4040–4042; Pub. L. 100–26, §7(j)(8), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. B, subdiv. 3, title I, §§2306(a), 2309, 2311, Dec. 4, 1987, 101 Stat. 1216, 1217; Pub. L. 100–370, §1(*l*)(2), July 19, 1988, 102 Stat. 849; Pub. L. 100–456, div. B, title XXVIII, §2802, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, §§2802, 2805, Nov. 29, 1989, 103 Stat. 1646, 1647; Pub. L. 102–190, div. B, title XXVIII, §2806(b), Dec. 5, 1991, 105 Stat. 1540; Pub. L. 103–35, title II, §201(d)(7), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. B, title XXVIII, §2801, Nov. 30, 1993, 107 Stat. 1883; Pub. L. 104–106, div. B, title XXVIII, §2816, Feb. 10, 1996, 110 Stat. 553; Pub. L. 105–85, div. B, title XXVIII, §2803, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 105–261, div. B, title XXVIII, §2802, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–398, §1 [div. B, title XXVIII, §2804], Oct. 30, 2000, 114 Stat. 1654, 1654A–414; Pub. L. 107–314, div. A, title X, §1062(a)(15), div. B, title XXVIII, §2801, Dec. 2, 2002, 116 Stat. 2650, 2702; Pub. L. 108–136, div. B, title XXVIII, §§2803, 2804(a), Nov. 24, 2003, 117 Stat. 1719; Pub. L. 109–163, div. B, title XXVIII, §2802, Jan. 6, 2006, 119 Stat. 3505; Pub. L. 109–364, div. B, title XXVIII, §2804, Oct. 17, 2006, 120 Stat. 2467; Pub. L. 110–181, div. B, title XXVIII, §2806(a)–(c), Jan. 28, 2008, 122 Stat. 540, 541; Pub. L. 110–417, div. B, title XXVIII, §2802, Oct. 14, 2008, 122 Stat. 4719; Pub. L. 111–383, div. B, title XXVIII, §2803(d), Jan. 7, 2011, 124 Stat. 4459.)

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (h) of this section and section 2673 of this title are based on Pub. L. 98–212, title VII, §707, Dec. 8, 1983, 97 Stat. 1438.

AMENDMENTS

2011—Subsec. (f)(2). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2008—Subsec. (b)(2). Pub. L. 110–181, §2806(a)(1), substituted ''paragraphs (3), (4), and (7)'' for ''paragraphs (3) and (4)''.

Subsec. (b)(5). Pub. L. 110–181, §2806(a)(2), substituted ''paragraphs (2), (3), and (7)'' for ''paragraphs (2) and (3)''.

Subsec. (b)(7). Pub. L. 110–181, §2806(a)(3), added par. (7).

Subsec. (b)(7)(A). Pub. L. 110–417 substituted ''$35,000 per unit'' for ''$18,620 per unit''.

Subsec. (e)(2). Pub. L. 110–181, §2806(b), substituted ''the Secretaries of the military departments may lease not more than 3,300 units of family housing in Italy'' for ''the Secretary of the Navy may lease not more than 2,800 units of family housing in Italy, and the Secretary of the Army may lease not more than 500 units of family housing in Italy''.

Subsec. (f). Pub. L. 110–181, §2806(c), substituted ''$1,000,000'' for ''$500,000''.

2006—Subsec. (b)(4)(D). Pub. L. 109–364 added subpar. (D).

Subsec. (e)(4). Pub. L. 109–163 substituted ''2,800'' for ''2,400''.

2003—Subsec. (d)(1). Pub. L. 108–136, §2804(a), substituted ''10 years, or 15 years in the case of leases in Korea,'' for ''ten years,''.

Subsec. (e)(2). Pub. L. 108–136, § 2803, substituted ''2,800'' for ''2,000''.

2002—Subsec. (b)(2). Pub. L. 107–314, § 1062(a)(15), inserted ''time'' after ''from time to''.

Subsec. (e)(3). Pub. L. 107–314, § 2801(a), substituted ''1,175 units'' for ''800 units''.

Subsec. (e)(4). Pub. L. 107–314, § 2801(b)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 107–314, § 2801(b)(1), (3), redesignated par. (4) as (5) and substituted ''(3), and (4)'' for ''and (3)'' in introductory provisions. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 107–314, § 2801(b)(1), (4), redesignated par. (5) as (6) and substituted ''55,775'' for ''53,000''.

2000—Subsec. (b)(2). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2804(c)(1)], inserted '', as adjusted from time to under paragraph (5)'' after ''per year''.

Subsec. (b)(3). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2804(c)(2)], substituted ''the maximum amount per unit per year in effect under paragraph (2) but does not exceed $14,000 per unit per year, as adjusted from time to time under paragraph (5)'' for ''$12,000 per unit per year but does not exceed $14,000 per unit per year''.

Subsec. (b)(4). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2804(a)], designated existing provisions as subpar. (A), struck out last sentence which read as follows: ''The total amount for all leases under this paragraph may not exceed $280,000 per year, and no lease on any individual housing unit may exceed $60,000 per year.'', and added subpars. (B) and (C).

Subsec. (b)(5), (6). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2804(b)], added pars. (5) and (6) and struck out former par. (5) which read as follows: ''At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for under paragraphs (2), (3), and (4) for the previous fiscal year by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.''

1998—Subsec. (e)(2). Pub. L. 105–261, § 2802(a)(1), inserted '', and the Secretary of the Army may lease not more than 500 units of family housing in Italy,'' after ''family housing in Italy''.

Subsec. (e)(3). Pub. L. 105–261, § 2802(a)(3), added par. (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 105–261, § 2802(b), substituted '', (2), and (3)'' for ''and (2)''.

Pub. L. 105–261, § 2802(a)(2), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 105–261, § 2802(a)(2), redesignated par. (4) as (5).

1997—Subsec. (b)(2). Pub. L. 105–85, § 2803(a)(1), substituted ''paragraphs (3) and (4)'' for ''paragraph (3)''.

Subsec. (b)(4). Pub. L. 105–85, § 2803(a)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 105–85, § 2803(b), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Pub. L. 105–85, § 2803(a)(2), redesignated par. (4) as (5).

1996—Subsec. (e)(1). Pub. L. 104–106, § 2816(1), substituted ''450 units'' for ''300 units'' in first sentence and ''350 such units'' for ''220 such units'' in second sentence.

Subsec. (e)(2). Pub. L. 104–106, § 2816(2), substituted ''450 units'' for ''300 units''.

1993—Subsec. (b)(2), (3). Pub. L. 103–35 substituted ''per year'' for ''per annum'' in par. (2) and in two places in par. (3).

Subsec. (b)(4). Pub. L. 103–160, § 2801(a), added par. (4).

Subsec. (e)(1). Pub. L. 103–160, § 2801(b)(1), (2), substituted '', except that 300 units may be leased in foreign countries for not more than $25,000 per unit per year'' for ''as adjusted for foreign currency fluctuation from October 1, 1987'' in first sentence and ''These maximum lease amounts'' for ''That maximum lease amount'' in second sentence.

Pub. L. 103–35 substituted ''per year'' for ''per annum''.

Subsec. (e)(2) to (4). Pub. L. 103–160, § 2801(b)(3), (4), added pars. (2) and (3) and redesignated former par. (2) as (4).

1991—Subsecs. (g), (h). Pub. L. 102–190 redesignated subsec. (h) as (g) and struck out former subsec. (g) which authorized contracts for lease of family housing units on or near military installations at which there is a validated deficit in family housing. See section 2835 of this title.

1989—Subsec. (b)(2). Pub. L. 101–189, § 2802(1), substituted ''$12,000'' for ''$10,000''.

Subsec. (b)(3). Pub. L. 101–189, § 2802(2), substituted ''Not'' for ''(A) Except as provided in subparagraph (B), not'', ''$12,000'' for ''$10,000'', and ''$14,000'' for ''$12,000'' and struck out subpar. (B) which read as follows: ''During fiscal years 1986 and 1987, the number of housing units that may be leased pursuant to the provisions of subparagraph (A) may be increased by 500 units for each such fiscal year. The Secretary concerned shall provide written notification to the Committees on Armed Services of the Senate and House of Representatives concerning the location, purpose, and cost of the additional units permitted by this subparagraph. Such notification shall be made periodically as the leases are entered into.''

Subsec. (e)(1). Pub. L. 101–189, § 2802(3), inserted ''as adjusted for foreign currency fluctuation from October 1, 1987'' after ''$20,000 per unit per annum''.

Subsec. (e)(2). Pub. L. 101–189, § 2802(4), substituted ''53,000'' for ''38,000''.

Subsec. (g)(7). Pub. L. 101–189, § 2805(1), added par. (7) and struck out former par. (7) which provided that this subsection could only be implemented by a pilot program, and that in carrying out such program, the Secretary of each military department or the Secretary of Transportation with respect to the Coast Guard, could not enter into more than two contracts under this subsection, and any such contract could not be for more than 300 family housing units.

Subsec. (g)(8). Pub. L. 101–189, § 2805, redesignated par. (9) as (8), substituted ''1991'' for ''1989'', and struck out former par. (8) which authorized the Secretaries of the military departments and the Secretary of Transportation to enter into contracts for family housing units in addition to those authorized in par. (7).

Subsec. (g)(9), (10). Pub. L. 101–189, § 2805(2), redesignated par. (10) as (9). Former par. (9) redesignated (8).

1988—Subsec. (e)(2). Pub. L. 100–456 substituted ''38,000'' for ''36,000''.

Subsec. (h). Pub. L. 100–370 added subsec. (h).

1987—Subsec. (a)(1). Pub. L. 100–26 substituted ''armed forces'' for ''Armed Forces''.

Subsec. (b)(2). Pub. L. 100–180, § 2309(b)(1), inserted ''per unit per annum'' after ''$10,000''.

Subsec. (b)(3)(A). Pub. L. 100–180, § 2309(b)(2), substituted ''$10,000 per unit per annum but does not exceed $12,000 per unit per annum'' for ''$10,000 but does not exceed $12,000''.

Subsec. (c). Pub. L. 100–26 substituted ''armed forces'' for ''Armed Forces''.

Subsec. (e)(1). Pub. L. 100–180, § 2309(a)(1), substituted ''$20,000 per unit per annum'' for ''$16,800''.

Subsec. (e)(2). Pub. L. 100–180, § 2309(a)(2), substituted ''36,000'' for ''32,000''.

Subsec. (f). Pub. L. 100–180, § 2311, substituted ''$500,000'' for ''$250,000''.

Subsec. (g)(1). Pub. L. 100–180, § 2306(a)(1), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''military department'' and ''or rehabilitated to residential use'' after ''constructed''.

Subsec. (g)(7)(A). Pub. L. 100–180, § 2306(a)(2), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''military department''.

Subsec. (g)(8)(C). Pub. L. 100–180, § 2306(a)(3), added subpar. (C).

Subsec. (g)(9). Pub. L. 100–180, § 2306(a)(4), substituted ''1989'' for ''1988''.

1986—Subsec. (b)(2). Pub. L. 99–661, § 2702(d)(1), substituted ''$10,000'' for ''the amount specified by law as the maximum annual domestic family housing unit lease amount''.

Subsec. (b)(3)(A). Pub. L. 99–661, § 2702(d)(2), substituted ''$10,000 but does not exceed $12,000'' for ''the maximum annual domestic family housing unit lease amount but does not exceed 120 percent of that amount''.

Subsec. (e)(1). Pub. L. 99–661, § 2714, substituted ''220'' for ''200''.

Pub. L. 99–661, § 2702(e), substituted ''$16,800'' for ''the amount specified by law as the maximum annual foreign family housing unit lease amount''.

Subsec. (e)(2). Pub. L. 99–661, § 2702(f), substituted ''is 32,000'' for ''shall be specified by law''.

Subsec. (f). Pub. L. 99–661, § 2702(g), substituted ''$250,000'' for ''the amount specified by law for such purpose''.

Subsec. (g)(8)(B). Pub. L. 99–661, § 2713(b)(1), substituted ''1,600'' for ''600''.

Subsec. (g)(9). Pub. L. 99–661, § 2713(b)(2), substituted ''September 30, 1988'' for ''September 30, 1986''.

Subsec. (g)(10). Pub. L. 99–661, § 2713(b)(3), added par. (10).

1985—Subsec. (b)(3). Pub. L. 99–167, § 805, designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), not'' for ''Not'', and added subpar. (B).

Subsec. (d). Pub. L. 99–167, § 803, designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(8). Pub. L. 99–167, § 801(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(9). Pub. L. 99–167, § 801(b)(1), substituted ''September 30, 1986'' for ''October 1, 1985''.

1984—Subsec. (g)(8), (9). Pub. L. 98–407 added par. (8) and redesignated former par. (8) as (9).

1983—Subsec. (g). Pub. L. 98–115 added subsec. (g).

1982—Subsec. (e)(1). Pub. L. 97–321 inserted ''the'' after ''may be waived by'' in second sentence.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. B, title XXVIII, § 2806(c), Dec. 5, 1991, 105 Stat. 1540, provided that: ''Section 2835 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b)(1) [amending this section] shall not affect the validity of any contract entered into before that date under section 2828(g) of such title, as in effect on the day before that date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–407, title VIII, § 806(c), Aug. 28, 1984, 98 Stat. 1521, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 2821 of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2829. Multi-year contracts for supplies and services

The Secretary concerned may make contracts for periods of up to four years for supplies and services for the management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2830. Occupancy of substandard family housing units

(a)(1) A member of the uniformed services with dependents may, without loss of the member's basic allowance for housing under section 403 of title 37, occupy a substandard family housing unit under the jurisdiction of the Secretary concerned.

(2) Occupancy of a family housing unit under paragraph (1) shall be subject to a charge against the member's basic allowance for housing in the amount of the fair rental value of the housing unit. However, such a charge may not be made in an amount in excess of 75 percent of the amount of such allowance.

(b)(1) The Secretary concerned may lease substandard family housing units to members of any of the uniformed services for occupancy by such members.

(2) The authority to enter into leases under paragraph (1) shall be exercised—

(A) in the case of a lease by the Secretary of a military department, subject to regulations prescribed by the Secretary of Defense; and

(B) in the case of a lease by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, subject to regulations prescribed by that Secretary.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 99–348, title III, § 304(a)(4), July 1, 1986, 100 Stat. 703; Pub. L. 100–180, div. A, title VI, § 632(a), Dec. 4, 1987, 101 Stat. 1105; Pub. L. 105–85, div. A, title VI, § 603(d)(2)(B), Nov. 18, 1997, 111 Stat. 1782; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (b)(2)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (a)(1). Pub. L. 105–85, § 603(d)(2)(B)(i), substituted ''basic allowance for housing under section 403 of title 37'' for ''basic allowance for quarters''.

Subsec. (a)(2). Pub. L. 105–85, § 603(d)(2)(B)(ii), substituted ''basic allowance for housing'' for ''basic allowance for quarters''.

1987—Subsec. (a)(1). Pub. L. 100–180, § 632(a)(1), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (b). Pub. L. 100–180, § 632(a)(2), (3), designated existing provisions as par. (1), substituted ''The Secretary concerned'' for ''Subject to regulations prescribed by the Secretary of Defense, the Secretary of a military department'', and added par. (2).

1986—Subsec. (c). Pub. L. 99–348 struck out subsec. (c) which defined ''uniformed services'' in this section to mean the armed forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration. See section 101 of this title.

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.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note

under section 5561 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2831. Military family housing management account

(a) ESTABLISHMENT.—There is on the books of the Treasury an account known as the Department of Defense Military Family Housing Management Account (hereinafter in this section referred to as the ''account''). The account shall be used for the management and administration of funds appropriated or otherwise made available to the Department of Defense for military family housing programs.

(b) CREDITS TO ACCOUNT.—The account shall be administered as a single account. There shall be transferred into the account—

(1) appropriations made for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operation and maintenance, and disposal of military family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c)[1] of the National Housing Act (12 U.S.C. 1715m(c));

(2) proceeds from the rental of family housing and mobile home facilities under the control of a military department, reimbursements from the occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the account; and

(3) proceeds of the handling and the disposal of family housing of a military department (including related land and improvements), whether carried out by a military department or any other Federal agency, but less those expenses payable pursuant to section 572(a) of title 40.

(c) AVAILABILITY OF AMOUNTS IN ACCOUNT.—Amounts in the account shall remain available until spent.

(d) USE OF ACCOUNT.—The Secretary concerned may make obligations against the account, in such amounts as may be specified from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b).

(e) REPORTS ON GENERAL OFFICERS AND FLAG OFFICERS QUARTERS.—(1) As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall submit a report—

(A) identifying each family housing unit used, or intended for use, as quarters for a general officer or flag officer for which the total operation, maintenance, and repair costs for the unit are anticipated to exceed $35,000 in the next fiscal year;

(B) for each family housing unit identified under subparagraph (A), specifying the total of such anticipated operation, maintenance, and repair costs for the unit;

(C) identifying each family housing unit in excess of 6,000 square feet used, or intended for use, as quarters for a general officer or flag officer;

(D) for each family housing unit identified under subparagraph (C), specifying any alternative and more efficient use to which the unit could be converted (which would include any costs necessary to convert the unit) and containing an explanation of the reasons why the unit is not being converted to the alternative use; and

(E) for each family housing unit identified under subparagraph (C) for which costs under subparagraph (A) or new construction costs are anticipated to exceed $100,000 in the next fiscal year, specifying any alternative use to which the unit could be converted (which would include any costs necessary to convert the unit) and an estimate of the costs to demolish and rebuild the unit to private sector standards.

(2) Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report specifying, for each family housing unit used as quarters for a general officer or flag officer at any time during that fiscal year, the total expenditures for operation and maintenance, utilities, lease, and repairs of the unit during that fiscal year.

(f) NOTICE AND WAIT REQUIREMENT.—(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may not carry out a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project will or may result in the total operation, maintenance, and repair costs for the unit for the fiscal year to exceed $35,000, until—

(A) the Secretary concerned submits to the congressional defense committees, in writing, a justification of the need for the maintenance or repair project and an estimate of the cost of the project; and

(B) a period of 21 days has expired following the date on which the justification and estimate are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and estimate are provided in an electronic medium pursuant to section 480 of this title.

(2) The project justification and cost estimate required by paragraph (1)(A) may be submitted after the commencement of a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project is a necessary environmental remediation project for the unit or is necessary for occupant safety or security, and the need for the project arose after the submis-

[1] See References in Text note below.

sion of the most recent report under subsection (e).

(3) Paragraph (1) shall not apply in the case of a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the unit was identified in the most recent report submitted under subsection (e) and the cost of the maintenance or repair project was included in the total of anticipated operation, maintenance, and repair costs for the unit specified in the report.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 107–217, § 3(b)(19), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–375, div. B, title XXVIII, § 2802(a), (b), Oct. 28, 2004, 118 Stat. 2119, 2120; Pub. L. 109–364, div. A, title X, § 1071(a)(26), div. B, title XXVIII, § 2805, Oct. 17, 2006, 120 Stat. 2399, 2467.)

REFERENCES IN TEXT

Section 222(c) of the National Housing Act (12 U.S.C. 1715m(c)), referred to in subsec. (b)(1), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(5), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

2006—Subsecs. (a) to (d). Pub. L. 109–364, § 2805(b)(1)–(4), inserted subsec. headings.

Subsec. (e). Pub. L. 109–364, § 2805(b)(5), struck out ''Cost of'' before ''General Officers'' in heading.

Subsec. (e)(1)(B). Pub. L. 109–364, § 2805(a)(2)(A), substituted ''identified under subparagraph (A)'' for ''so identified''.

Subsec. (e)(1)(C) to (E). Pub. L. 109–364, § 2805(a)(1), (2)(B), (3), added subpars. (C) to (E).

Subsec. (f)(2). Pub. L. 109–364, § 1071(a)(26), substituted ''environmental'' for ''enviromental''.

2004—Subsecs. (e), (f). Pub. L. 108–375 added subsecs. (e) and (f).

2002—Subsec. (b)(3). Pub. L. 107–217 substituted ''section 572(a) of title 40'' for ''section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b))''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2832. Homeowners assistance program

The Secretary of Defense may exercise the authority provided in section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 101–189, div. B, title XXVIII, § 2831(a), Nov. 29, 1989, 103 Stat. 1660; Pub. L. 104–106, div. A, title XV, § 1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 107–107, div. A, title X, § 1048(e)(11), Dec. 28, 2001, 115 Stat. 1228.)

AMENDMENTS

2001—Pub. L. 107–107 struck out ''(a)'' before ''The Secretary of Defense'' and struck out subsec. (b) which read as follows:

''(b)(1) Subject to paragraph (2) and notwithstanding subsection (i) of section 1013 of the Act referred to in subsection (a)—

''(A) the Secretary of Defense may transfer not more than $31,000,000 from the Department of Defense Base Closure Account, established by section 207 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627), to the fund established pursuant to subsection (d) of such section 1013 for use as part of such fund; and

''(B) any funds so transferred shall be available for obligation and expenditure for the same purposes that funds appropriated to such fund are available, except that such funds may not be obligated after September 30, 1991.

''(2) Amounts may be transferred under paragraph (1) only after the date on which the appropriate committees of Congress receive from the Secretary written notice of, and justification for, the transfer.''

1996—Subsec. (b)(2). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives''.

1989—Pub. L. 101–189 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. B, title XXVIII, § 2831(b), Nov. 29, 1989, 103 Stat. 1660, provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to funds appropriated or transferred to, or otherwise deposited in, the Department of Defense Base Closure Account for, or during, fiscal years beginning after September 30, 1989.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2833. Family housing support

Amounts authorized by law for support of military family housing include amounts for—

(1) operating expenses;

(2) leasing expenses;

(3) maintenance of real property expenses;

(4) payments of principal and interest on mortgage debts incurred; and

(5) payments of mortgage insurance premiums authorized under section 222[1] of the National Housing Act (12 U.S.C. 1715m).

(Added Pub. L. 99–167, title VIII, § 804(b)(1), Dec. 3, 1985, 99 Stat. 987.)

REFERENCES IN TEXT

Section 222 of the National Housing Act (12 U.S.C. 1715m), referred to in par. (5), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(5), July 30, 2008, 122 Stat. 2835.

§ 2834. Participation in Department of State housing pools

(a) The Secretary concerned may enter into an agreement with the Secretary of State under which the Secretary of State agrees to provide housing and related services for personnel under the jurisdiction of the Secretary concerned who are assigned to duty in a foreign country if the Secretary concerned determines—

(1) that there is a shortage of adequate housing in the area of the foreign country in which such personnel are assigned to duty; and

(2) that participation in the Department of State housing pool is the most cost-effective means of providing housing for such personnel.

The Secretary concerned shall reimburse the Secretary of State, as provided in the agreement, for housing and related services furnished personnel under the jurisdiction of the Secretary concerned.

[1] See References in Text note below.

(b) The maximum lease amounts specified in section 2828(e)(1) of this title for the rental of family housing in foreign countries shall not apply to housing made available to the Department of Defense under this section. To the extent that the lease amount for units of housing made available under this subsection exceeds such maximum lease amounts, such units shall not be counted in applying the limitation contained in such section on the number of units of family housing for which the Secretary concerned may waive such maximum lease amounts.

(Added Pub. L. 99–167, title VIII, § 808(a), Dec. 3, 1985, 99 Stat. 989; amended Pub. L. 101–510, div. A, title XIII, § 1301(18), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103–160, div. B, title XXVIII, § 2806, Nov. 30, 1993, 107 Stat. 1887.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In computing the number of leases for which the maximum lease amount may be waived by the Secretary concerned under the second sentence of section 2828(e)(1) of this title, housing made available to the Department of Defense under this section shall be included.''

1990—Subsecs. (b), (c). Pub. L. 101–510 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Agreements entered into with the Secretary of State under this section may not be executed until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed agreement, and (2) a period of 21 days has elapsed after the day on which the notification is received by the committees.''

§ 2835. Long-term leasing of military family housing to be constructed

(a) BUILD AND LEASE AUTHORIZED.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. Housing units leased under this section shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED LEASE CONTRACTS.—(1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a lease contract under subsection (a) for such military housing as is authorized by law for the purposes of this section.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing projects for which lease contracts are proposed to be entered into under subsection (a) in such fiscal year.

(c) COMPETITIVE PROCESS.—Each contract under subsection (a) shall be awarded through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a contract for the lease of military housing authorized in accordance with subsection (b)(1). Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—A lease contract entered into for a military housing project under subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(4) A requirement that housing units constructed pursuant to the contract shall be constructed—

(A) to Department of Defense specifications, in the case of a Department of Defense contract; and

(B) to Department of Homeland Security specifications, in the case of a contract for the Coast Guard.

(e) LEASE TERM.—A contract under this section may be for any period not in excess of 20 years (excluding the period required for construction of the housing facilities).

(f) RIGHT OF FIRST REFUSAL TO ACQUIRE.—A contract under this section shall provide that, upon the termination of the lease period, the United States shall have the right of first refusal to acquire all right, title, and interest to the housing facilities constructed and leased under the contract.

(g) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the lease of housing facilities under this section until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 days has expired following the date on which the economic analysis is received by those committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the analysis is provided in an electronic medium pursuant to section 480 of this title.

(h) SUPPORT BUILDINGS.—A contract for the lease of family housing under this section may

include provision for the lease of a child care center, civic center building, and similar type buildings constructed for the support of family housing.

(Added Pub. L. 102–190, div. B, title XXVIII, § 2806(a)(1), Dec. 5, 1991, 105 Stat. 1539; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–383, div. B, title XXVIII, § 2803(e), Jan. 7, 2011, 124 Stat. 4459; Pub. L. 112–239, div. A, title X, § 1076(f)(35), Jan. 2, 2013, 126 Stat. 1954.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in subsec. (g) of section 2828 of this title, prior to repeal by Pub. L. 102–190, § 2806(b)(1).

AMENDMENTS

2013—Subsec. (a), (g)(1). Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''Coast Guard''.

2011—Subsec. (g)(2). Pub. L. 111–383 struck out ''calendar'' after ''21'' and inserted before period at end ''or, if earlier, a period of 14 days has elapsed from the date on which a copy of the analysis is provided in an electronic medium pursuant to section 480 of this title''.

2002—Subsecs. (a) to (c), (d)(4)(B), (g)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

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.

EFFECTIVE DATE

Section applicable with respect to contracts entered into under this section on or after Dec. 5, 1991, see section 2806(c) of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 2828 of this title.

§ 2835a. Use of military family housing constructed under build and lease authority to house other members

(a) INDIVIDUAL ASSIGNMENT OF MEMBERS WITHOUT DEPENDENTS.—(1) To the extent that the Secretary concerned determines that military family housing constructed and leased under section 2835 of this title is not needed to house members of the armed forces eligible for assignment to military family housing, the Secretary may assign, without rental charge, members without dependents to the housing.

(2) A member without dependents who is assigned to housing pursuant to paragraph (1) shall be considered to be assigned to quarters pursuant to section 403(e) of title 37.

(b) CONVERSION TO LONG-TERM LEASING OF MILITARY UNACCOMPANIED HOUSING.—(1) If the Secretary concerned determines that military family housing constructed and leased under section 2835 of this title is excess to the long-term needs of the family housing program of the Secretary, the Secretary may convert the lease contract entered into under subsection (a) of such section into a long-term lease of military unaccompanied housing.

(2) The term of the lease contract for military unaccompanied housing converted from military family housing under paragraph (1) may not exceed the remaining term of the lease contract for the family housing so converted.

(c) NOTICE AND WAIT REQUIREMENTS.—(1) The Secretary concerned may not convert military family housing to military unaccompanied housing under subsection (b) until—

(A) the Secretary submits to the congressional defense committees a notice of the intent to undertake the conversion; and

(B) a period of 21 days has expired following the date on which the notice is received by the committees or, if earlier, a period of 14 days has expired following the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

(2) The notice required by paragraph (1) shall include—

(A) an explanation of the reasons for the conversion of the military family housing to military unaccompanied housing;

(B) a description of the long-term lease to be converted;

(C) amounts to be paid under the lease; and

(D) the expiration date of the lease.

(d) APPLICATION TO HOUSING LEASED UNDER FORMER AUTHORITY.—This section also shall apply to housing initially acquired or constructed under the former section 2828(g) of this title (commonly known as the ''Build to Lease program''), as added by section 801 of the Military Construction Authorization Act, 1984 (Public Law 98–115; 97 Stat 782).

(Added Pub. L. 110–417, div. B, title XXVIII, § 2803(a), Oct. 14, 2008, 122 Stat. 4719.)

REFERENCES IN TEXT

Section 2828(g) of this title (commonly known as the ''Build to Lease program''), as added by section 801 of the Military Construction Authorization Act, 1984, referred to in subsec. (d), means the subsection (g) added to section 2828 of this title by section 801 of Pub. L. 98–115, which was repealed by Pub. L. 102–190, div. B, title XXVIII, § 2806(b), Dec. 5, 1991, 105 Stat. 1540.

§ 2836. Military housing rental guarantee program

(a) AUTHORITY.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into an agreement to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents). The authority provided under this subsection shall be exercised under uniform regulations prescribed by the Secretary of Defense.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED AGREEMENTS.—The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into agreements pursuant to subsection (a) for such military housing rental guaranty projects as are authorized by law.

(c) CONTENT OF AGREEMENT.—An agreement under subsection (a)—

(1) may not assure the occupancy of more than 97 percent of the units constructed under the agreement;

(2) shall establish initial rental rates that are not more than rates for comparable rental dwelling units in the same general market area and may include an escalation clause;

(3) may apply to existing housing;

(4) shall require that the housing units be constructed—

(A) in the case of a Department of Defense agreement, to Department of Defense specifications or, at the discretion of the Secretary of the military department concerned, in compliance with the local building codes; and

(B) in the case of an agreement for the Coast Guard when it is not operating as a service in the Navy, to Department of Homeland Security specifications;

(5) may not be for a term in excess of 25 years;

(6) may not be renewed unless the project is located on government owned land, in which case the renewal period may not exceed the original contract term;

(7) may not assure more than an amount equivalent to the shelter rent of the housing units, determined on the basis of amortizing initial construction costs;

(8) may only be entered into to the extent that there is a shortage in military family housing;

(9) may only be entered into if existing military-controlled housing at all installations in the commuting area (except for a new installation or an installation for which there is projected a significant increase in the number of families due to an increase in the number of authorized personnel) has exceeded 97 percent use for a period of not less than 18 consecutive months immediately preceding the date on which the agreement is entered into, excluding units temporarily inactivated for major repair or improvements;

(10) shall provide for priority of occupancy for military families;

(11) shall include a provision authorizing the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, to take such action as the Secretary considers appropriate to protect the interests of the United States, including rendering the agreement null and void if, in the opinion of the Secretary, the owner of the housing fails to maintain a satisfactory level of operation and maintenance;

(12) may provide in the agreement for the rental of a child care center, civic center building, and similar type buildings constructed for the support of family housing;

(13) may provide that utilities, trash collection, snow removal, and entomological services will be furnished by the Federal Government at no cost to the occupant to the same extent that these items are provided to occupants of housing owned by the Federal Government; and

(14) may require that rent collection and operation and maintenance services in connection with the housing be under the terms of a separate agreement or be carried out by personnel of the Federal Government.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—An agreement entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the agreement in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the agreement when and to the extent that funds are appropriated for such project for such fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(e) COMPETITIVE PROCESS.—An agreement under subsection (a) shall be made through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a guaranty agreement for each military housing rental guaranty project authorized in accordance with subsection (b).

(f) DISPUTES.—The Secretary concerned may require that disputes arising under an agreement entered into under subsection (a) be decided in accordance with the procedures provided for by chapter 71 of title 41.

(Added Pub. L. 102–190, div. B, title XXVIII, § 2809(a)(1), Dec. 5, 1991, 105 Stat. 1541; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title X, § 1031(a)(43), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 111–350, § 5(b)(48), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 112–81, div. A, title X, § 1061(25), Dec. 31, 2011, 125 Stat. 1584; Pub. L. 112–239, div. A, title X, § 1076(f)(36), Jan. 2, 2013, 126 Stat. 1954.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 98–115, title VIII, § 802, Oct. 11, 1983, 97 Stat. 783, as amended, which was set out as a note under section 2821 of this title, prior to repeal by Pub. L. 102–190, § 2809(b).

AMENDMENTS

2013—Subsecs. (a), (c)(4)(B), (11). Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''Coast Guard''.

2011—Subsec. (b). Pub. L. 112–81, § 1061(25)(A), struck out par. (1) designation before ''The Secretary of a military department'' and struck out par. (2) which read as follows: ''The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing rental guaranty projects for which agreements are proposed to be entered into under subsection (a) in that fiscal year.''

Subsec. (f). Pub. L. 112–81, § 1061(25)(B), (C), redesignated subsec. (g) as (f) and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: ''An agreement may not be entered into under subsection (a) until—

''(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

''(2) a period of 21 days has expired following the date on which the economic analysis is received by those committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title.''

Subsec. (g). Pub. L. 112–81, § 1061(25)(C), redesignated subsec. (g) as (f).

Pub. L. 111–350 substituted ''chapter 71 of title 41'' for ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)''.

2003—Subsec. (f)(2). Pub. L. 108–136 substituted ''21 days'' for ''21 calendar days'' and inserted before period at end ''or, if over sooner, a period of 14 days has expired following the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title''.

2002—Subsecs. (a), (b), (c)(4)(B), (11), (e), (f)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

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.

EFFECTIVE DATE

Pub. L. 102–190, div. B, title XXVII, § 2809(c), Dec. 5. 1991, 105 Stat. 1543, provided that: ''Section 2836 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b) [repealing provisions set out as a note under section 2821 of this title] shall not affect the validity of any contract entered into before that date under section 802 of the Military Construction Authorization Act, 1984 (10 U.S.C. 2821 note), as in effect on the day before that date.''

[§ 2837. Repealed. Pub. L. 113–66, div. B, title XXVIII, § 2802(a)(1), Dec. 26, 2013, 127 Stat. 1006]

Section, added Pub. L. 103–337, div. B, title XXVIII, § 2803(a), Oct. 5, 1994, 108 Stat. 3051; amended Pub. L. 104–106, div. B, title XXVIII, § 2802, Feb. 10, 1996, 110 Stat. 551; Pub. L. 106–65, div. A, title X, § 1066(a)(28), Oct. 5, 1999, 113 Stat. 772; Pub. L. 108–136, div. A, title X, § 1031(a)(44), Nov. 24, 2003, 117 Stat. 1602, authorized the Secretary of a military department to enter into limited partnerships with private developers of housing through Sept. 30, 2000, further authorized such Secretary to enter into collateral incentive agreements with those private developers, and established the Defense Housing Investment Account.

EFFECT ON EXISTING CONTRACTS

Pub. L. 113–66, div. B, title XXVIII, § 2802(b), Dec. 26, 2013, 127 Stat. 1006, provided that: ''The repeal of section 2837 of title 10, United States Code, shall not affect the validity or terms of any contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) of such section entered into before the date of the enactment of this Act [Dec. 26, 2013].''

EFFECT ON DEFENSE HOUSING INVESTMENT ACCOUNT

Pub. L. 113–66, div. B, title XXVIII, § 2802(c), Dec. 26, 2013, 127 Stat. 1006, provided that: ''Any unobligated amounts remaining in the Defense Housing Investment Account on the date of the enactment of this Act [Dec. 26, 2013] shall be transferred to the Department of Defense Family Housing Improvement Fund. Amounts transferred shall be merged with amounts in such fund and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund.''

§ 2838. Leasing of military family housing to Secretary of Defense

(a) AUTHORITY.—(1) The Secretary of a military department may lease to the Secretary of Defense military family housing in the National Capital Region (as defined in section 2674(f) of this title).

(2) In determining the military housing unit to lease under this section, the Secretary of Defense should first consider any available military housing units that are already substantially equipped for executive communications and security.

(b) RENTAL RATE.—A lease under subsection (a) shall provide for the payment by the Secretary of Defense of consideration in an amount equal to 105 percent of the monthly rate of basic allowance for housing prescribed under section 403(b) of title 37 for a member of the uniformed services in the pay grade of O–10 with dependents assigned to duty at the military installation on which the leased housing unit is located. A rate so established shall be considered the fair market value of the lease interest.

(c) TREATMENT OF PROCEEDS.—(1) The Secretary of a military department shall deposit all amounts received pursuant to leases entered into by the Secretary under this section into a special account in the Treasury established for such military department.

(2) The proceeds deposited into the special account of a military department pursuant to paragraph (1) shall be available to the Secretary of that military department, without further appropriation, for the maintenance, protection, alteration, repair, improvement, or restoration of military housing on the military installation at which the housing leased pursuant to subsection (a) is located.

(Added Pub. L. 110–417, div. B, title XXVIII, § 2804(a), Oct. 14, 2008, 122 Stat. 4720.)

SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Sec.

2851. Supervision of military construction projects.
2852. Military construction projects: waiver of certain restrictions.
2853. Authorized cost and scope of work variations.
2854. Restoration or replacement of damaged or destroyed facilities.
2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds.
2855. Law applicable to contracts for architectural and engineering services and construction design.
2856. Military unaccompanied housing: local comparability of floor areas.
[2857. Renumbered.]

Sec.
2858. Limitation on the use of funds for expediting a construction project.
2859. Construction requirements related to antiterrorism and force protection or urban-training operations.
2860. Availability of appropriations.
2861. Military construction projects in connection with industrial facility investment program.
2862. Turn-key selection procedures.
2863. Payment of contractor claims.
2864. Master plans for major military installations.
[2865. Repealed.]
2866. Water conservation at military installations.
2867. Energy monitoring and utility control system specification for military construction and military family housing activities.
2868. Utility services: furnishing for certain buildings.
2869. Exchange of property at military installations.

AMENDMENTS

2013—Pub. L. 112–239, div. B, title XXVIII, §2802(b), Jan. 2, 2013, 126 Stat. 2147, added item 2864.

Pub. L. 112–239, div. A, title X, §1076(a)(22), Jan. 2, 2013, 126 Stat. 1949, made technical amendment to directory language of Pub. L. 112–81, §2815(c). See 2011 Amendment note below.

2011—Pub. L. 112–81, div. B, title XXVIII, §2815(c), Dec. 31, 2011, 125 Stat. 1689, as amended by Pub. L. 112–239, div. A, title X, §1076(a)(22), Jan. 2, 2013, 126 Stat. 1949, substituted ''Exchange of property at military installations'' for ''Conveyance of property at military installations to limit encroachment'' in item 2869.

Pub. L. 111–383, div. A, title X, §1075(d)(23), Jan. 7, 2011, 124 Stat. 4374, made technical amendment to directory language of Pub. L. 111–84, §2804(d)(2). See 2009 Amendment note below.

2009—Pub. L. 111–84, div. B, title XXVIII, §2841(a)(2), Oct. 28, 2009, 123 Stat. 2680, added item 2867.

Pub. L. 111–84, div. B, title XXVIII, §2804(d)(2), Oct. 28, 2009, 123 Stat. 2662, as amended by Pub. L. 111–383, div. A, title X, §1075(d)(23), Jan. 7, 2011, 124 Stat. 4374, substituted ''Conveyance of property at military installations to limit encroachment'' for ''Conveyance of property at military installations to support military construction or limit encroachment'' in item 2869.

2006—Pub. L. 109–364, div. B, title XXVIII, §§2807(a)(2), 2808(b)(2), 2809(b), 2810(b), 2811(f)(2), 2851(c)(4), Oct. 17, 2006, 120 Stat. 2468–2471, 2473, 2495, added item 2861, inserted ''or urban-training operations'' after ''force protection'' in item 2859, substituted ''Military unaccompanied housing: local comparability of floor areas'' for ''Limitations on barracks space by pay grade'' in item 2856 and ''to support military construction or limit encroachment'' for ''closed or realigned to support military construction'' in item 2869, and struck out items 2857 ''Use of renewable forms of energy in new facilities'', 2864 ''Military construction contracts on Guam'', 2865 ''Energy savings at military installations'', and 2867 ''Sale of electricity from alternate energy and cogeneration production facilities''.

Pub. L. 109–163, div. B, title XXVIII, §2804(c)(2), Jan. 6, 2006, 119 Stat. 3507, substituted ''Authorized cost and scope of work variations'' for ''Authorized cost variations'' in item 2853.

Pub. L. 108–375, div. B, title XXVIII, §2804(a)(2), Oct. 28, 2004, 118 Stat. 2122, added item 2859.

2003—Pub. L. 108–136, div. A, title X, §1044(b)(2), div. B, title XXVIII, §2805(a)(2), Nov. 24, 2003, 117 Stat. 1612, 1721, struck out item 2859 ''Transmission of annual military construction authorization request'' and added item 2869.

2001—Pub. L. 107–107, div. B, title XXVIII, §2803(b), Dec. 28, 2001, 115 Stat. 1305, struck out item 2861 ''Annual report to Congress''.

1997—Pub. L. 105–85, div. A, title III, §371(c)(3), Nov. 18, 1997, 111 Stat. 1705, added items 2867 and 2868.

1996—Pub. L. 104–106, div. B, title XXVIII, §2818(a)(2), Feb. 10, 1996, 110 Stat. 555, added item 2854a.

1993—Pub. L. 103–160, div. B, title XXVIII, §2803(b), Nov. 30, 1993, 107 Stat. 1885, added item 2866.

1990—Pub. L. 101–510, div. B, title XXVIII, §2851(b), Nov. 5, 1990, 104 Stat. 1804, added item 2865.

1989—Pub. L. 101–189, div. B, title XXVIII, §2807(b), Nov. 29, 1989, 103 Stat. 1648, added item 2864.

1987—Pub. L. 100–180, div. B, subdiv. 3, title I, §2303(b), Dec. 4, 1987, 101 Stat. 1215, added item 2863.

1986—Pub. L. 99–661, div. A, title XIII, §1343(a)(21)(B), Nov. 14, 1986, 100 Stat. 3994, struck out ''for five years'' after ''Availability of appropriations'' in item 2860.

1985—Pub. L. 99–167, title VIII, §807(b), Dec. 3, 1985, 99 Stat. 988, added item 2862.

1982—Pub. L. 97–321, title VIII, §801(b)(3), Oct. 15, 1982, 96 Stat. 1571, substituted ''renewable forms of energy in new facilities'' for ''solar energy systems'' in item 2857.

§ 2851. Supervision of military construction projects

(a) SUPERVISION OF MILITARY DEPARTMENT PROJECTS.—Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direction and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the Commander of the Naval Facilities Engineering Command), or such other department or Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

(b) SUPERVISION OF DEFENSE AGENCY PROJECTS.—A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense.

(c) MAINTENANCE OF MILITARY CONSTRUCTION INFORMATION ON INTERNET; ACCESS.—(1) The Secretary of Defense shall maintain an Internet site that will permit a person to access and view on a separate page of the Internet site a document or other file containing the information required by paragraph (2) for the following:

(A) Each military construction project or military family housing project that has been specifically authorized by Act of Congress.

(B) Each project carried out with funds authorized for the operation and maintenance of military family housing.

(C) Each project carried out with funds authorized for the improvement of military family housing units.

(D) Each unspecified minor construction project carried out under the authority of section 2805(a) of this title.

(E) Each military construction project or military family housing project regarding which a statutory requirement exists to notify Congress.

(2) The information to be provided via the Internet site required by paragraph (1) for each project described in such paragraph shall include the following:

(A) The solicitation date and award date (or anticipated dates) for each contract entered into (or to be entered into) by the United States in connection with the project.

(B) The contract recipient, contract award amount, construction milestone schedule proposed by the contractor, and construction completion date stipulated in the awarded contract.

(C) The most current Department of Defense Form 1391, Military Construction Project Data, for the project.

(D) The progress of the project, including the percentage of construction currently completed and the current estimated construction completion date.

(E) The current contract obligation of funds for the project, including any changes to the original contract award amount.

(F) If funds appropriated for the project have been diverted for use in another project, the project to which the funds were diverted and the amount so diverted.

(G) For accounts such as planning and design, unspecified minor construction, and family housing operation and maintenance, detailed information regarding expenditures and anticipated expenditures under these accounts and the purposes for which the expenditures are made.

(3) The information required to be provided for each project described in paragraph (1) shall be made available on the Internet site required by such paragraph not later than 90 days after the award of a contract or delivery order for the project. The Secretary of Defense shall update the required information as promptly as practicable, but not less frequently than once a month, to ensure that the information is available in a timely manner.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 109–163, div. B, title XXVIII, § 2803(a), (c), Jan. 6, 2006, 119 Stat. 3505, 3506; Pub. L. 111–383, div. B, title XXVIII, § 2801, Jan. 7, 2011, 124 Stat. 4458.)

AMENDMENTS

2011—Subsec. (c)(1). Pub. L. 111–383, § 2801(c)(1), substituted ''that will permit a person'' for ''that, when activated by a person authorized under paragraph (3), will permit the person''.

Subsec. (c)(2)(F) to (H). Pub. L. 111–383, § 2801(a), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which read as follows: ''The estimated final cost of the project and, if the estimated final cost of the project exceeds the amount appropriated for the project and funds have been provided from another source to meet the increased cost, the source of the funds and the amount provided.''

Subsec. (c)(3), (4). Pub. L. 111–383, § 2801(b), (c)(2), redesignated par. (4) as (3), substituted ''on the Internet site required by such paragraph'' for ''to the persons referred to in paragraph (3)'' and struck out ''to such persons'' before ''in a timely manner'', and struck out former par. (3) which read as follows: ''Access to the Internet site required by paragraph (1) shall be restricted to the following persons:

''(A) Members of the congressional defense committees and their staff.

''(B) Staff of the congressional defense committees.''

2006—Subsecs. (a), (b). Pub. L. 109–163, § 2803(c), inserted headings.

Subsec. (c). Pub. L. 109–163, § 2803(a), added subsec. (c).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

IMPLEMENTATION OF INTERNET SITE

Pub. L. 109–163, div. B, title XXVIII, § 2803(b), Jan. 6, 2006, 119 Stat. 3506, provided that: ''The Internet site required by subsection (c) of section 2851 of title 10, United States Code, as added by subsection (a), shall be available to the persons referred to in paragraph (3) of such subsection not later than July 15, 2006.''

IDENTIFICATION OF REQUIREMENTS TO REDUCE BACKLOG IN MAINTENANCE AND REPAIR OF DEFENSE FACILITIES

Pub. L. 106–398, § 1 [[div. A], title III, § 374], Oct. 30, 2000, 114 Stat. 1654, 1654A–81, which required the Secretary of Defense to submit to Congress, not later than March 15, 2001, a report identifying a list of requirements to reduce the backlog in maintenance and repair needs of facilities and infrastructure under the jurisdiction of the Department of Defense or a military department, which report was to be updated annually, was repealed by Pub. L. 112–81, div. A, title X, § 1062(i)(1), Dec. 31, 2011, 125 Stat. 1585.

§ 2852. Military construction projects: waiver of certain restrictions

(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to subsections (a) and (b) of section 3324 of title 31.

(b) Authority to carry out a military construction project or a military family housing project may be exercised on land not owned by the United States—

(1) before title to the land on which the project is to be carried out is approved under section 3111 of title 40; and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(c) In the case of a military construction project or a military family housing project, the contract amount thresholds specified in subchapter III of chapter 31 of title 40 (commonly referred to as the Miller Act) shall be applied by substituting ''$150,000'' for ''$100,000'' for purposes of determining when a performance bond and payment bond are required under section 3131 of such title and when alternatives to payment bonds as payment protections for suppliers of labor and materials are required under section 3132 of such title.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 97–295, § 1(35), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97–321, title VIII, § 805(a)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–145, title XIII, § 1303(a)(19), Nov. 8, 1985, 99 Stat. 739; Pub. L. 107–217, § 3(b)(20), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 112–81, div. B, title XXVIII, § 2803, Dec. 31, 2011, 125 Stat. 1685.)

HISTORICAL AND REVISION NOTES

In 10:2852(a), the title 31 citation is substituted on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

2011—Subsec. (c). Pub. L. 112–81 added subsec. (c).

2002—Subsec. (b)(1). Pub. L. 107–217 substituted ''section 3111 of title 40'' for ''section 355 of the Revised Statutes (40 U.S.C. 255)''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

Subsec. (b). Pub. L. 97–321 substituted ''may be exercised on land not owned by the United States'' for ''on land not owned by the United States may be exercised'' in introductory text, redesignated former cl. (1) as par. (1), added par. (2), and struck out former cl. (2) which read as follows: ''even though the land is held temporarily''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2853. Authorized cost and scope of work variations

(a) Except as provided in subsection (c) or (d), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a), whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) The scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term ''scope of work'' refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b)(1) does not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—

(1) in the case of a cost increase or a reduction in the scope of work—

(A) the Secretary concerned notifies the appropriate committees of Congress in writing of the cost increase or reduction in scope, the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can still be met with the reduced scope, and a description of the funds proposed to be used to finance any increased costs; and

(B) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title; or

(2) in the case of a cost decrease, the Secretary concerned notifies the appropriate committees of Congress in writing not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(d) The limitation on cost variations in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(e) Notwithstanding the authority under subsections (a) through (d), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the ''Anti-Deficiency Act'').

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 98–407, title VIII, §807, Aug. 28, 1984, 98 Stat. 1521; Pub. L. 100–26, §7(f)(2), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–180, div. B, subdiv. 3, title I, §§2312, 2313, Dec. 4, 1987, 101 Stat. 1217, 1218; Pub. L. 101–189, div. B, title XXVIII, §2808, Nov. 29, 1989, 103 Stat. 1648; Pub. L. 104–106, div. B, title XXVIII, §2817, Feb. 10, 1996, 110 Stat. 553; Pub. L. 107–107, div. B, title XXVIII, §2802, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108–375, div. B, title XXVIII, §2803, Oct. 28, 2004, 118 Stat. 2121; Pub. L. 109–163, div. B, title XXVIII, §2804(a)–(c)(1), Jan. 6, 2006, 119 Stat. 3506; Pub. L. 109–364, div. B, title XXVIII, §2806, Oct. 17, 2006, 120 Stat. 2468; Pub. L. 111–84, div. B, title XXVIII, §2803, Oct. 28, 2009, 123 Stat. 2661; Pub. L. 112–81, div. B, title XXVIII, §2802(c)(2), Dec. 31, 2011, 125 Stat. 1685; Pub. L. 112–239, div. B, title XXVIII, §2801, Jan. 2, 2013, 126 Stat. 2146;

Pub. L. 113–291, div. A, title X, §1071(f)(24), Dec. 19, 2014, 128 Stat. 3511.)

AMENDMENTS

2014—Subsec. (c)(1)(A). Pub. L. 113–291 substituted ''can still be'' for ''can be still be''.

2013—Subsec. (a). Pub. L. 112–239, §2801(1), substituted ''was authorized'' for ''was approved originally''.

Subsec. (b)(1). Pub. L. 112–239, §2801(2)(A), inserted at end ''Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.''

Subsec. (b)(3). Pub. L. 112–239, §2801(2)(B), added par. (3).

Subsec. (c)(1)(A). Pub. L. 112–239, §2801(3), substituted '', the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can be still be met with the reduced scope, and a description'' for ''and the reasons therefor, including a description''.

Subsec. (e). Pub. L. 112–239, §2801(4), added subsec. (e).

2011—Subsec. (a). Pub. L. 112–81 substituted ''section 2805(a)'' for ''section 2805(a)(1)''.

2009—Subsec. (b). Pub. L. 111–84, §2803(1), designated existing provisions as par. (1), substituted ''may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.'' for ''may be reduced by not more than 25 percent from the amount approved for that project, construction, improvement, or acquisition by Congress.'', and added par. (2).

Subsec. (c). Pub. L. 111–84, §2803(2), substituted ''subsection (b)(1)'' for ''subsection (b)'' in introductory provisions.

2006—Pub. L. 109–163, §2804(c)(1), substituted ''Authorized cost and scope of work variations'' for ''Authorized cost variations'' in section catchline.

Subsec. (a). Pub. L. 109–163, §2804(a)(1), substituted ''may be increased or decreased by not more than 25 percent'' for ''may be increased by not more than 25 percent'' and ''if the Secretary concerned determines that such revised cost is required'' for ''if the Secretary concerned determines that such an increase in cost is required''.

Subsec. (c). Pub. L. 109–364 substituted ''if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—'' for ''if—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) to (3) which read as follows:

''(1) the variation in cost or reduction in scope is approved by the Secretary concerned;

''(2) the Secretary concerned notifies the appropriate committees of Congress in writing of the variation or reduction and the reasons therefor, including a description of the funds proposed to be used to finance any increased costs; and

''(3) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.''

Pub. L. 109–163, §2804(a)(2), (b), substituted ''limitation on cost variations'' for ''limitation on cost increase'' in introductory provisions, ''the variation'' for ''the increase'' in pars. (1) and (2), and inserted '', including a description of the funds proposed to be used to finance any increased costs'' after ''the reasons therefor'' in par. (2).

Subsec. (d). Pub. L. 109–163, §2804(a)(3), substituted ''limitation on cost variations'' for ''limitation on cost increases'' in introductory provisions.

2004—Subsec. (c)(3). Pub. L. 108–375 inserted before period at end ''or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2001—Subsec. (d). Pub. L. 107–107 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The limitation on cost increases in subsection (a) does not apply to the settlement of a contractor claim under a contract.''

1996—Subsec. (d). Pub. L. 104–106 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The limitation on cost increases in subsection (a) does not apply to a within-scope modification to a contract or to the settlement of a contractor claim under a contract if the increase in cost is approved by the Secretary concerned, and the Secretary concerned promptly submits written notification of the facts relating to the proposed increase in cost to the appropriate committees of Congress.''

1989—Pub. L. 101–189 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) to (f).

1987—Subsec. (a)(1). Pub. L. 100–180, §2312, substituted ''Except as provided in paragraph (2), the total cost authorized for military construction projects at an installation (including each project the cost of which is included in such total authorized cost and is less than the minor project ceiling) may be increased by not more than 25 percent of the total amount appropriated for such projects'' for ''Except as provided in paragraph (2), the cost authorized for a military construction project (other than a project for which the approved amount is less than the minor project ceiling (as defined in subsection (f))) may be increased by not more than 25 percent of the amount appropriated for the project''.

Pub. L. 100–26, §7(f)(2)(A), substituted ''the minor project ceiling (as defined in subsection (f))'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Pub. L. 100–26, §7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (a)(2). Pub. L. 100–26, §7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project'' in two places.

Subsec. (b). Pub. L. 100–26, §7(f)(2)(B), (C), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project'' and ''the amount of such ceiling'' for ''such maximum amount'' in two places.

Subsec. (c). Pub. L. 100–180, §2313, substituted ''construction, improvement,'' for ''construction''.

Subsec. (e). Pub. L. 100–26, §7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (f). Pub. L. 100–26, §7(f)(2)(D), added subsec. (f).

1984—Subsec. (e). Pub. L. 98–407 inserted ''is more than the amount specified by law as the maximum amount for a minor military construction project and''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2854. Restoration or replacement of damaged or destroyed facilities

(a) Subject to subsection (b), the Secretary concerned may repair, restore, or replace a facility under his jurisdiction, including a family housing facility, that has been damaged or destroyed.

(b) When a decision is made to carry out construction under this section and the cost of the

repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 165; amended Pub. L. 102–190, div. B, title XXVIII, §2870(7), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108–136, div. A, title X, §1031(a)(45), Nov. 24, 2003, 117 Stat. 1602.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

1991—Subsec. (b). Pub. L. 102–190 struck out ''(1)'' after ''carried out only'' and '', or (2) after each such committee has approved the project, if the committees approve the project before the end of that period'' before period at end.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds

(a) AUTHORITY TO CONVEY.—(1) The Secretary concerned may convey any family housing facility that, due to damage or deterioration, is in a condition that is uneconomical to repair. Any conveyance of a family housing facility under this section may include a conveyance of the real property associated with the facility conveyed.

(2) The authority of this section does not apply to family housing facilities located at military installations approved for closure under a base closure law or family housing facilities located at an installation outside the United States at which the Secretary of Defense terminates operations.

(3) The aggregate total value of the family housing facilities conveyed by the Department of Defense under the authority in this subsection in any fiscal year may not exceed $5,000,000.

(4) For purposes of this subsection, a family housing facility is in a condition that is uneconomical to repair if the cost of the necessary repairs for the facility would exceed the amount equal to 70 percent of the cost of constructing a family housing facility to replace such facility.

(b) CONSIDERATION.—(1) As consideration for the conveyance of a family housing facility under subsection (a), the person to whom the facility is conveyed shall pay the United States an amount equal to the fair market value of the facility conveyed, including any real property conveyed along with the facility.

(2) The Secretary concerned shall determine the fair market value of any family housing facility and associated real property that is conveyed under subsection (a). Such determination shall be final.

(c) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may not enter into an agreement to convey a family housing facility under this section until—

(1) the Secretary submits to the appropriate committees of Congress, in writing, a justification for the conveyance under the agreement, including—

(A) an estimate of the consideration to be provided the United States under the agreement;

(B) an estimate of the cost of repairing the family housing facility to be conveyed; and

(C) an estimate of the cost of replacing the family housing facility to be conveyed; and

(2) a period of 21 days has elapsed after the date on which the justification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the justification is provided in an electronic medium pursuant to section 480 of this title.

(d) INAPPLICABILITY OF CERTAIN PROPERTY DISPOSAL LAWS.—The following provisions of law do not apply to the conveyance of a family housing facility under this section:

(1) Subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(2) Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.).

(e) USE OF PROCEEDS.—(1) The proceeds of any conveyance of a family housing facility under this section shall be credited to the appropriate fund established under section 2883 of this title and shall be available—

(A) to construct family housing units to replace the family housing facility conveyed under this section, but only to the extent that the number of units constructed with such proceeds does not exceed the number of units of military family housing of the facility conveyed;

(B) to repair or restore existing military family housing; and

(C) to reimburse the Secretary concerned for the costs incurred by the Secretary in conveying the family housing facility.

(2) Notwithstanding section 2883(d) of this title, proceeds derived from a conveyance of a family housing facility under this section shall be available under paragraph (1) without any further appropriation.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of any family housing facility conveyed under this section, including any real property associated with such facility, shall be determined by such means as the Secretary concerned considers satisfactory, including by survey in the case of real property.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such addi-

tional terms and conditions in connection with the conveyance of family housing facilities under this section as the Secretary considers appropriate to protect the interests of the United States.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2818(a)(1), Feb. 10, 1996, 110 Stat. 553; amended Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(21), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–136, div. A, title X, § 1031(a)(46), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 111–350, § 5(b)(49), Jan. 4, 2011, 124 Stat. 3846.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (d)(2), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Title V of the Act is classified generally to subchapter V (§ 11411 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 111–350 substituted ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)''.

2003—Subsec. (c)(2). Pub. L. 108–136 struck out ''calendar'' after ''21'' and inserted before period at end ''or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the justification is provided in an electronic medium pursuant to section 480 of this title''.

2002—Subsec. (d)(1). Pub. L. 107–217 substituted ''Subtitle I of title 40 and title III of the'' for ''The'' and ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

2001—Subsec. (d)(2). Pub. L. 107–107 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

§ 2855. Law applicable to contracts for architectural and engineering services and construction design

(a) Contracts for architectural and engineering services and construction design in connection with a military construction project or a military family housing project shall be awarded in accordance with chapter 11 of title 40.

(b)(1) In the case of a contract referred to in subsection (a)—

(A) if the Secretary concerned estimates that the initial award of the contract will be in an amount greater than or equal to the threshold amount determined under paragraph (2), the contract may not be set aside exclusively for award to small business concerns; and

(B) if the Secretary concerned estimates that the initial award of the contract will be in an amount less than the threshold amount determined under paragraph (2), the contract shall be awarded in accordance with the set aside provisions of the Small Business Act (15 U.S.C. 631 et seq.).

(2) The initial threshold amount under paragraph (1) is $300,000. The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).

(3) This subsection does not restrict the award of contracts to small business concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 98–407, title VIII, § 808(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 107–217, § 3(b)(22), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–136, div. A, title XIV, § 1427(a), Nov. 24, 2003, 117 Stat. 1670.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (b)(1)(B), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–136 substituted ''$300,000'' for ''$85,000''.

2002—Subsec. (a). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)''.

1984—Pub. L. 98–407 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–407, title VIII, § 808(b), Aug. 28, 1984, 98 Stat. 1522, provided that: ''Subsection (b) of section 2855 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded after September 30, 1984, except that the authority of the Secretary of Defense under paragraph (2) of that subsection shall apply only with respect to contracts awarded after September 30, 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2856. Military unaccompanied housing: local comparability of floor areas

In the construction, acquisition, and improvement of military unaccompanied housing, the Secretary concerned shall ensure that the floor areas of such housing in a particular locality (as designated by the Secretary concerned for purposes of this section) do not exceed the floor areas of similar housing in the private sector in that locality.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 101–510, div. A, title XIII, § 1301(19), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 109–364, div. B, title XXVIII, § 2807(a)(1), Oct. 17, 2006, 120 Stat. 2468.)

AMENDMENTS

2006—Pub. L. 109–364 amended section catchline and text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prescribe regulations establishing the maximum allowable net square feet per occupant for new permanent barracks construction. Such regulations shall be uniform for the armed forces under the jurisdiction of the Secretary of a military department.''

1990—Pub. L. 101–510 struck out ''(a)'' before ''The Secretary of Defense'' and struck out subsec. (b) which read as follows: ''Before taking effect, any regulations under this section, and any modifications to such regulations, shall be submitted to the appropriate committees of Congress. Such regulations (including any modi-

fications to such regulations) may not then take effect until 21 days after being received by such committees.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

[§ 2857. Renumbered § 2915]

§ 2858. Limitation on the use of funds for expediting a construction project

Funds appropriated for military construction (including military family housing) may not be expended for additional costs involved in expediting a construction project unless the Secretary concerned (1) certifies that expenditures for such costs are necessary to protect the national interest, and (2) establishes a reasonable completion date for the project. In establishing such a completion date, the Secretary shall take into consideration the urgency of the requirement for completion of the project, the type and location of the project, the climatic and seasonal conditions affecting the construction involved, and the application of economical construction practices.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 167.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2859. Construction requirements related to antiterrorism and force protection or urban-training operations

(a) ANTITERRORISM AND FORCE PROTECTION GUIDANCE AND CRITERIA.—The Secretary of Defense shall develop common guidance and criteria to be used by each Secretary concerned—

(1) to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;

(2) to develop construction standards that, taking into consideration other security or force-protection measures available for the facility or military installation concerned, are designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;

(3) to prepare and carry out military construction projects, such as gate and fenceline construction, to improve the physical security of military installations; and

(4) to assist in prioritizing such projects within the military construction budget of each of the armed forces.

(b) VULNERABILITY ASSESSMENTS.—The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under subsection (a).

(c) MILITARY CONSTRUCTION REQUIREMENTS.—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report, in both classified and unclassified form, describing—

(1) the location and results of the vulnerability assessments conducted under subsection (b) during the most recently completed fiscal year;

(2) the military construction requirements anticipated to be necessary during the period covered by the then-current future-years defense plan under section 221 of this title to improve the physical security of military installations; and

(3) the extent to which funds to meet those requirements are not requested in the Department of Defense budget for the fiscal year for which the budget is submitted.

(d) CERTIFICATION REQUIRED FOR MILITARY CONSTRUCTION PROJECTS DESIGNED TO PROVIDE TRAINING IN URBAN OPERATIONS.—(1) Except as provided in paragraph (3), the Secretary concerned may not carry out a military construction project to construct a facility designed to provide training in urban operations for members of the armed forces or personnel of the Department of Defense or other Federal agencies until—

(A) the Secretary of Defense approves a strategy for training and facility construction for operations in urban terrain; and

(B) the Under Secretary of Defense for Personnel and Readiness evaluates the project and certifies to the appropriate committees of Congress that the project—

(i) is consistent with the strategy; and

(ii) incorporates the appropriate capabilities for joint and interagency use in accordance with the strategy.

(2) This subsection shall not apply with respect to a military construction project carried out under the authority of section 2803, 2804, or 2808 of this title or section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1723).

(Added Pub. L. 108–375, div. B, title XXVIII, §2804(a)(1), Oct. 28, 2004, 118 Stat. 2121; amended Pub. L. 109–364, div. B, title XXVIII, §2808(a), (b)(1), Oct. 17, 2006, 120 Stat. 2469; Pub. L. 112–239, div. A, title X, §1081(2), Jan. 2, 2013, 126 Stat. 1960; Pub. L. 113–66, div. B, title XXVIII, §2803(a), Dec. 26, 2013, 127 Stat. 1006.)

REFERENCES IN TEXT

Section 2808 of the Military Construction Authorization Act for Fiscal Year 2004, referred to in subsec. (d)(2), is section 2808 of title XXVIII of div. B of Pub. L. 108–136, Nov. 24, 2003, 117 Stat. 1723, which is not classified to the Code except for section 2808(e), which is set out as a note under section 2805 of this title.

PRIOR PROVISIONS

A prior section 2859, added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 97–295, §1(36), Oct. 12, 1982, 96 Stat. 1296, provided for transmission of annual military construction authorization request, prior to repeal by Pub. L. 108–136, div. A, title X, §1044(b)(1), Nov. 24, 2003, 117 Stat. 1612.

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 113–66 substituted ''develop construction standards that, taking into consideration other security or force-protection measures available for the facility or military installation con-

cerned, are designed'' for ''develop construction standards designed''.

Subsec. (d)(2), (3). Pub. L. 112–239 redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The Under Secretary of Defense for Personnel and Readiness shall conduct the evaluation required by paragraph (1)(B) in consultation with the Commander of the United States Joint Forces Command.''

2006—Pub. L. 109–364, § 2808(b)(1), inserted ''or urban-training operations'' after ''force protection'' in section catchline.

Subsec. (d). Pub. L. 109–364, § 2808(a), added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. B, title XXVIII, § 2808(c), Oct. 17, 2006, 120 Stat. 2470, provided that: ''Subsection (d) of section 2859 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects described in such subsection (d) for which funds are first provided for fiscal year 2007 or thereafter.''

SPECIAL REQUIREMENT FOR 2006 REPORT

Pub. L. 108–375, div. B, title XXVIII, § 2804(b), Oct. 28, 2004, 118 Stat. 2122, provided that: ''In the case of the report required to be submitted in 2006 under section 2859(c) of title 10, United States Code, as added by subsection (a), the Secretary of Defense shall include a certification by the Secretary that since September 11, 2001, assessments regarding the vulnerability of military installations to terrorist attack have been undertaken for all major military installations. The Secretary shall indicate the basis by which the Secretary differentiated between major and nonmajor military installations for purposes of making the certification.''

§ 2860. Availability of appropriations

Funds appropriated to a military department or to the Secretary of Defense for a fiscal year for military construction or military family housing purposes may remain available for obligation beyond such fiscal year to the extent provided in appropriation Acts.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 99–167, title VIII, § 812(a), Dec. 3, 1985, 99 Stat. 991; Pub. L. 99–173, § 121(b), Dec. 10, 1985, 99 Stat. 1029; Pub. L. 99–661, div. A, title XIII, § 1343(a)(21)(A), Nov. 14, 1986, 100 Stat. 3994.)

AMENDMENTS

1986—Pub. L. 99–661 substituted ''to the Secretary of Defense'' for ''defense agency'', inserted ''for obligation'' after ''remains available'', and struck out ''the'' before ''appropriation Acts''.

1985—Pub. L. 99–173 substituted ''Availability of appropriations'' for ''Availability of appropriations for five years'' as section catchline, and amended text generally. Prior to amendment, text read as follows: ''Subject to the provisions of appropriation Acts, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.''

Pub. L. 99–167 struck out subsection designation ''(a)'' and ''and except as otherwise provided under subsection (b)'' after ''provisions of appropriation Acts'', and struck out subsec. (b) which provided: ''Should a requirement develop to obligate funds for a military construction project after the end of the fourth fiscal year after the fiscal year for which such funds were appropriated, such obligation may be made after the end of the 21-day period beginning on the date on which the appropriate committees of Congress receive notification of the need for such obligation and the reasons therefor.''

EFFECTIVE DATE OF 1985 AMENDMENTS

Pub. L. 99–173, § 121(c), Dec. 10, 1985, 99 Stat. 1029, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to funds appropriated after the date of the enactment of Public Law 99–103 [Sept. 30, 1985].''

Pub. L. 99–167, title VIII, § 812(b), Dec. 3, 1985, 99 Stat. 991, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to funds appropriated after September 30, 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

AVAILABILITY OF APPROPRIATIONS FOR FIVE YEARS

Pub. L. 109–114, title I, § 117, Nov. 30, 2005, 119 Stat. 2378, which provided that any funds made available to a military department or defense agency for the construction of military projects could be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were made available, if the funds obligated for such project: (1) were obligated from funds available for military construction projects; and (2) did not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law, was from the Military Construction, Military Quality of Life and Veterans Affairs Appropriations Act, 2006 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108–324, div. A, § 117, Oct. 13, 2004, 118 Stat. 1227.
Pub. L. 108–132, § 117, Nov. 22, 2003, 117 Stat. 1380.
Pub. L. 107–249, § 117, Oct. 23, 2002, 116 Stat. 1583.
Pub. L. 107–64, § 117, Nov. 5, 2001, 115 Stat. 479.
Pub. L. 106–246, div. A, § 117, July 13, 2000, 114 Stat. 516.
Pub. L. 106–52, § 117, Aug. 17, 1999, 113 Stat. 264.
Pub. L. 105–237, § 117, Sept. 20, 1998, 112 Stat. 1558.
Pub. L. 105–45, § 117, Sept. 30, 1997, 111 Stat. 1147.
Pub. L. 104–196, § 117, Sept. 16, 1996, 110 Stat. 2391.
Pub. L. 104–32, § 117, Oct. 3, 1995, 109 Stat. 289.
Pub. L. 103–307, § 118, Aug. 23, 1994, 108 Stat. 1664.
Pub. L. 103–110, § 118, Oct. 21, 1993, 107 Stat. 1043.
Pub. L. 102–380, § 119, Oct. 5, 1992, 106 Stat. 1371.
Pub. L. 102–136, § 119, Oct. 25, 1991, 105 Stat. 643.
Pub. L. 101–519, § 119, Nov. 5, 1990, 104 Stat. 2246.
Pub. L. 101–148, § 121, Nov. 10, 1989, 103 Stat. 925.
Pub. L. 100–447, § 124, Sept. 27, 1988, 102 Stat. 1835.

TRANSFER OF FUNDS FOR FOREIGN CURRENCY FLUCTUATIONS

Pub. L. 108–132, § 118, Nov. 22, 2003, 117 Stat. 1380, which provided that during the 5-year period after appropriations available to the Department of Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations would not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations could be transferred into the appropriation ''Foreign Currency Fluctuations, Construction, Defense'' to be merged with and to

be available for the same time period and for the same purposes as the appropriation to which transferred, was from the Military Construction Appropriations Act, 2005 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 107–249, § 118, Oct. 23, 2002, 116 Stat. 1584.
Pub. L. 107–64, § 118, Nov. 5, 2001, 115 Stat. 480.
Pub. L. 106–246, div. A, § 118, July 13, 2000, 114 Stat. 516.
Pub. L. 106–52, § 118, Aug. 17, 1999, 113 Stat. 264.
Pub. L. 105–237, § 118, Sept. 20, 1998, 112 Stat. 1559.
Pub. L. 105–45, § 118, Sept. 30, 1997, 111 Stat. 1147.
Pub. L. 104–196, § 118, Sept. 16, 1996, 110 Stat. 2392.
Pub. L. 104–32, § 118, Oct. 3, 1995, 109 Stat. 289.
Pub. L. 103–307, § 119, Aug. 23, 1994, 108 Stat. 1665.
Pub. L. 103–110, § 120, Oct. 21, 1993, 107 Stat. 1043.
Pub. L. 102–380, § 121, Oct. 5, 1992, 106 Stat. 1372.
Pub. L. 102–136, § 122, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 99–500, § 101(k) [title I, § 121], Oct. 18, 1986, 100 Stat. 1783–287, 1783–293, and Pub. L. 99–591, § 101(k) [title I, § 121], Oct. 30, 1986, 100 Stat. 3341–287, 3341–293, as amended by Pub. L. 102–136, § 122, Oct. 25, 1991, 105 Stat. 643, provided that: ''For Transfer by the Secretary of Defense to and from appropriations and funds not merged pursuant to subsection 1552(a)(1) of title 31 of the United States Code and available for obligation or expenditure during fiscal year 1987 or thereafter, for military construction or expenses of family housing for the military departments and Defense agencies, in order to maintain the budgeted level of operations for such appropriations and thereby eliminate substantial gains and losses to such appropriations caused by fluctuations in foreign currency exchange rates that vary substantially from those used in preparing budget submissions, an appropriation, to remain available until expended: *Provided*, That funds transferred from this appropriation shall be merged with and be available for the same purpose, and for the same time period, as the appropriation or fund to which transferred, and funds transferred to this appropriation shall be merged with, and available for the purpose of this appropriation until expended: *Provided further*, That transfers may be made from time to time from this appropriation to the extent the Secretary of Defense determines it may be necessary to do so to reflect downward fluctuations in the currency exchange rates from those used in preparing the budget submissions for such appropriations, but transfers shall be made from such appropriations to this appropriation to reflect upward fluctuations in currency exchange rates to prevent substantial net gains in such appropriations: *Provided further*, That authorizations or limitations now or hereafter contained within appropriations or other provisions of law limiting the amounts that may be obligated or expended for military construction and family housing expenses are hereby increased to the extent necessary to reflect downward fluctuations in foreign currency exchange rates from those used in preparing the applicable budget submission: *Provided further*, That for the purposes of the appropriation 'Foreign Currency Fluctuations, Construction, Defense' the foreign currency rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on the Acts making appropriations for military construction for the Department of Defense: *Provided further*, That the Secretary of Defense shall provide an annual report to the Congress on all transfers made to or made from this appropriation: *Provided further*, That contracts or other obligations entered into payable in foreign currencies may be recorded as obligations based on the currency exchange rates used in preparing budget submissions and adjustments to reflect fluctuations in such rates may be recorded as disbursements are made: *Provided further*, That, at the discretion of the Secretary of Defense, any savings generated in the military construction and family housing programs may be transferred to this appropriation.''

§ 2861. Military construction projects in connection with industrial facility investment program

(a) AUTHORITY.—The Secretary of Defense may carry out a military construction project, not previously authorized, for the purpose of carrying out activities under section 2474(a)(2) of this title, using funds appropriated or otherwise made available for that purpose in military construction accounts.

(b) CREDITING OF FUNDS TO CAPITAL BUDGET.—Funds appropriated or otherwise made available in a fiscal year for the purpose of carrying out a military construction project with respect to a covered depot (as defined in subsection (e) of section 2476 of this title) may be credited to the amount required by subsection (a) of such section to be invested in the capital budgets of the covered depots in that fiscal year.

(c) NOTICE AND WAIT REQUIREMENT.—When a decision is made to carry out a project under subsection (a), the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision and the savings estimated to be realized from the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(d) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary shall submit to Congress a report describing actions taken under this section and the savings realized from such actions during the fiscal year ending in the year in which the report is submitted.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2809(a), Oct. 17, 2006, 120 Stat. 2470.)

PRIOR PROVISIONS

A prior section 2861, added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 100–26, § 7(f)(1), (j)(9), Apr. 21, 1987, 101 Stat. 281, 283; Pub. L. 104–106, div. B, title XXVIII, § 2811(b), Feb. 10, 1996, 110 Stat. 552; Pub. L. 104–201, div. B, title XXVIII, § 2802(d)(1), Sept. 23, 1996, 110 Stat. 2787, required the Secretary of Defense to submit an annual report to the appropriate committees of Congress with respect to military construction activities and military family housing activities, prior to repeal by Pub. L. 107–107, div. B, title XXVIII, § 2803(a), Dec. 28, 2001, 115 Stat. 1305.

§ 2862. Turn-key selection procedures

(a) AUTHORITY TO USE FOR CERTAIN PURPOSES.—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into a contract for any of the following purposes:

(1) The construction of an authorized military construction project.

(2) A repair project (as defined in section 2811(e) of this title) with an approved cost equal to or less than $4,000,000.

(3) The construction of a facility as part of an authorized security assistance activity.

(b) DEFINITIONS.—In this section:

(1) The term ''one-step turn-key selection procedures'' means procedures used for the se-

lection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(2) The term ''security assistance activity'' means—

(A) humanitarian and civic assistance authorized by sections 401 and 2561 of this title;

(B) foreign disaster assistance authorized by section 404 of this title;

(C) foreign military construction sales authorized by section 29 of the Arms Export Control Act (22 U.S.C. 2769);

(D) foreign assistance authorized under sections 607 and 632 of the Foreign Assistance Act of 1961 (22 U.S.C. 2357, 2392); and

(E) other international security assistance specifically authorized by law.

(Added Pub. L. 99–167, title VIII, § 807(a), Dec. 3, 1985, 99 Stat. 988; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2301, Dec. 4, 1987, 101 Stat. 1214; Pub. L. 101–189, div. B, title XXVIII, § 2806, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, § 2802, Dec. 5, 1991, 105 Stat. 1537; Pub. L. 113–291, div. B, title XXVIII, § 2804, Dec. 19, 2014, 128 Stat. 3697.)

AMENDMENTS

2014—Pub. L. 113–291 amended section generally. Prior to amendment, text read as follows:

''(a) AUTHORITY TO USE.—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into contracts for the construction of authorized military construction projects.

''(b) DEFINITION.—In this section, the term 'one-step turn-key selection procedures' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.''

1991—Pub. L. 102–190 redesignated par. (1) of subsec. (a) as entire subsec. (a) and inserted heading, redesignated par. (2) of subsec. (a) as (b), inserted heading, and struck out former subsecs. (b) and (c) which read as follows:

''(b) The Secretary of Defense, with respect to any Defense Agency, or the Secretary of a military department may not, during any fiscal year, enter into more than three contracts for military construction projects using procedures authorized by this section.

''(c) The authority under this section shall expire on October 1, 1991.''

1989—Subsec. (a)(1). Pub. L. 101–189, § 2806(1), struck out at end ''Such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.''

Subsec. (c). Pub. L. 101–189, § 2806(2), substituted ''1991'' for ''1990''.

1987—Subsec. (a)(1). Pub. L. 100–180, § 2301(1), substituted ''The Secretary concerned'' for ''The Secretaries of the military departments, with the approval of the Secretary of Defense,'' and inserted provision at end that such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.

Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

Subsec. (b). Pub. L. 100–180, § 2301(2), inserted ''Secretary of Defense, with respect to any Defense Agency, or the'' after ''The''.

EFFECTIVE DATE

Pub. L. 99–167, title VIII, § 807(c), Dec. 3, 1985, 99 Stat. 989, provided that: ''The amendments made by this section [enacting this section] shall take effect on October 1, 1986.''

§ 2863. Payment of contractor claims

Notwithstanding any other provision of law, the Secretary concerned may pay meritorious contractor claims that arise under military construction contracts or family housing contracts. The Secretary of Defense, with respect to a Defense Agency, or the Secretary of a military department may use for such purpose any unobligated funds appropriated to such department and available for military construction or family housing construction, as the case may be.

(Added Pub. L. 100–180, div. B, subdiv. 3, title I, § 2303(a), Dec. 4, 1987, 101 Stat. 1215.)

§ 2864. Master plans for major military installations

(a) PLANS REQUIRED.—(1) At a time interval prescribed by the Secretary concerned (but not less frequently than once every 10 years), the commander of each major military installation under the jurisdiction of the Secretary shall ensure that an installation master plan is developed to address environmental planning, sustainable design and development, sustainable range planning, real property master planning, and transportation planning.

(2) To address the requirements under paragraph (1), each installation master plan shall include consideration of—

(A) planning for compact and infill development;

(B) horizontal and vertical mixed-use development;

(C) the full lifecycle costs of real property planning decisions; and

(D) capacity planning through the establishment of growth boundaries around cantonment areas to focus development towards the core and preserve range and training space.

(b) TRANSPORTATION COMPONENT.—(1) The transportation component of the master plan for a major military installation shall be developed and updated in consultation with the metropolitan planning organization designated for the metropolitan planning area in which the military installation is located.

(2) To address the requirements under subsection (a) and paragraph (1), each installation master plan shall include consideration of ways to diversify and connect transit systems.

(c) SAVINGS CLAUSE.—Nothing in this section shall supersede the requirements of section 2859(a) of this title.

(d) DEFINITIONS.—In this section:

(1) The term ''major military installation'' has the meaning given to the term ''large site'' in the most recent version of the Department of Defense Base Structure Report issued before the time interval prescribed for development of installation master plans arises under subsection (a).

(2) The terms ''metropolitan planning area'' and ''metropolitan planning organization'' have the meanings given those terms in sec-

tion 134(b) of title 23 and section 5303(b) of title 49.

(Added Pub. L. 112–239, div. B, title XXVIII, § 2802(a), Jan. 2, 2013, 126 Stat. 2147; amended Pub. L. 113–66, div. B, title XXVIII, § 2811, Dec. 26, 2013, 127 Stat. 1013.)

PRIOR PROVISIONS

A prior section 2864, added Pub. L. 101–189, div. B, title XXVIII, § 2807(a), Nov. 29, 1989, 103 Stat. 1648; amended Pub. L. 104–106, div. A, title X, § 1062(g), Feb. 10, 1996, 110 Stat. 444, related to military construction contracts on Guam, prior to repeal by Pub. L. 109–364, div. B, title XXVIII, § 2810(a), Oct. 17, 2006, 120 Stat. 2470.

AMENDMENTS

2013—Subsec. (a). Pub. L. 113–66, § 2811(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 113–66, § 2811(2), designated existing provisions as par. (1) and added par. (2).

Subsecs. (c), (d). Pub. L. 113–66, § 2811(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

[§ 2865. Repealed. Pub. L. 109–364, div. B, title XXVIII, § 2851(a)(2), Oct. 17, 2006, 120 Stat. 2494]

Section, added Pub. L. 101–510, div. B, title XXVIII, § 2851(a), Nov. 5, 1990, 104 Stat. 1803; amended Pub. L. 102–484, div. B, title XXVIII, § 2801, Oct. 23, 1992, 106 Stat. 2604; Pub. L. 103–160, div. B, title XXVIII, § 2804, Nov. 30, 1993, 107 Stat. 1885; Pub. L. 103–337, div. A, title X, § 1070(a)(14), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XV, § 1502(a)(27), div. B, title XXVIII, § 2819, Feb. 10, 1996, 110 Stat. 506, 555; Pub. L. 105–85, div. A, title III, § 371(d)(2), div. B, title XXVIII, § 2804(a), Nov. 18, 1997, 111 Stat. 1706, 1990; Pub. L. 107–314, div. B, title XXVIII, § 2805, Dec. 2, 2002, 116 Stat. 2705; Pub. L. 108–136, div. A, title X, § 1031(a)(47), div. B, title XXVIII, § 2812(a), Nov. 24, 2003, 117 Stat. 1602, 1725, related to energy savings at military installations.

§ 2866. Water conservation at military installations

(a) WATER CONSERVATION ACTIVITIES.—(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by a utility for the management of water demand or for water conservation.

(2) The Secretary of Defense may authorize a military installation to accept a financial incentive (including an agreement to reduce the amount of a future water bill), goods, or services generally available from a utility, for the purpose of adopting technologies and practices that—

(A) relate to the management of water demand or to water conservation; and

(B) as determined by the Secretary, are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into an agreement with a utility to design and implement a cost-effective program that provides incentives for the management of water demand and for water conservation and that addresses the requirements and circumstances of the installation. Activities under the program may include the provision of water management services, the alteration of a facility, and the installation and maintenance by the utility of a water-saving device or technology.

(4)(A) If an agreement under paragraph (3) provides for a utility to pay in advance the financing costs for the design or implementation of a program referred to in that paragraph and for such advance payment to be repaid by the United States, the cost of such advance payment may be recovered by the utility under terms that are not less favorable than the terms applicable to the most favored customer of the utility.

(B) Subject to the availability of appropriations, a repayment of an advance payment under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to a water-saving device or technology installed at a military installation pursuant to the agreement shall vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(b) USE OF FINANCIAL INCENTIVES AND WATER COST SAVINGS.—(1) Financial incentives received from utilities for management of water demand or water conservation under subsection (a)(2) shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(2) Water cost savings realized under subsection (a)(3) shall be used as follows:

(A) One-half of the amount shall be used for water conservation activities at such buildings, facilities, or installations of the Department of Defense as may be designated (in accordance with regulations prescribed by the Secretary of Defense) by the head of the department, agency, or instrumentality that realized the water cost savings.

(B) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

(i) improvements to existing military family housing units;

(ii) any unspecified minor construction project that will enhance the quality of life of personnel; or

(iii) any morale, welfare, or recreation facility or service.

(3) The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 a separate statement of the amounts available for obligation under this subsection in that fiscal year.

(c) WATER CONSERVATION CONSTRUCTION PROJECTS.—(1) The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made

available to the Secretary for water conservation.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 103–160, div. B, title XXVIII, § 2803(a), Nov. 30, 1993, 107 Stat. 1884; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(27), Feb. 10, 1996, 110 Stat. 506; Pub. L. 105–85, div. B, title XXVIII, § 2804(b), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108–136, div. A, title X, § 1031(a)(48), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 109–364, div. B, title XXVIII, § 2851(d), Oct. 17, 2006, 120 Stat. 2495; Pub. L. 113–291, div. A, title X, § 1071(f)(25), Dec. 19, 2014, 128 Stat. 3511.)

AMENDMENTS

2014—Subsec. (a)(4)(A). Pub. L. 113–291 substituted ''repaid'' for ''repayed''.

2006—Subsec. (b). Pub. L. 109–364 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) Financial incentives received under subsection (a)(2) shall be used as provided in section 2865(b)(3) of this title.

''(2) Water cost savings realized under subsection (a)(3) shall be used as provided in section 2865(b)(2) of this title.''

2003—Subsec. (c)(2). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

1997—Subsec. (b). Pub. L. 105–85 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b) USE OF WATER COST SAVINGS.—Water cost savings realized under this section shall be used as provided in section 2865(b)(2) of this title.''

1996—Subsec. (c)(2). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and Appropriations of the Senate and House of Representatives''.

§ 2867. Energy monitoring and utility control system specification for military construction and military family housing activities

(a) ADOPTION OF DEPARTMENT-WIDE, OPEN PROTOCOL, ENERGY MONITORING AND UTILITY CONTROL SYSTEM SPECIFICATION.—(1) The Secretary of Defense shall adopt an open protocol energy monitoring and utility control system specification for use throughout the Department of Defense in connection with a military construction project, military family housing activity, or other activity under this chapter for the purpose of monitoring and controlling, with respect to the project or activity, the items specified in paragraph (2) with the goal of establishing installation-wide energy monitoring and utility control systems.

(2) The energy monitoring and utility control system specification required by paragraph (1) shall cover the following:

(A) Utilities and energy usage, including electricity, gas, steam, and water usage.

(B) Indoor environments, including temperature and humidity levels.

(C) Heating, ventilation, and cooling components.

(D) Central plant equipment.

(E) Renewable energy generation systems.

(F) Lighting systems.

(G) Power distribution networks.

(b) EXCLUSION.—(1) The energy monitoring and utility control system specification required by subsection (a) is not required to apply to projects carried out under the authority provided in subchapter IV of chapter 169 of this title.

(2) The Secretary concerned may waive the application of the energy monitoring and utility control system specification required by subsection (a) with respect to a specific military construction project, military family housing activity, or other activity under this chapter if the Secretary determines that the application of the specification to the project or activity is not life cycle cost-effective. The Secretary concerned shall notify the congressional defense committees of any waiver granted under this paragraph.

(Added Pub. L. 111–84, div. B, title XXVIII, § 2841(a)(1), Oct. 28, 2009, 123 Stat. 2679.)

PRIOR PROVISIONS

A prior section 2867 was renumbered section 2916 of this title.

DEADLINE FOR ADOPTION

Pub. L. 111–84, div. B, title XXVIII, § 2841(a)(3), Oct. 28, 2009, 123 Stat. 2680, provided that: ''The Secretary of Defense shall adopt the open protocol energy monitoring and utility control system specification required by section 2867 of title 10, United States Code, as added by paragraph (1), not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009].''

§ 2868. Utility services: furnishing for certain buildings

Appropriations for the Department of Defense may be used for utility services for buildings constructed at private cost, as authorized by law.

(Added Pub. L. 100–370, § 1(j)(1), July 19, 1988, 102 Stat. 848, § 2490; renumbered § 2868, Pub. L. 105–85, div. A, title III, § 371(b)(2), Nov. 18, 1997, 111 Stat. 1705; amended Pub. L. 108–375, div. A, title VI, § 651(e)(2), Oct. 28, 2004, 118 Stat. 1972.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8006(b)], Dec. 19, 1985, 99 Stat. 1185.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for ''welfare and recreation'' or ''welfare and recreational'' purposes. (Section 735 of Public Law 98–212 and section 8006(b) of Public Law 99–190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term ''morale'' in both of these two instances to conform to the usual ''MWR'' usage for morale, welfare, and recreation activities.

AMENDMENTS

2004—Pub. L. 108–375 substituted ''for buildings constructed at private cost, as authorized by law.'' for ''for—

''(1) buildings constructed at private cost, as authorized by law; and

''(2) buildings on military reservations authorized by regulation to be used for morale, welfare, and recreational purposes.''

1997—Pub. L. 105–85 renumbered section 2490 of this title as this section.

§ 2869. Exchange of property at military installations

(a) EXCHANGE AUTHORIZED.—(1) The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the person in and to a parcel of real property, including any improvements thereon under the person's control, or to carry out a land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations.

(2) Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned that—

(A) is located on a military installation that is closed or realigned under a base closure law; or

(B) is located on a military installation not covered by subparagraph (A) and is determined to be excess to the needs of the Department of Defense.

(b) CONDITIONS ON CONVEYANCE AUTHORITY.—The fair market value of the land to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the land is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

(c) LIMITATION ON USE OF CONVEYANCE AUTHORITY AT INSTALLATIONS CLOSED UNDER BASE CLOSURE LAWS.—The authority under subsection (a)(2)(A) to convey property located on a military installation may only be used to the extent the conveyance is consistent with an approved redevelopment plan for such installation.

(d) ADVANCE NOTICE OF USE OF AUTHORITY.—(1) Notice of the proposed use of the conveyance authority provided by subsection (a) shall be provided in such manner as the Secretary of Defense may prescribe, including publication in the Federal Register and otherwise. When real property located at a military installation is proposed for conveyance by means of a public sale, the Secretary concerned may notify prospective purchasers that consideration for the property may be provided in the manner authorized by such subsection.

(2) The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

(A) the Secretary submits to Congress notice of the conveyance, including—

(i) a description of the real property to be conveyed by the Secretary under the agreement;

(ii) a description of the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(iii) the amount of any payment to be made under subsection (b) or under section 2684a(d) of this title to equalize the fair market values of the property to be conveyed and the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(B) the waiting period applicable to that notice under paragraph (3) expires.

(3) If the notice submitted under paragraph (2) deals with the conveyance of real property located on a military installation that is closed or realigned under a base closure law or the conveyance of real property under an agreement entered into under section 2684a of this title, the Secretary concerned may enter into the agreement under subsection (a) for the conveyance of the property after a period of 21 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title. In the case of other real property to be conveyed under subsection (a), the Secretary concerned may enter into the agreement only after a period of 60 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 45 days has elapsed from the date on which the electronic copy is provided.

(e) DEPOSIT AND USE OF FUNDS.—The Secretary concerned shall deposit funds received under subsection (b) in the appropriation ''Foreign Currency Fluctuations, Construction, Defense''. The funds deposited shall be available, in such amounts as provided in appropriation Acts, for the purpose of paying increased costs of overseas military construction and family housing construction or improvement associated with unfavorable fluctuations in currency exchange rates. The use of such funds for this purpose does not relieve the Secretary concerned from the duty to provide advance notice to Congress under section 2853(c) of this title whenever the Secretary approves an increase in the cost of an overseas project under such section.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary concerned.

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

(Added Pub. L. 108–136, div. B, title XXVIII, § 2805(a)(1), Nov. 24, 2003, 117 Stat. 1719; amended Pub. L. 109–364, div. B, title XXVIII, § 2811(a)–(f)(1), Oct. 17, 2006, 120 Stat. 2471–2473; Pub. L. 111–84, div. B, title XXVIII, § 2804(a)–(d)(1), Oct. 28, 2009, 123 Stat. 2661, 2662; Pub. L. 112–81, div. B, title XXVIII, § 2815(a), (b),

Dec. 31, 2011, 125 Stat. 1688, 1689; Pub. L. 112–239, div. B, title XXVIII, § 2811, Jan. 2, 2013, 126 Stat. 2150.)

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112–239 substituted ''any person'' for ''any eligible entity'', ''the person'' for ''the entity'', and ''the person's control'' for ''their control''.

2011—Pub. L. 112–81, § 2815(a)(1), substituted ''Exchange of property at military installations'' for ''Conveyance of property at military installations to limit encroachment'' in section catchline.

Subsec. (a). Pub. L. 112–81, § 2815(a)(2)(A), substituted ''Exchange Authorized'' for ''Conveyance Authorized; Consideration'' in heading.

Subsec. (a)(1). Pub. L. 112–81, § 2815(a)(2)(B), substituted ''to any eligible entity who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the entity in and to a parcel of real property, including any improvements thereon under their control, or to carry out a land acquisition'' for ''to any person who agrees, in exchange for the real property, to carry out a land acquisition''.

Subsecs. (f) to (h). Pub. L. 112–81, § 2815(b), redesignated subsecs. (g) and (h) as (f) and (g), respectively, and struck out former subsec. (f), which provided that authority to enter into an agreement under this section would expire on September 30, 2013.

2009—Pub. L. 111–84, § 2804(d)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Conveyance of property at military installations to support military construction or limit encroachment''.

Subsec. (a)(1). Pub. L. 111–84, § 2804(a)(1)(A), struck out subpar. (A) designation before ''to carry out'', substituted ''real property,'' for ''real property—'', '' to carry out a land acquisition'' for ''to carry out a military construction project or land acquisition'', and a period for ''; or'', and struck out subpar. (B) which read as follows: ''to transfer to the Secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both.''

Subsec. (a)(3). Pub. L. 111–84, § 2804(a)(1)(B), struck out par. (3) which read as follows: ''Subparagraph (B) of paragraph (2) shall apply only during the period beginning on the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007 and ending on September 30, 2008. Any conveyance of real property described in such subparagraph for which the Secretary concerned has provided the advance public notice required by subsection (d)(1) before the expiration date may be completed after that date.''

Subsec. (b). Pub. L. 111–84, § 2804(a)(2), substituted ''fair market value of the land'' for ''fair market value of the military construction, military family housing, or military unaccompanied housing'' in two places.

Subsec. (c). Pub. L. 111–84, § 2804(a)(3), added subsec. (c) and struck out former subsec. (c) which related to pilot program for use of conveyance authority.

Subsec. (d)(2)(A)(ii), (iii). Pub. L. 111–84, § 2804(a)(4), substituted ''land acquisition'' for ''military construction project, land acquisition, military family housing, or military unaccompanied housing''.

Subsec. (e). Pub. L. 111–84, § 2804(b), designated par. (3) as entire subsec., substituted ''The Secretary concerned shall deposit funds received under subsection (b) in the appropriation 'Foreign Currency Fluctuations, Construction, Defense'. The funds deposited shall be available'' for ''The funds deposited under paragraph (2) shall be available'', and struck out pars. (1) and (2), which read as follows:

''(1) Except as provided in paragraph (2), the Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.

''(2) During the period specified in paragraph (3) of subsection (a), the Secretary concerned shall deposit funds received under subsection (b) in the appropriation 'Foreign Currency Fluctuations, Construction, Defense'.''

Subsec. (f). Pub. L. 111–84, § 2804(c), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to annual reports on conveyances and effect of failure to submit report.

2006—Pub. L. 109–364, § 2811(f)(1), substituted ''to support military construction or limit encroachment'' for ''closed or realigned to support military construction'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 2811(a), (b), designated existing provisions as par. (1), in introductory provisions substituted ''described in paragraph (2)'' for ''located on a military installation that is closed or realigned under a base closure law'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in subpar. (A) substituted ''land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations'' for ''land acquisition'', and added pars. (2) and (3).

Subsec. (d)(1). Pub. L. 109–364, § 2811(c)(1), substituted ''is proposed for conveyance'' for ''closed or realigned under the base closure laws is to be conveyed''.

Subsec. (d)(2), (3). Pub. L. 109–364, § 2811(c)(2), added pars. (2) and (3) and struck out former par. (2) which read as follows: ''The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

''(A) the Secretary submits to Congress notice of the conveyance, including the military construction activities, military family housing, or military unaccompanied housing to be obtained in exchange for the conveyance; and

''(B) a period of 14 days expires beginning on the date on which the notice is submitted.''

Subsec. (e). Pub. L. 109–364, § 2811(d), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.''

Subsec. (f). Pub. L. 109–364, § 2811(e), in heading substituted ''Annual Reports; Effect of Failure to Submit'' for ''Annual Report'', designated existing provisions as par. (1), in introductory provisions substituted ''Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a report detailing the following:'' for ''In the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall include a report detailing the following:'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in subpar. (C) inserted ''and of excess real property at military installations'' before period at end, and added par. (2).

SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING

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AMENDMENTS

2008—Pub. L. 110–417, div. B, title XXVIII, §2805(a)(2), (e)(2), Oct. 14, 2008, 122 Stat. 4722, 4724, added items 2882 and 2885 and struck out former item 2882 ''Assignment of members of the armed forces to housing units''.

2004—Pub. L. 108–375, div. B, title XXVIII, §2805(b)(2), Oct. 28, 2004, 118 Stat. 2122, struck out item 2885 ''Expiration of authority''.

2002—Pub. L. 107–314, div. B, title XXVIII, §§2802(b)(3), (c)(2), 2803(a)(2), Dec. 2, 2002, 116 Stat. 2703, 2705, struck out ''to be constructed'' after ''Leasing of housing'' in item 2874, struck out item 2879 ''Interim leases'', and added item 2881a.

2001—Pub. L. 107–107, div. B, title XXVIII, §2804(b), Dec. 28, 2001, 115 Stat. 1306, added item 2883a.

2000—Pub. L. 106–398, §1 [div. B, title XXVIII, §2805(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415, added item 2872a.

1999—Pub. L. 106–65, div. B, title XXVIII, §2803(h)(2), Oct. 5, 1999, 113 Stat. 849, added item 2875 and struck out former item 2875 ''Investments in nongovernmental entities''.

§ 2871. Definitions

In this subchapter:

(1) The term ''ancillary supporting facilities'' means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(2) The term ''child development center'' includes a facility, and the utilities to support such facility, the function of which is to support the daily care of children aged six weeks old through five years old for full-day, part-day, and hourly service.

(3) The term ''construction'' means the construction of military housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.

(4) The term ''contract'' includes any contract, lease, or other agreement entered into under the authority of this subchapter.

(5) The term ''eligible entity'' means any private person, corporation, firm, partnership, company, State or local government, or housing authority of a State or local government that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of military housing units and ancillary supporting facilities.

(6) The term ''Fund'' means the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund established under section 2883(a) of this title.

(7) The term ''military unaccompanied housing'' means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents and transient housing intended to be occupied by members of the armed forces on temporary duty.

(8) The term ''United States'' includes the Commonwealth of Puerto Rico.

(Added Pub. L. 104–106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 544; amended Pub. L. 105–261, div. B, title XXVIII, §2803, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–65, div. B, title XXVIII, §2803(a), Oct. 5, 1999, 113 Stat. 848; Pub. L. 107–314, div. B, title XXVIII, §2803(b), Dec. 2, 2002, 116 Stat. 2705; Pub. L. 108–136, div. A, title X, §1043(c)(6), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 109–163, div. B, title XXVIII, §2805(b), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110–417, div. B, title XXVIII, §2805(c), Oct. 14, 2008, 122 Stat. 4723.)

AMENDMENTS

2008—Par. (5). Pub. L. 110–417 inserted before period at end ''that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of military housing units and ancillary supporting facilities''.

2006—Par. (1). Pub. L. 109–163, §2805(b)(1), inserted ''child development centers,'' after ''day care centers,''.

Par. (2). Pub. L. 109–163, §2805(b)(2), added par. (2).

2003—Par. (2). Pub. L. 108–136 struck out par. (2) which read as follows: ''The term 'base closure law' means the following:

''(A) Section 2687 of this title.

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

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

2002—Par. (7). Pub. L. 107–314 inserted ''and transient housing intended to be occupied by members of the armed forces on temporary duty'' before period at end.

1999—Pars. (5) to (8). Pub. L. 106–65 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1998—Par. (1). Pub. L. 105–261 inserted ''facilities to provide or support elementary or secondary education,'' after ''including''.

§ 2872. General authority

In addition to any other authority provided under this chapter for the acquisition or construction of military family housing or military unaccompanied housing, the Secretary concerned may exercise any authority or any combination of authorities provided under this subchapter in order to provide for the acquisition or construction by eligible entities of the following:

(1) Family housing units on or near military installations within the United States and its territories and possessions.

(2) Military unaccompanied housing units on or near such military installations.

(Added Pub. L. 104–106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106–65, div. B, title XXVIII, §2803(b), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''eligible entities'' for ''private persons'' in introductory provisions.

§ 2872a. Utilities and services

(a) AUTHORITY TO FURNISH.—The Secretary concerned may furnish utilities and services re-

ferred to in subsection (b) in connection with any military housing acquired or constructed pursuant to the exercise of any authority or combination of authorities under this subchapter if the military housing is located on a military installation.

(b) COVERED UTILITIES AND SERVICES.—The utilities and services that may be furnished under subsection (a) are the following:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural gas.
(7) Pest control.
(8) Snow and ice removal.
(9) Mechanical refrigeration.
(10) Telecommunications service.
(11) Firefighting and fire protection services.
(12) Police protection services.

(c) REIMBURSEMENT.—(1) The Secretary concerned shall be reimbursed for any utilities or services furnished under subsection (a).

(2) The amount of any cash payment received under paragraph (1) as reimbursement for the cost of furnishing utilities or services shall—

(A) in the case of a cost paid using funds appropriated or otherwise made available before October 1, 2014, be credited to the appropriation or working capital account from which the cost of furnishing utilities or services concerned was paid; or

(B) in the case of a cost paid using funds appropriated or otherwise made available on or after October 1, 2014, be credited to the appropriation or working capital account currently available for the purpose of furnishing utilities or services under subsection (a).

(3) Amounts credited under paragraph (2) to an appropriation or account shall be merged with funds in such appropriation or account, and shall be available to the same extent, and subject to the same terms and conditions, as such funds.

(Added Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2805(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–414; amended Pub. L. 107–314, div. B, title XXVIII, § 2802(a), Dec. 2, 2002, 116 Stat. 2703; Pub. L. 113–66, div. B, title XXVIII, § 2804, Dec. 26, 2013, 127 Stat. 1007.)

AMENDMENTS

2013—Subsec. (c)(2), (3). Pub. L. 113–66 substituted ''under paragraph (1) as reimbursement for the cost of furnishing utilities or services shall—'' for ''under paragraph (1) shall be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services concerned was paid.'', added subpars. (A) and (B), designated second sentence of par. (2) as par. (3), and substituted ''Amounts credited under paragraph (2)'' for ''Amounts so credited''.

2002—Subsec. (b)(11), (12). Pub. L. 107–314 added pars. (11) and (12).

§ 2873. Direct loans and loan guarantees

(a) DIRECT LOANS.—(1) Subject to subsection (c), the Secretary concerned may make direct loans to an eligible entity in order to provide funds to the eligible entity for the acquisition or construction of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The Secretary concerned shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.

(b) LOAN GUARANTEES.—(1) Subject to subsection (c), the Secretary concerned may guarantee a loan made to an eligible entity if the proceeds of the loan are to be used by the eligible entity to acquire, or construct housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The amount of a guarantee on a loan that may be provided under paragraph (1) may not exceed the amount equal to the lesser of—

(A) the amount equal to 80 percent of the value of the project; or

(B) the amount of the outstanding principal of the loan.

(3) The Secretary concerned shall establish such terms and conditions with respect to guarantees of loans under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the rights and obligations of obligors of such loans and the rights and obligations of the United States with respect to such guarantees.

(c) LIMITATION ON DIRECT LOAN AND GUARANTEE AUTHORITY.—Direct loans and loan guarantees may be made under this section only to the extent that appropriations of budget authority to cover their cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) are made in advance, or authority is otherwise provided in appropriation Acts. If such appropriation or other authority is provided, there may be established a financing account (as defined in section 502(7) of such Act (2 U.S.C. 661a(7))), which shall be available for the disbursement of direct loans or payment of claims for payment on loan guarantees under this section and for all other cash flows to and from the Government as a result of direct loans and guarantees made under this section.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(c), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–65, § 2803(c)(1), substituted ''an eligible entity'' for ''persons in the private sector'' and ''the eligible entity'' for ''such persons''.

Subsec. (b)(1). Pub. L. 106–65, § 2803(c)(2), substituted ''an eligible entity'' for ''any person in the private sector'' and ''the eligible entity'' for ''the person''.

§ 2874. Leasing of housing

(a) LEASE AUTHORIZED.—The Secretary concerned may enter into contracts for the lease of housing units that the Secretary determines are suitable for use as military family housing or military unaccompanied housing.

(b) USE OF LEASED UNITS.—The Secretary concerned shall utilize housing units leased under this section as military family housing or military unaccompanied housing, as appropriate.

(c) LEASE TERMS.—A contract under this section may be for any period that the Secretary concerned determines appropriate and may provide for the owner of the leased property to operate and maintain the property.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 107–314, div. B, title XXVIII, § 2802(b)(1), (2), Dec. 2, 2002, 116 Stat. 2703.)

AMENDMENTS

2002—Pub. L. 107–314, § 2802(b)(2), in section catchline struck out ''to be constructed'' after ''Leasing of housing''.

Subsec. (a). Pub. L. 107–314, § 2802(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary concerned may enter into contracts for the lease of military family housing units or military unaccompanied housing units to be constructed under this subchapter.''

Subsecs. (b), (c). Pub. L. 107–314, § 2802(b)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

§ 2875. Investments

(a) INVESTMENTS AUTHORIZED.—The Secretary concerned may make investments in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

(b) FORMS OF INVESTMENT.—An investment under this section may take the form of an acquisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

(c) LIMITATION ON VALUE OF INVESTMENT.—(1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to 33⅓ percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(2) If the Secretary concerned conveys land or facilities to an eligible entity as all or part of an investment in the eligible entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(3) In this subsection, the term ''capital cost'', with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

(d) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 105–85, div. B, title XXVIII, § 2805, Nov. 18, 1997, 111 Stat. 1991; Pub. L. 106–65, div. B, title XXVIII, § 2803(d), (h)(1), Oct. 5, 1999, 113 Stat. 849; Pub. L. 108–136, div. A, title X, § 1031(a)(50), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 113–66, div. B, title XXVIII, § 2805, Dec. 26, 2013, 127 Stat. 1008.)

AMENDMENTS

2013—Subsec. (e). Pub. L. 113–66 struck out subsec. (e). Text read as follows: ''Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund may be used to make a cash investment under this section in an eligible entity only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title.''

2003—Subsec. (e). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title''.

1999—Pub. L. 106–65, § 2803(h)(1), struck out ''in nongovernmental entities'' after ''Investments'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 2803(d)(1), substituted ''an eligible entity'' for ''nongovernmental entities''.

Subsec. (c). Pub. L. 106–65, § 2803(d)(2), substituted ''an eligible entity'' for ''a nongovernmental entity'' in pars. (1) and (2) and ''the eligible entity'' for ''the entity'' wherever appearing in pars. (1) and (2).

Subsec. (d). Pub. L. 106–65, § 2803(d)(3), substituted ''eligible'' for ''nongovernmental''.

Subsec. (e). Pub. L. 106–65, § 2803(d)(4), substituted ''an eligible entity'' for ''a nongovernmental entity''.

1997—Subsec. (e). Pub. L. 105–85 added subsec. (e).

§ 2876. Rental guarantees

The Secretary concerned may enter into agreements with eligible entities that acquire or construct military family housing units or military unaccompanied housing units under this subchapter in order to assure—

(1) the occupancy of such units at levels specified in the agreements; or

(2) rental income derived from rental of such units at levels specified in the agreements.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(e), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''eligible entities'' for ''private persons'' in introductory provisions.

§ 2877. Differential lease payments

Pursuant to an agreement entered into by the Secretary concerned and a lessor of military family housing or military unaccompanied housing to members of the armed forces, the Secretary may pay the lessor an amount in addition to the rental payments for the housing made by the members as the Secretary determines appro-

priate to encourage the lessor to make the housing available to members of the armed forces as military family housing or as military unaccompanied housing.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(f), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''a lessor'' for ''a private lessor''.

§ 2878. Conveyance or lease of existing property and facilities

(a) CONVEYANCE OR LEASE AUTHORIZED.—The Secretary concerned may convey or lease property or facilities (including ancillary supporting facilities) to eligible entities for purposes of using the proceeds of such conveyance or lease to carry out activities under this subchapter.

(b) INAPPLICABILITY TO PROPERTY AT INSTALLATION APPROVED FOR CLOSURE.—The authority of this section does not apply to property or facilities located on or near a military installation approved for closure under a base closure law.

(c) COMPETITIVE PROCESS.—The Secretary concerned shall ensure that the time, method, and terms and conditions of the reconveyance or lease of property or facilities under this section from the eligible entity permit full and free competition consistent with the value and nature of the property or facilities involved.

(d) TERMS AND CONDITIONS.—(1) The conveyance or lease of property or facilities under this section shall be for such consideration and upon such terms and conditions as the Secretary concerned considers appropriate for the purposes of this subchapter and to protect the interests of the United States.

(2) As part or all of the consideration for a conveyance or lease under this section, the purchaser or lessor (as the case may be) shall enter into an agreement with the Secretary to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or sublease of a reasonable number of the housing units covered by the conveyance or lease, as the case may be, or in the lease of other suitable housing units made available by the purchaser or lessee.

(e) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.—The conveyance or lease of property or facilities under this section shall not be subject to the following provisions of law:

(1) Section 2667 of this title.

(2) Subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(3) Section 1302 of title 40.

(4) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 105–85, div. A, title X, § 1073(a)(60), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–65, div. B, title XXVIII, § 2803(g), Oct. 5, 1999, 113 Stat. 849; Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(23), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 110–417, div. B, title XXVIII, § 2805(d), Oct. 14, 2008, 122 Stat. 4723; Pub. L. 111–350, § 5(b)(50), Jan. 4, 2011, 124 Stat. 3846.)

AMENDMENTS

2011—Subsec. (e)(2). Pub. L. 111–350, which directed substitution of ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' in subsec. (d)(2), was executed by making the substitution in subsec. (e)(2) to reflect the probable intent of Congress and the amendment by Pub. L. 110–417. See 2008 Amendment note below.

2008—Subsecs. (c) to (e). Pub. L. 110–417 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

2002—Subsec. (d)(2). Pub. L. 107–217, § 3(b)(23)(A), substituted ''Subtitle I of title 40 and title III of the'' for ''The'' and ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

Subsec. (d)(3). Pub. L. 107–217, § 3(b)(23)(B), substituted ''Section 1302 of title 40'' for ''Section 321 of the Act of June 30, 1932 (commonly known as the Economy Act) (40 U.S.C. 303b)''.

2001—Subsec. (d)(4). Pub. L. 107–107 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

1999—Subsec. (a). Pub. L. 106–65 substituted ''eligible entities'' for ''private persons''.

1997—Subsec. (d)(4). Pub. L. 105–85 substituted ''11411'' for ''11401''.

[§ 2879. Repealed. Pub. L. 107–314, div. B, title XXVIII, § 2802(c)(1), Dec. 2, 2002, 116 Stat. 2703]

Section, added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547, related to interim leases of completed units pending completion of a project to acquire or construct military family housing units or military unaccompanied housing units.

§ 2880. Unit size and type

(a) CONFORMITY WITH SIMILAR HOUSING UNITS IN LOCALE.—The Secretary concerned shall ensure that the room patterns and floor areas of military family housing units and military unaccompanied housing units acquired or constructed under this subchapter are generally comparable to the room patterns and floor areas of similar housing units in the locality concerned.

(b) INAPPLICABILITY OF LIMITATIONS ON SPACE BY PAY GRADE.—Sections 2826 and 2856 of this title shall not apply to military family housing or military unaccompanied housing units acquired or constructed under this subchapter.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 108–136, div. B, title XXVIII, § 2806, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 109–364, div. B, title XXVIII, § 2807(b), Oct. 17, 2006, 120 Stat. 2469.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–364 substituted ''Sections 2826 and 2856'' for ''(1) Section 2826'', inserted ''or military unaccompanied housing'' after ''military family housing'', and struck out par. (2) which read as follows: ''The regulations prescribed under section 2856 of this title shall not apply to any military unaccompanied housing unit acquired or constructed under this subchapter.''

2003—Subsec. (b)(2). Pub. L. 108–136 struck out ''unless the unit is located on a military installation'' before period at end.

§ 2881. Ancillary supporting facilities

(a) AUTHORITY TO ACQUIRE OR CONSTRUCT.—Any project for the acquisition or construction of military family housing units or military unaccompanied housing units under this subchapter may include the acquisition or construction of ancillary supporting facilities for the housing units concerned.

(b) RESTRICTION.—A project referred to in subsection (a) may not include the acquisition or construction of an ancillary supporting facility (other than a child development center) if, as determined by the Secretary concerned, the facility is to be used for providing merchandise or services in direct competition with—

(1) the Army and Air Force Exchange Service;

(2) the Navy Exchange Service Command;

(3) a Marine Corps exchange;

(4) the Defense Commissary Agency; or

(5) any nonappropriated fund activity of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 106–65, div. B, title XXVIII, § 2804, Oct. 5, 1999, 113 Stat. 849; Pub. L. 109–163, div. B, title XXVIII, § 2805(a), Jan. 6, 2006, 119 Stat. 3507.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 inserted ''(other than a child development center)'' after ''ancillary supporting facility'' in introductory provisions.

1999—Pub. L. 106–65 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–163, div. B, title XXVIII, § 2805(c), Jan. 6, 2006, 119 Stat. 3507, provided that: ''Nothing in the amendment made by subsection (a) [amending this section] may be construed to alter any law and regulation applicable to the operation of a child development center, as defined in section 2871(2) of title 10, United States Code.''

§ 2881a. Pilot projects for acquisition or construction of military unaccompanied housing

(a) PILOT PROJECTS AUTHORIZED.—The Secretary of the Navy may carry out not more than three pilot projects under the authority of this section or another provision of this subchapter to use the private sector for the acquisition or construction of military unaccompanied housing in the United States, including any territory or possession of the United States.

(b) TREATMENT OF HOUSING; ASSIGNMENT OF MEMBERS.—The Secretary of the Navy may assign members of the armed forces without dependents to housing units acquired or constructed under the pilot projects, and such housing units shall be considered as quarters of the United States or a housing facility under the jurisdiction of the Secretary for purposes of section 403 of title 37.

(c) BASIC ALLOWANCE FOR HOUSING.—(1) The Secretary of Defense may prescribe and, under section 403(n) of title 37, pay for members of the armed forces without dependents in privatized housing acquired or constructed under the pilot projects higher rates of partial basic allowance for housing than the rates authorized under paragraph (2) of such section.

(2) The partial basic allowance for housing paid for a member at a higher rate under this subsection may be paid directly to the private sector source of the housing to whom the member is obligated to pay rent or other charge for residing in such housing if the private sector source credits the amount so paid against the amount owed by the member for the rent or other charge.

(d) FUNDING.—(1) The Secretary of the Navy shall use the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under the pilot projects.

(2) Subject to 30 days prior notification to the appropriate committees of Congress, such additional amounts as the Secretary of Defense considers necessary may be transferred to the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in military construction accounts. The amounts so transferred shall be merged with and be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund.

(e) REPORTS.—(1) The Secretary of the Navy shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition of military unaccompanied housing that the Secretary proposes to solicit under the pilot projects;

(B) each conveyance or lease proposed under section 2878 of this title in furtherance of the pilot projects; and

(C) the proposed partial basic allowance for housing rates for each contract as they vary by grade of the member and how they compare to basic allowance for housing rates for other contracts written under the authority of the pilot programs.

(2) The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation. The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(f) EXPIRATION.—The authority of the Secretary of the Navy to enter into a contract under the pilot programs shall expire September 30, 2009.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2803(a)(1), Dec. 2, 2002, 116 Stat. 2703; amended Pub. L. 109–163, div. A, title X, § 1056(c)(10), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109–364, div. B, title XXVIII, § 2812, Oct. 17, 2006, 120 Stat. 2473; Pub. L. 111–383, div. B, title XXVIII, § 2803(f), Jan. 7, 2011, 124 Stat. 4459.)

AMENDMENTS

2011—Subsec. (e)(2). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 20 days has

elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title''.

2006—Subsecs. (d)(2), (e)(2). Pub. L. 109–364, § 2812(a), substituted ''30 days'' for ''90 days''.

Subsec. (f). Pub. L. 109–364, § 2812(b), substituted ''2009'' for ''2007''.

Pub. L. 109–163 substituted ''The'' for ''Notwithstanding section 2885 of this title, the''.

§ 2882. Effect of assignment of members to housing units acquired or constructed under alternative authority

(a) TREATMENT AS QUARTERS OF THE UNITED STATES.—Except as provided in subsection (b), housing units acquired or constructed under this subchapter shall be considered as quarters of the United States or a housing facility under the jurisdiction of a uniformed service for purposes of section 403 of title 37.

(b) AVAILABILITY OF BASIC ALLOWANCE FOR HOUSING.—A member of the armed forces who is assigned to a housing unit acquired or constructed under this subchapter that is not owned or leased by the United States shall be entitled to a basic allowance for housing under section 403 of title 37.

(c) LEASE PAYMENTS THROUGH PAY ALLOTMENTS.—The Secretary concerned may require members of the armed forces who lease housing in housing units acquired or constructed under this subchapter to make lease payments for such housing pursuant to allotments of the pay of such members under section 701 of title 37.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 105–85, div. A, title VI, § 603(d)(2)(C), Nov. 18, 1997, 111 Stat. 1783; Pub. L. 110–417, div. B, title XXVIII, § 2805(e)(1), Oct. 14, 2008, 122 Stat. 4723.)

AMENDMENTS

2008—Pub. L. 110–417 amended section generally. Prior to amendment, section related to assignment of members of the armed forces to housing units by the Secretary concerned, treatment of such housing as quarters of the United States, entitlement to a basic allowance for housing, and making of lease payments through pay allotments.

1997—Subsec. (b)(1). Pub. L. 105–85, § 603(d)(2)(C)(i), substituted ''section 403'' for ''section 403(b)''.

Subsec. (b)(2). Pub. L. 105–85, § 603(d)(2)(C)(ii), substituted ''basic allowance for housing under section 403 of title 37'' for ''basic allowance for quarters under section 403 of title 37 and, if in a high housing cost area, a variable housing allowance under section 403a of that title''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

§ 2883. Department of Defense Housing Funds

(a) ESTABLISHMENT.—There are hereby established on the books of the Treasury the following accounts:

(1) The Department of Defense Family Housing Improvement Fund.

(2) The Department of Defense Military Unaccompanied Housing Improvement Fund.

(b) COMMINGLING OF FUNDS PROHIBITED.—(1) The Secretary of Defense shall administer each Fund separately.

(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

(c) CREDITS TO FUNDS.—(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition, improvement, or construction of military family housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing.

(D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.

(2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing.

(D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.

(d) USE OF AMOUNTS IN FUNDS.—(1) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Family Housing Improvement Fund to carry out activities under this subchapter with respect to military family housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(3) Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

(e) LIMITATION ON OBLIGATIONS.—(1) The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

(2) The Funds established under subsection (a) shall be the sole source of funds for activities carried out under this subchapter.

(f) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to a Fund under subparagraph (B) of paragraph (1) or subparagraph (B) of paragraph (2) of subsection (c) may be made only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 104–106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 104–201, div. B, title XXVIII, §2804, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106–65, div. B, title XXVIII, §2802(b), Oct. 5, 1999, 113 Stat. 848; Pub. L. 108–136, div. A, title X, §1031(a)(51), div. B, title XXVIII, §2805(c), Nov. 24, 2003, 117 Stat. 1603, 1721; Pub. L. 108–375, div. B, title XXVIII, §2805(a), Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109–163, div. B, title XXVIII, §2806(a), (b), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110–181, div. B, title XXVII, §2705, Jan. 28, 2008, 122 Stat. 533; Pub. L. 112–239, div. B, title XXVII, §2711(c)(5), Jan. 2, 2013, 126 Stat. 2144.)

AMENDMENTS

2013—Subsec. (c)(1)(G). Pub. L. 112–239, §2711(c)(5)(A)(i), struck out subpar. (G), which read as follows: ''Subject to subsection (f), any amounts that the Secretary of Defense transfers to that Fund from amounts in the Department of Defense Base Closure Account 2005.''

Subsec. (c)(2)(G). Pub. L. 112–239, §2711(c)(5)(A)(ii), struck out subpar. (G), which read as follows: ''Subject to subsection (f), any amounts that the Secretary of Defense transfers to that Fund from amounts in the Department of Defense Base Closure Account 2005.''

Subsec. (f). Pub. L. 112–239, §2711(c)(5)(B), struck out ''or (G)'' after ''subparagraph (B)'' in two places in first sentence, and struck out second sentence which read: ''In addition, the notice required in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.''

2008—Subsec. (c)(1)(G). Pub. L. 110–181, §2705(a)(1), added subpar. (G).

Subsec. (c)(2)(G). Pub. L. 110–181, §2705(a)(2), added subpar. (G).

Subsec. (f). Pub. L. 110–181, §2705(b), substituted ''subparagraph (B) or (G) of paragraph (1) or subparagraph (B) or (G) of paragraph (2)'' for ''paragraph (1)(B) or (2)(B)'' and inserted at end ''In addition, the notice required in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.''

2006—Subsec. (c)(1)(B). Pub. L. 109–163, §2806(b), substituted ''acquisition, improvement, or construction'' for ''acquisition or construction''.

Subsec. (e). Pub. L. 109–163, §2806(a), designated existing provisions as par. (1) and added par. (2).

2004—Subsec. (g). Pub. L. 108–375 struck out heading and text of subsec. (g). Text read as follows: ''The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed—

''(1) $850,000,000 for the acquisition or construction of military family housing; and

''(2) $150,000,000 for the acquisition or construction of military unaccompanied housing.''

2003—Subsec. (c)(1)(F). Pub. L. 108–136, §2805(c)(1), added subpar. (F).

Subsec. (c)(2)(F). Pub. L. 108–136, §2805(c)(2), added subpar. (F).

Subsec. (f). Pub. L. 108–136, §1031(a)(51), inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title''.

1999—Subsec. (c)(1)(E). Pub. L. 106–65, §2802(b)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 106–65, §2802(b)(2), added subpar. (E).

1996—Subsec. (d)(1), (2). Pub. L. 104–201 inserted at end ''The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are

otherwise available to the Department of Defense for such types of expenses.''

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113–76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112–239, set out as a note under section 2701 of this title.

§ 2883a. Funds for housing allowances of members of the armed forces assigned to certain military family housing units

(a) AUTHORITY TO TRANSFER FUNDS TO COVER HOUSING ALLOWANCES.—During the fiscal year in which a contract is awarded for the acquisition or construction of military family housing units under this subchapter that are not to be owned by the United States, the Secretary of Defense may transfer the amount determined under subsection (b) with respect to such housing from appropriations available for support of military housing for the armed force concerned for that fiscal year to appropriations available for pay and allowances of military personnel of that same armed force for that same fiscal year.

(b) AMOUNT TRANSFERRED.—The total amount authorized to be transferred under subsection (a) in connection with a contract under this subchapter may not exceed an amount equal to any additional amounts payable during the fiscal year in which the contract is awarded to members of the armed forces assigned to the acquired or constructed housing units as basic allowance for housing under section 403 of title 37 that would not otherwise have been payable to such members if not for assignment to such housing units.

(c) TRANSFERS SUBJECT TO APPROPRIATIONS.—The transfer of funds under the authority of subsection (a) is limited to such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 107–107, div. B, title XXVIII, § 2804(a), Dec. 28, 2001, 115 Stat. 1305.)

§ 2884. Reports

(a) PROJECT REPORTS.—(1) The Secretary of Defense shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition or construction of family housing units or unaccompanied housing units that the Secretary proposes to solicit under this subchapter; and

(B) each conveyance or lease proposed under section 2878 of this title.

(2) For each proposed contract, conveyance, or lease described in paragraph (1), the report required by such paragraph shall include the following:

(A) A description of the contract, conveyance, or lease, including a summary of the terms of the contract, conveyance, or lease.

(B) A description of the authorities to be utilized in entering into the contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease, including a justification of the intended method of participation.

(C) A statement of the scored cost of the contract, conveyance, or lease, as determined by the Office of Management and Budget.

(D) A statement of the United States funds required for the contract, conveyance, or lease and a description of the source of such funds, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease.

(E) An economic assessment of the life cycle costs of the contract, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over the life of the contract, conveyance, or lease from amounts derived from payments of government allowances, including the basic allowance for housing under section 403 of title 37, if the housing affected by the project were fully occupied by military personnel over the life of the contract, conveyance, or lease.

(3)(A) In the case of a contract described in paragraph (1) proposed to be entered into with a private party, the report shall specify whether the contract will or may include a guarantee (including the making of mortgage or rental payments) by the Secretary to the private party in the event of—

(i) the closure or realignment of the installation for which housing will be provided under the contract;

(ii) a reduction in force of units stationed at such installation; or

(iii) the extended deployment of units stationed at such installation.

(B) If the contract will or may include such a guarantee, the report shall also—

(i) describe the nature of the guarantee; and

(ii) assess the extent and likelihood, if any, of the liability of the United States with respect to the guarantee.

(4) The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(b) ANNUAL REPORTS TO ACCOMPANY BUDGET MATERIALS.—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) A separate report on the expenditures and receipts during the preceding fiscal year covering each of the Funds established under section 2883 of this title, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year.

(2) A report setting forth, by armed force, the following:

(A) An estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter.

(B) The number of units of military family housing and military unaccompanied housing upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.

(3) A description of the plans for housing privatization activities to be carried out under this subchapter—

(A) during the fiscal year for which the budget is submitted; and

(B) during the period covered by the then-current future-years defense plan under section 221 of this title.

(4) A report identifying each family housing unit acquired or constructed under this subchapter that is used, or intended to be used, as quarters for a general officer or flag officer and for which the total operation, maintenance, and repair costs for the unit exceeded $50,000. For each housing unit so identified, the report shall also include the total of such operation, maintenance, and repair costs.

(c) ANNUAL REPORT ON PRIVATIZATION PROJECTS.—The Secretary of Defense shall submit to the congressional defense committees a semi-annual report containing an evaluation of the status of oversight and accountability measures under section 2885 of this title for military housing privatization projects. To the extent each Secretary concerned has the right to attain the information described in this subsection, each report shall include, at a minimum, the following:

(1) An assessment of the backlog of maintenance and repair at each military housing privatization project where a significant backlog exists, including an estimation of the cost of eliminating the maintenance and repair backlog.

(2) If the debt associated with a privatization project exceeds net operating income or the occupancy rates for the housing units are below 75 percent for more than one year, the plan developed to mitigate the financial risk of the project.

(3) An assessment of any significant project variances between the actual and pro forma deposits in the recapitalization account, to specifically include any unique variances associated with litigation costs.

(4) The details of any significant withdrawals from a recapitalization account, including the purpose and rationale of the withdrawal and, if the withdrawal occurs before the normal recapitalization period, the impact of the early withdrawal on the financial health of the project.

(5) An assessment of the extent to which the information required to comply with paragraphs (1) through (4) has been requested by the Secretaries, but has not been made available.

(6) An assessment of cost assessed to members of the armed forces for utilities compared to utility rates in the local area.

(Added Pub. L. 104–106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 550; amended Pub. L. 108–136, div. B, title XXVIII, §2807, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 108–375, div. B, title XXVIII, §2806, Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109–163, div. B, title XXVIII, §2806(c), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110–417, div. B, title XXVIII, §2805(b), (f), Oct. 14, 2008, 122 Stat. 4723, 4724; Pub. L. 111–383, div. A, title X, §1075(h)(6), div. B, title XXVIII, §2803(g), Jan. 7, 2011, 124 Stat. 4377, 4459; Pub. L. 112–239, div. B, title XXVIII, §2803(b), Jan. 2, 2013, 126 Stat. 2148; Pub. L. 113–66, div. B, title XXVIII, §2806, Dec. 26, 2013, 127 Stat. 1008; Pub. L. 113–291, div. A, title X, §1071(f)(26), Dec. 19, 2014, 128 Stat. 3511.)

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–291 substituted ''an evaluation'' for ''on evaluation'' in introductory provisions.

2013—Subsecs. (b), (c). Pub. L. 112–239 added subsecs. (b) and (c) and struck out former subsec. (b) which required the Secretary of Defense to provide annual reports to Congress.

Subsec. (c)(3). Pub. L. 113–66 inserted '', to specifically include any unique variances associated with litigation costs'' before period at end.

2011—Subsec. (a)(4). Pub. L. 111–383, §2803(g), inserted before period at end ''or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title''.

Subsec. (b)(1). Pub. L. 111–383, §1075(h)(6), made technical correction to directory language of Pub. L. 109–163, §2806(c)(2)(A). See 2006 Amendment note below.

2008—Subsec. (b)(7). Pub. L. 110–417, §2805(b), added par. (7).

Subsec. (b)(8). Pub. L. 110–417, §2805(f), added par. (8).

2006—Subsec. (a)(2)(D). Pub. L. 109–163, §2806(c)(1), inserted before period '', including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease''.

Subsec. (b)(1). Pub. L. 109–163, §2806(c)(2)(B), (C), substituted ''covering each of the Funds'' for ''covering the Funds'' and inserted before period at end '', including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year''.

Pub. L. 109–163, §2806(c)(2)(A), as amended by Pub. L. 111–383, §1075(h)(6), substituted ''A separate report'' for ''A report''.

2004—Subsec. (a)(2). Pub. L. 108–375, §2806(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation.''

Subsec. (b)(5), (6). Pub. L. 108–375, §2806(b), added par. (5) and redesignated former par. (5) as (6).

2003—Subsec. (a)(2) to (4). Pub. L. 108–136, §2807(a), designated second sentence of par. (2) as par. (4) and added par. (3).

Subsec. (b)(2). Pub. L. 108–136, §2807(b)(1), inserted before period at end '', and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future''.

Subsec. (b)(3) to (5). Pub. L. 108–136, § 2807(b)(2), added pars. (3) to (5) and struck out former par. (3) which read as follows: ''A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, § 1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that amendment by section 1075(h)(6) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109–163 as enacted.

FINAL REPORT

Pub. L. 104–106, div. B, title XXVIII, § 2801(b), Feb. 10, 1996, 110 Stat. 551, provided that, not later than Mar. 1, 2000, the Secretary of Defense was to submit to the congressional defense committees a report on the use by the Secretary of Defense and the Secretaries of the military departments of the authorities provided by subchapter IV of chapter 169 of this title.

§ 2885. Oversight and accountability for privatization projects

(a) OVERSIGHT AND ACCOUNTABILITY MEASURES.—Each Secretary concerned shall prescribe regulations to effectively oversee and manage military housing privatization projects carried out under this subchapter during the course of the construction or renovation of the housing units. The regulations shall include the following requirements for each privatization project:

(1) The installation asset manager shall conduct monthly site visits and provide quarterly reports on the progress of the construction or renovation of the housing units. The reports shall be submitted quarterly to the assistant secretary for installations and environment of the respective military department.

(2) The installation asset manager, and, as applicable, the resident construction manager, privatization asset manager, bondholder representative, project owner, developer, general contractor, and construction consultant for the project shall conduct meetings to ensure that the construction or renovation of the units meets performance and schedule requirements and that appropriate operating and ground lease agreements are in place and adhered to.

(3) In the case of a project for new construction, if the project is 90 days or more behind schedule or otherwise appears to be substantially failing to adhere to the obligations or milestones under the contract, the assistant secretary for installations and environment of the respective military department shall submit a notice of deficiency to the Assistant Secretary of Defense for Energy, Installations, and Environment, the Secretary concerned, the managing member, and the trustee for the project.

(4)(A) Not later than 15 days after the submittal of a notice of deficiency under paragraph (3), the Secretary concerned or designated representative shall submit to the project owner, developer, or general contractor responsible for the project a summary of deficiencies related to the project.

(B) If the project owner, developer, or general contractor responsible for the privatization project is unable, within 60 days after receiving a notice of deficiency under subparagraph (A), to make progress on the issues outlined in such notice, the Secretary concerned shall notify the congressional defense committees of the status of the project, and shall provide a recommended course of action to correct the problems.

(b) REQUIRED QUALIFICATIONS.—The Secretary concerned or designated representative shall ensure that the project owner, developer, or general contractor that is selected for each military housing privatization initiative project has construction experience commensurate with that required to complete the project.

(c) BONDING LEVELS.—The Secretary concerned shall ensure that the project owner, developer, or general contractor responsible for a military housing privatization initiative project has sufficient payment and performance bonds or suitable instruments in place for each phase of a construction or renovation portion of the project to ensure successful completion of the work in amounts as agreed to in the project's legal documents, but in no case less than 50 percent of the total value of the active phases of the project, prior to the commencement of work for that phase.

(d) REPORTING OF EFFORTS TO SELECT SUCCESSOR IN EVENT OF DEFAULT.—In the event a military housing privatization initiative project enters into default, the assistant secretary for installations and environment of the respective military department shall submit a report to the congressional defense committees every 90 days detailing the status of negotiations to award the project to a new project owner, developer, or general contractor.

(e) EFFECT OF NOTICES OF DEFICIENCY ON CONTRACTORS AND AFFILIATED ENTITIES.—(1) The Secretary concerned shall keep a record of all plans of action or notices of deficiency issued to a project owner, developer, or general contractor under subsection (a)(4), including the identity of each parent, subsidiary, affiliate, or other controlling entity of such owner, developer, or contractor.

(2) Each military department shall consult all records maintained under paragraph (1) when reviewing the past performance of owners, developers, and contractors in the bidding process for a contract or other agreement for a military housing privatization initiative project.

(f) FINANCIAL INTEGRITY AND ACCOUNTABILITY MEASURES.—(1) The regulations required by subsection (a) shall address the following requirements for each military housing privatization project upon the completion of the construction or renovation of the housing units:

(A) The financial health and performance of the privatization project, including the debt-coverage ratio of the project and occupancy rates for the housing units.

(B) An assessment of the backlog of maintenance and repair of the housing units.

(2) If the debt service coverage for a military housing privatization project falls below 1.0 or the occupancy rates for the housing units of the project are below 75 percent for more than one year, the Secretary concerned shall require the development of a plan to address the financial risk of the project.

(Added Pub. L. 110–417, div. B, title XXVIII, §2805(a)(1), Oct. 14, 2008, 122 Stat. 4721; amended Pub. L. 112–239, div. B, title XXVIII, §2803(a), Jan. 2, 2013, 126 Stat. 2147; Pub. L. 113–66, div. A, title X, §1084(a)(3), Dec. 26, 2013, 127 Stat. 871; Pub. L. 113–291, div. A, title IX, §901(n)(2), Dec. 19, 2014, 128 Stat. 3469.)

PRIOR PROVISIONS

A prior section 2885, added Pub. L. 104–106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 551; amended Pub. L. 105–85, div. A, title X, §1073(a)(61), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–398, §1 [div. B, title XXVIII, §2806], Oct. 30, 2000, 114 Stat. 1654, 1654A–415; Pub. L. 107–107, div. B, title XXVIII, §2805, Dec. 28, 2001, 115 Stat. 1306, related to expiration of authority to enter into a contract under this subchapter, prior to repeal by Pub. L. 108–375, div. B, title XXVIII, §2805(b)(1), Oct. 28, 2004, 118 Stat. 2122.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–239, §2803(a)(2), in introductory provisions, inserted ''during the course of the construction or renovation of the housing units'' before period at end of first sentence.

Subsec. (a)(3). Pub. L. 113–66 substituted ''In the case of a project for new construction, if the project'' for ''If a project''.

Subsec. (f). Pub. L. 112–239, §2803(a)(1), added subsec. (f).

CHANGE OF NAME

''Assistant Secretary of Defense for Energy, Installations, and Environment'' substituted for ''Deputy Under Secretary of Defense (Installations and Environment)'' in subsec. (a)(3) on authority of section 901(n)(2) of Pub. L. 113–291, set out as a References note under section 131 of this title.

[CHAPTER 171—REPEALED]

[§§ 2891, 2892. Repealed. Pub. L. 104–106, div. A, title X, §1061(b)(1), Feb. 10, 1996, 110 Stat. 442]

Section 2891, added Pub. L. 100–456, div. A, title III, §342(a)(1), Sept. 29, 1988, 102 Stat. 1959; amended Pub. L. 102–484, div. A, title III, §372, Oct. 23, 1992, 106 Stat. 2384, required Secretary of Defense to submit to Congress for each of fiscal years 1992, 1993, and 1994, a report regarding security and control of Department of Defense supplies.

Section 2892, added Pub. L. 100–456, div. A, title III, §342(a)(1), Sept. 29, 1988, 102 Stat. 1960, directed Secretary of Defense to require investigations of discrepancies in accounting for Department supplies and to separate offices ordering supplies from offices receiving supplies.

CHAPTER 172—STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM

Sec.
2901. Strategic Environmental Research and Development Program.
2902. Strategic Environmental Research and Development Program Council.
2903. Executive Director.
2904. Strategic Environmental Research and Development Program Scientific Advisory Board.

§2901. Strategic Environmental Research and Development Program

(a) The Secretary of Defense shall establish a program to be known as the ''Strategic Environmental Research and Development Program''.

(b) The purposes of the program are as follows:

(1) To address environmental matters of concern to the Department of Defense and the Department of Energy through support for basic and applied research and development of technologies that can enhance the capabilities of the departments to meet their environmental obligations.

(2) To identify research, technologies, and other information developed by the Department of Defense and the Department of Energy for national defense purposes that would be useful to governmental and private organizations involved in the development of energy technologies and of technologies to address environmental restoration, waste minimization, hazardous waste substitution, and other environmental concerns, and to share such research, technologies, and other information with such governmental and private organizations.

(3) To furnish other governmental organizations and private organizations with data, enhanced data collection capabilities, and enhanced analytical capabilities for use by such organizations in the conduct of environmental research, including research concerning global environmental change.

(4) To identify technologies developed by the private sector that are useful for Department of Defense and Department of Energy defense activities concerning environmental restoration, hazardous and solid waste minimization and prevention, hazardous material substitution, and provide for the use of such technologies in the conduct of such activities.

(Added Pub. L. 101–510, div. A, title XVIII, §1801(a)(1), Nov. 5, 1990, 104 Stat. 1751.)

§2902. Strategic Environmental Research and Development Program Council

(a) There is a Strategic Environmental Research and Development Program Council (hereinafter in this chapter referred to as the ''Council'').

(b) The Council is composed of 12 members as follows:

(1) The official within the Office of the Assistant Secretary of Defense for Research and Engineering who is responsible for science and technology.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) The official within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics who is responsible for environmental security.

(4) The Assistant Secretary of Energy for Defense programs.

(5) The Assistant Secretary of Energy responsible for environmental restoration and waste management.

(6) The Director of the Department of Energy Office of Science.

(7) The Administrator of the Environmental Protection Agency.

(8) One representative from each of the Army, Navy, Air Force, and Coast Guard.

(9) The Executive Director of the Council (appointed pursuant to section 2903 of this title), who shall be a nonvoting member.

(c) The Secretary of Defense shall designate a member of the Council as chairman for each odd numbered fiscal year. The Secretary of Energy shall designate a member of the Council as chairman for each even-numbered fiscal year.

(d) The Council shall have the following responsibilities:

(1) To prescribe policies and procedures to implement the Strategic Environmental Research and Development Program.

(2) To enter into contracts, grants, and other financial arrangements, in accordance with other applicable law, to carry out the purposes of the Strategic Environmental Research and Development Program.

(3) To prepare an annual report that contains the following:

(A) A description of activities of the strategic environmental research and development program carried out during the fiscal year before the fiscal year in which the report is prepared.

(B) A general outline of the activities planned for the program during the fiscal year in which the report is prepared.

(C) A summary of projects continued from the fiscal year before the fiscal year in which the report is prepared and projects expected to be started during the fiscal year in which the report is prepared and during the following fiscal year.

(D) A summary of the actions of the Strategic Environmental Research and Development Program Scientific Advisory Board during the year preceding the year in which the report is submitted and any recommendations, including recommendations on program direction and legislation, that the Advisory Board considers appropriate regarding the program.

(4) To promote the maximum exchange of information, and to minimize duplication, regarding environmentally related research, development, and demonstration activities through close coordination with the military departments and Defense Agencies, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, other departments and agencies of the Federal Government or any State and local governments, including the National Science and Technology Council, and other organizations engaged in such activities.

(5) To ensure that research and development activities under the Strategic Environmental Research and Development Program do not duplicate other ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, or any other department or agency of the Federal Government.

(6) To ensure that the research and development programs identified for support pursuant to policies and procedures prescribed by the council utilize, to the maximum extent possible, the talents, skills, and abilities residing at the Federal laboratories, including the Department of Energy multiprogram and defense laboratories, the Department of Defense laboratories, and Federal contract research centers. To utilize the research capabilities of institutions of higher education and private industry to the extent practicable.

(e) In carrying out subsection (d)(1), the Council shall prescribe policies and procedures that—

(1) provide for appropriate access by Federal Government personnel, State and local government personnel, college and university personnel, industry personnel, and the general public to data under the control of, or otherwise available to, the Department of Defense that is relevant to environmental matters by—

(A) identifying the sources of such data;

(B) publicizing the availability and sources of such data by appropriately-targeted dissemination of information to such personnel and the general public, and by other means; and

(C) providing for review of classified data relevant to environmental matters with a view to declassifying or preparing unclassified summaries of such data;

(2) provide governmental and nongovernmental entities with analytic assistance, consistent with national defense missions, including access to military platforms for sensor deployment and access to computer capabilities, in order to facilitate environmental research;

(3) provide for the identification of energy technologies developed for national defense purposes (including electricity generation systems, energy storage systems, alternative fuels, biomass energy technology, and applied materials technology) that might have environmentally sound, energy efficient applications for other programs of the Department of Defense and the Department of Energy national security programs;

(4) provide for the identification and support of programs of basic and applied research, development, and demonstration in technologies useful—

(A) to facilitate environmental compliance, remediation, and restoration activities of the Department of Defense and at Department of Energy defense facilities;

(B) to minimize waste generation, including reduction at the source, by such departments; or

(C) to substitute use of nonhazardous, nontoxic, nonpolluting, and other environmentally sound materials and substances for use of hazardous, toxic, and polluting materials and substances by such departments;

(5) provide for the identification and support of research, development, and application of other technologies developed for national defense purposes which not only are directly useful for programs, projects, and activities of such departments, but also have useful applications for solutions to such national and international environmental problems as climate change and ozone depletion;

(6) provide for the Secretary of Defense, the Secretary of Energy, and the Administrator of

the Environmental Protection Agency, in cooperation with other Federal and State agencies, as appropriate, to conduct joint research, development, and demonstration projects relating to innovative technologies, management practices, and other approaches for purposes of—

(A) preventing pollution from all sources;

(B) minimizing hazardous and solid waste, including recycling; and

(C) treating hazardous and solid waste, including the use of thermal, chemical, and biological treatment technologies;

(7) encourage transfer of technologies referred to in clauses (2) through (6) to the private sector under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) and other applicable laws;

(8) provide for the identification of, and planning for the demonstration and use of, existing environmentally sound, energy-efficient technologies developed by the private sector that could be used directly by the Department of Defense;

(9) provide for the identification of military specifications that prevent or limit the use of environmentally beneficial technologies, materials, and substances in the performance of Department of Defense contracts and recommend changes to such specifications; and

(10) to ensure that the research and development programs identified for support pursuant to the policies and procedures prescribed by the Council are closely coordinated with, and do not duplicate, ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, or other Federal agencies.

(f) The Council shall be subject to the authority, direction, and control of the Secretary of Defense in prescribing policies and procedures under subsection (d)(1).

(g) Not later than February 1 of each year, the Council shall submit to the Secretary of Defense the annual report prepared pursuant to subsection (d)(3).

(Added Pub. L. 101–510, div. A, title XVIII, §1801(a)(1), Nov. 5, 1990, 104 Stat. 1751; amended Pub. L. 102–190, div. A, title II, §257(a), title X, §1061(a)(19), Dec. 5, 1991, 105 Stat. 1331, 1473; Pub. L. 102–484, div. A, title X, §1052(38), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 103–160, div. A, title II, §265(a), Nov. 30, 1993, 107 Stat. 1611; Pub. L. 104–106, div. A, title II, §203(a)–(b)(2), (c), Feb. 10, 1996, 110 Stat. 217, 218; Pub. L. 105–245, title III, §309(b)(2)(B), Oct. 7, 1998, 112 Stat. 1853; Pub. L. 106–65, div. A, title III, §324, Oct. 5, 1999, 113 Stat. 563; Pub. L. 106–398, §1 [[div. A], title III, §313(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–55; Pub. L. 108–136, div. A, title X, §1031(a)(52), Nov. 24, 2003, 117 Stat. 1603; Pub. L. 111–383, div. A, title IX, §901(j)(5), Jan. 7, 2011, 124 Stat. 4324.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (e)(7), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 111–383, §901(j)(5)(A), substituted ''official within the Office of the Assistant Secretary of Defense for Research and Engineering who is responsible for science and technology'' for ''Deputy Under Secretary of Defense for Science and Technology''.

Subsec. (b)(3). Pub. L. 111–383, §901(j)(5)(B), substituted ''official within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics who is'' for ''Deputy Under Secretary of Defense''.

2003—Subsec. (g). Pub. L. 108–136 struck out designation for par. (1) before ''Not later than February'' and struck out par. (2) which read as follows: ''Not later than March 15 of each year, the Secretary of Defense shall submit such annual report to Congress, along with such comments as the Secretary considers appropriate.''

2000—Subsec. (d)(3)(D). Pub. L. 106–398 added subpar. (D).

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''Deputy Under Secretary of Defense for Science and Technology'' for ''Director of Defense Research and Engineering''.

1998—Subsec. (b)(6). Pub. L. 105–245 substituted ''Science'' for ''Energy Research''.

1996—Subsec. (b). Pub. L. 104–106, §203(a)(1), substituted ''12'' for ''thirteen'' in introductory provisions.

Subsec. (b)(3) to (7). Pub. L. 104–106, §203(a)(2), (3), redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out former par. (3) which read as follows: ''The Assistant Secretary of the Air Force responsible for matters relating to space.''

Subsec. (b)(8). Pub. L. 104–106, §203(a)(3), (4), redesignated par. (9) as (8) and struck out '', who shall be nonvoting members'' after ''Coast Guard''. Former par. (8) redesignated (7).

Subsec. (b)(9), (10). Pub. L. 104–106, §203(a)(3), redesignated pars. (9) and (10) as (8) and (9), respectively.

Subsec. (d)(3). Pub. L. 104–106, §203(b)(1)(A), added par. (3) and struck out former par. (3) which read as follows: ''To prepare an annual five-year strategic environmental research and development plan that shall cover the fiscal year in which the plan is prepared and the four fiscal years following such fiscal year.''

Subsec. (d)(4). Pub. L. 104–106, §203(b)(1)(B), substituted ''National Science and Technology Council'' for ''Federal Coordinating Council on Science, Engineering, and Technology''.

Subsec. (e)(3). Pub. L. 104–106, §203(c), substituted ''national security programs'' for ''national security programs, particularly technologies that have the potential for industrial, commercial, and other governmental applications, and to support programs of research in and development of such applications''.

Subsecs. (f), (g). Pub. L. 104–106, §203(b)(2), added subsec. (g), redesignated former subsec. (g) as (f), and struck out former subsec. (f) which authorized Secretaries of Defense and Energy to submit to the Council proposals for conducting environmental research under this chapter.

Subsec. (h). Pub. L. 104–106, §203(b)(2)(A), struck out subsec. (h) which required Council to submit to Secretary of Defense and to Congress an annual report on annual five-year strategic environmental research and development plan.

1993—Subsec. (b)(1) to (4). Pub. L. 103–160, §265(a)(1)–(3), redesignated pars. (2) to (4) as (1) to (3), respectively, added par. (4), and struck out former par. (1) which read as follows: ''The Assistant Secretary of Defense responsible for matters relating to production and logistics.''

Subsec. (b)(6). Pub. L. 103–160, §265(a)(4), added par. (6) and struck out former par. (6) which read as follows:

''The Director of the Department of Energy Office of Environmental Restoration and Waste Management.''

1992—Subsec. (b)(9). Pub. L. 102–484 substituted ''nonvoting'' for ''non-voting''.

1991—Subsec. (b). Pub. L. 102–190, § 257(a)(1), substituted ''thirteen'' for ''nine'' in introductory provisions.

Subsec. (b)(9), (10). Pub. L. 102–190, § 257(a)(2), (3), added par. (9) and redesignated former par. (9) as (10).

Subsec. (f)(2)(A). Pub. L. 102–190, § 1061(a)(19), substituted ''department's'' for ''Department's''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title II, § 203(b)(3), Feb. 10, 1996, 110 Stat. 218, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to the annual report prepared during fiscal year 1997 and each fiscal year thereafter.''

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.

FIRST ANNUAL REPORT OF STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM COUNCIL

Pub. L. 101–510, div. A, title XVIII, § 1801(c), Nov. 5, 1990, 104 Stat. 1758, provided that the first annual report required by former subsec. (h) of this section be submitted to Secretary of Defense, Secretary of Energy, and Administrator of the Environmental Protection Agency not later than Feb. 1, 1992, that the Strategic Environmental Research and Development Program Council conduct and include as part of report an assessment of advisability of, and various alternatives to, charging fees for information released, as required pursuant to section 2901(b)(3) of this title and subsecs. (e)(1), (2), and (g)(2)(I) [now (f)(2)(I)] of this section, to private sector entities operating for a profit, and that Secretary of Defense, Secretary of Energy, and Administrator of the Environmental Protection Agency submit to Congress any recommendations for changes in structure or personnel of Council that Secretaries and Administrator consider necessary to carry out environmental activities of strategic environmental research and development program.

§ 2903. Executive Director

(a) There shall be an Executive Director of the Council appointed by the Secretary of Defense after consultation with the Secretary of Energy.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Executive Director is responsible for the management of the Strategic Environmental Research and Development Program in accordance with the policies established by the Council.

(c) The Executive Director may enter into contracts using competitive procedures. The Executive Director may enter into other agreements in accordance with applicable law. In either case, the Executive Director shall first obtain the approval of the Council for any contract or agreement in an amount equal to or in excess of $500,000 or such lesser amount as the Council may prescribe.

(d)(1) The Executive Director, with the concurrence of the Council, may appoint such professional and clerical staff as may be necessary to carry out the responsibilities and policies of the Council.

(2) The Executive Director, with the concurrence of the Council and without regard to the provisions of chapter 51 of title 5 and subchapter III of chapter 53 of such title, may establish the rates of basic pay for professional, scientific, and technical employees appointed pursuant to paragraph (1).

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1755; amended Pub. L. 102–25, title VII, § 701(h)(2), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–160, div. A, title II, § 265(b), Nov. 30, 1993, 107 Stat. 1611; Pub. L. 104–106, div. A, title II, § 203(d), (e)(1), Feb. 10, 1996, 110 Stat. 218.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106, § 203(d), substituted ''contracts using competitive procedures. The Executive Director may enter into'' for ''contracts or'' and ''law. In either case,'' for ''law, except that''.

Subsec. (d)(2). Pub. L. 104–106, § 203(e)(1), struck out at end ''The authority provided in the preceding sentence shall expire on September 30, 1995.''

1993—Subsec. (d)(2). Pub. L. 103–160 substituted ''September 30, 1995'' for ''November 5, 1992''.

1991—Subsec. (d)(2). Pub. L. 102–25 substituted ''on November 5, 1992'' for ''two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1991''.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title II, § 203(e)(2), Feb. 10, 1996, 110 Stat. 218, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of September 29, 1995.''

§ 2904. Strategic Environmental Research and Development Program Scientific Advisory Board

(a) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall jointly appoint a Strategic Environmental Research and Development Program Scientific Advisory Board (hereafter in this section referred to as the ''Advisory Board'') consisting of not less than six and not more than 14 members.

(b)(1) The following persons shall be permanent members of the Advisory Board:

(A) The Science Advisor to the President, or his designee.

(B) The Administrator of the National Oceanic and Atmospheric Administration, or his designee.

(2) Other members of the Advisory Board shall be appointed from among persons eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health physics, health sciences, or social sciences, with due regard given to the equitable representation of scientists and engineers who are women or who represent minority groups. At least one member of the Advisory Board shall be a representative of environmental public interest groups and one member shall be a representative of the interests of State governments.

(3) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall request—

(A) that the head of the National Academy of Sciences, in consultation with the head of the National Academy of Engineering and the head of the Institutes of Medicine of the National Academy of Sciences, nominate persons for appointment to the Advisory Board;

(B) that the Council on Environmental Quality nominate for appointment to the Advisory Board at least one person who is a representative of environmental public interest groups; and

(C) that the National Association of Governors nominate for appointment to the Advisory Board at least one person who is representative of the interests of State governments.

(4) Members of the Advisory Board shall be appointed for terms of not less than two and not more than four years.

(c) A member of the Advisory Board who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee, except for the purposes of chapter 81 of title 5 (relating to compensation for work-related injuries) and chapter 171 of title 28 (relating to tort claims).

(d) The Advisory Board shall prescribe procedures for carrying out its responsibilities. Such procedures shall define a quorum as a majority of the members, provide for annual election of the Chairman by the members of the Advisory Board, and require at least four meetings of the Advisory Board each year.

(e) The Council shall refer to the Advisory Board, and the Advisory Board shall review, each proposed research project including its estimated cost, for research in and development of technologies related to environmental activities in excess of $1,000,000. The Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding such project or proposal.

(f) The Advisory Board may make recommendations to the Council regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of the Strategic Environmental Research and Development Program.

(g) The Advisory Board shall assist and advise the Council in identifying the environmental data and analytical assistance activities that should be covered by the policies and procedures prescribed pursuant to section 2902(d)(1) of this title.

(h) Each member of the Advisory Board shall be required to file a financial disclosure report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(Added Pub. L. 101–510, div. A, title XVIII, §1801(a)(1), Nov. 5, 1990, 104 Stat. 1756; amended Pub. L. 102–190, div. A, title II, §257(b), Dec. 5, 1991, 105 Stat. 1331; Pub. L. 105–85, div. A, title III, §341, Nov. 18, 1997, 111 Stat. 1686; Pub. L. 106–398, §1 [[div. A], title III, §313(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–55.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (h), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act is set out in the Appendix to Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

2000—Subsecs. (h), (i). Pub. L. 106–398 redesignated subsec. (i) as (h) and struck out former subsec. (h) which read as follows: ''Not later than March 15 of each year, the Advisory Board shall submit to the Congress an annual report setting forth its actions during the year preceding the year in which the report is submitted and any recommendations, including recommendations on projects, programs, and information exchange and recommendations for legislation, that the Advisory Board considers appropriate regarding the Strategic Environmental Research and Development Program.''

1997—Subsec. (b)(4). Pub. L. 105–85 substituted ''not less than two and not more than four'' for ''three years''.

1991—Subsec. (a). Pub. L. 102–190, §257(b)(1), substituted ''14 members'' for ''13 members''.

Subsec. (b)(1). Pub. L. 102–190, §257(b)(2), added par. (1) and struck out former par. (1) which read as follows: ''The Science Advisor to the President, or his designee, shall be a permanent member of the Advisory Board.''

INITIAL APPOINTMENTS OF ADVISORY BOARD MEMBERS

Pub. L. 101–510, div. A, title XVIII, §1801(b), Nov. 5, 1990, 104 Stat. 1757, directed Secretary of Defense and Secretary of Energy to make the appointments required by 10 U.S.C. 2904(a) not later than 60 days after Nov. 5, 1990, and provided that up to one-half of the members originally appointed to the Strategic Environmental Research and Development Program Scientific Advisory Board could be appointed for terms of not more than six and not less than two years in order to provide for staggered expiration of the terms of members.

FIRST ANNUAL REPORT OF ADVISORY BOARD

Pub. L. 101–510, div. A, title XVIII, §1801(d), Nov. 5, 1990, 104 Stat. 1758, directed that first annual report of the Strategic Environmental Research and Development Program Scientific Advisory Board be submitted not later than Mar. 15, 1992.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 173—ENERGY SECURITY

Subchapter		Sec.
I.	Energy Security Activities	2911
II.	Energy-Related Procurement	2922
III.	General Provisions	2924

AMENDMENTS

2011—Pub. L. 112–81, div. B, title XXVIII, §2821(a)(2)(A), Dec. 31, 2011, 125 Stat. 1691, substituted ''2924'' for ''2925'' in item III.

2011—Pub. L. 111–383, div. A, title X, §1075(b)(47), Jan. 7, 2011, 124 Stat. 4371, inserted ''Sec.'' above ''2911''.

SUBCHAPTER I—ENERGY SECURITY ACTIVITIES

Sec.
2911. Energy performance goals and master plan for the Department of Defense.
2912. Availability and use of energy cost savings.
2913. Energy savings contracts and activities.
2914. Energy conservation construction projects.
2915. Facilities: use of renewable forms of energy and energy efficient products.
2916. Sale of electricity from alternate energy and cogeneration production facilities.
2917. Development of geothermal energy on military lands.
2918. Fuel sources for heating systems; prohibition on converting certain heating facilities.
2919. Department of Defense participation in programs for management of energy demand or reduction of energy usage during peak periods.

AMENDMENTS

2011—Pub. L. 111–383, div. B, title XXVIII, § 2832(c)(2), Jan. 7, 2011, 124 Stat. 4470, added items 2911 and 2915 and struck out former items 2911 ''Energy performance goals and plan for Department of Defense'' and 2915 ''New construction: use of renewable forms of energy and energy efficient products''.

2009—Pub. L. 111–84, div. B, title XXVIII, § 2843(b), Oct. 28, 2009, 123 Stat. 2682, added item 2919.

§ 2911. Energy performance goals and master plan for the Department of Defense

(a) ENERGY PERFORMANCE GOALS.—(1) The Secretary of Defense shall submit to the congressional defense committees the energy performance goals for the Department of Defense regarding transportation systems, support systems, utilities, and infrastructure and facilities.

(2) The energy performance goals shall be submitted annually not later than the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31 and cover that fiscal year as well as the next five, 10, and 20 years. The Secretary shall identify changes to the energy performance goals since the previous submission.

(b) ENERGY PERFORMANCE MASTER PLAN.—(1) The Secretary of Defense shall develop a comprehensive master plan for the achievement of the energy performance goals of the Department of Defense, as set forth in laws, executive orders, and Department of Defense policies.

(2) The master plan shall include the following:

(A) A separate master plan, developed by each military department and Defense Agency, for the achievement of energy performance goals.

(B) The use of a baseline standard for the measurement of energy consumption by transportation systems, support systems, utilities, and facilities and infrastructure that is consistent for all of the military departments.

(C) A method of measurement of reductions or conservation in energy consumption that provides for the taking into account of changes in the current size of fleets, number of facilities, and overall square footage of facility plants.

(D) Metrics to track annual progress in meeting energy performance goals.

(E) A description of specific requirements, and proposed investments, in connection with the achievement of energy performance goals reflected in the budget of the President for each fiscal year (as submitted to Congress under section 1105(a) of title 31).

(F) The up-to date list of energy-efficient products maintained under section 2915(e)(2) of this title.

(3) Not later than 30 days after the date on which the budget of the President is submitted to Congress for a fiscal year under section 1105(a) of title 31, the Secretary shall submit the current version of the master plan to Congress.

(c) SPECIAL CONSIDERATIONS.—For the purpose of developing and implementing the energy performance goals and energy performance master plan, the Secretary of Defense shall consider at a minimum the following:

(1) Opportunities to reduce the current rate of consumption of energy.

(2) Opportunities to reduce the future demand and the requirements for the use of energy.

(3) Opportunities to implement conservation measures to improve the efficient use of energy.

(4) Opportunities to pursue alternative energy initiatives, including the use of alternative fuels and hybrid-electric drive in military vehicles and equipment.

(5) Opportunities for the high-performance construction, lease, operation, and maintenance of buildings.

(6) Cost effectiveness, cost savings, and net present value of alternatives.

(7) The value of diversification of types and sources of energy used.

(8) The value of economies-of-scale associated with fewer energy types used.

(9) The value of the use of renewable energy sources.

(10) The value of incorporating electric, hybrid-electric, and high efficiency vehicles into vehicle fleets.

(11) The potential for an action to serve as an incentive for members of the armed forces and civilian personnel to reduce energy consumption or adopt an improved energy performance measure.

(12) Opportunities for improving energy security for facility energy projects that will use renewable energy sources.

(d) SELECTION OF ENERGY CONSERVATION MEASURES.—For the purpose of implementing the energy performance master plan, the Secretary of Defense shall provide that the selection of energy conservation measures, including energy efficient maintenance, shall be limited to those measures that—

(1) are readily available;

(2) demonstrate an economic return on the investment;

(3) are consistent with the energy performance goals and energy performance master plan for the Department; and

(4) are supported by the special considerations specified in subsection (c).

(e) GOAL REGARDING USE OF RENEWABLE ENERGY TO MEET FACILITY ENERGY NEEDS.—(1) It shall be the goal of the Department of Defense—

(A) to produce or procure not less than 25 percent of the total quantity of facility energy

it consumes within its facilities during fiscal year 2025 and each fiscal year thereafter from renewable energy sources; and

(B) to produce or procure facility energy from renewable energy sources whenever the use of such renewable energy sources is consistent with the energy performance goals and energy performance master plan for the Department and supported by the special considerations specified in subsection (c).

(2) To help ensure that the goal specified in paragraph (1)(A) regarding the use of renewable energy by the Department of Defense is achieved, the Secretary of Defense shall establish an interim goal for fiscal year 2018 for the production or procurement of facility energy from renewable energy sources.

(3)(A) The Secretary of Defense shall establish a policy to maximize savings for the bulk purchase of replacement renewable energy certificates in connection with the development of facility energy projects using renewable energy sources.

(B) Under the policy required by subparagraph (A), the Secretary of a military department shall submit requests for the purchase of replacement renewable energy certificates to a centralized purchasing authority maintained by such department or the Defense Logistics Agency with expertise regarding—

(i) the market for renewable energy certificates;

(ii) the procurement of renewable energy certificates; and

(iii) obtaining the best value for the military department by maximizing the purchase of renewable energy certificates from projects placed into service before January 1, 1999.

(C) The centralized purchasing authority shall solicit industry for the most competitive offer for replacement renewable energy certificates, to include a combination of renewable energy certificates from new projects and projects placed into service before January 1, 1999.

(D) Subparagraph (B) does not prohibit the Secretary of a military department from entering into an agreement outside of the centralized purchasing authority if the Secretary will obtain the best value by bundling the renewable energy certificates with the facility energy project through a power purchase agreement or other contractual mechanism at the installation.

(E) Nothing in this paragraph shall be construed to authorize the purchase of renewable energy certificates to meet Federal goals or mandates in the absence of the development of a facility energy project using renewable energy sources.

(F) This policy does not make the purchase of renewable energy certificates mandatory, but the policy shall apply whenever original renewable energy certificates are proposed to be swapped for replacement renewable energy certificates.

(Added and amended Pub. L. 109–364, div. B, title XXVIII, §§2851(a)(1), 2852, Oct. 17, 2006, 120 Stat. 2489, 2496; Pub. L. 111–84, div. B, title XXVIII, §2842, Oct. 28, 2009, 123 Stat. 2680; Pub. L. 111–383, div. B, title XXVIII, §§2831, 2832(a), Jan. 7, 2011, 124 Stat. 4467, 4468; Pub. L. 112–81, div. B, title XXVIII, §§2821(b)(1), 2822(b), 2823(a), 2824(a), 2825(b), Dec. 31, 2011, 125 Stat. 1691, 1692, 1694.)

AMENDMENTS

2011—Pub. L. 111–383, §2832(a)(3), substituted ''Energy performance goals and master plan for the Department of Defense'' for ''Energy performance goals and plan for Department of Defense'' in section catchline.

Pub. L. 111–383, §2832(a)(2), substituted ''master plan'' for ''plan'' wherever appearing in subsecs. (c) to (e).

Subsec. (b). Pub. L. 111–383, §2832(a)(1), amended subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall develop, and update as necessary, a comprehensive plan to help achieve the energy performance goals for the Department of Defense.''

Subsec. (b)(2)(F). Pub. L. 112–81, §2825(b), added subpar. (F).

Subsec. (c)(4). Pub. L. 111–383, §2831(1), inserted ''and hybrid-electric drive'' after ''alternative fuels''.

Subsec. (c)(5) to (11). Pub. L. 111–383, §2831(2)–(5), added pars. (5) and (10) and redesignated former pars. (5) to (8) and (9) as (6) to (9) and (11), respectively.

Subsec. (c)(12). Pub. L. 112–81, §2822(b), added par. (12).

Subsec. (d). Pub. L. 112–81, §2821(b)(1)(A), struck out par. (1) designation, redesignated subpars. (A) to (D) as pars. (1) to (4), respectively, and struck out former par. (2), which defined ''energy efficient maintenance''.

Subsec. (e)(2). Pub. L. 112–81, §2823(a), added par. (2).

Pub. L. 112–81, §2821(b)(1)(B), struck out par. (2), which defined ''renewable energy source''.

Subsec. (e)(3). Pub. L. 112–81, §2824(a), added par. (3).

2009—Subsec. (e). Pub. L. 111–84, §2842(c), substituted ''Facility Energy Needs'' for ''Electricity Needs'' in heading.

Pub. L. 111–84, §2842(a), (b), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), in par. (1)(A), substituted ''facility energy'' for ''electric energy'' and struck out ''and in its activities'' after ''facilities'' and ''(as defined in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)))'' after ''sources'', in par. (1)(B), substituted ''facility energy'' for ''electric energy'', and added par. (2).

2006—Subsec. (e). Pub. L. 109–364, §2852, added subsec. (e).

BUSINESS CASE ANALYSIS OF ANY PLAN TO DESIGN, REFURBISH, OR CONSTRUCT A BIOFUEL REFINERY

Pub. L. 113–291, div. A, title III, §314, Dec. 19, 2014, 128 Stat. 3338, provided that: ''Not later than 30 days before entering into a contract for the planning, design, refurbishing, or construction of a biofuel refinery, or of any other facility or infrastructure used to refine biofuels, the Secretary of Defense or the Secretary of the military department concerned shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a business case analysis for such planning, design, refurbishing, or construction.''

GUIDANCE ON FINANCING FOR RENEWABLE ENERGY PROJECTS

Pub. L. 112–239, div. B, title XXVIII, §2824, Jan. 2, 2013, 126 Stat. 2153, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(2), Dec. 19, 2014, 128 Stat. 3469, provided that:

''(a) GUIDANCE ON USE OF AVAILABLE FINANCING APPROACHES.—

''(1) ISSUANCE.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall—

''(A) issue guidance about the use of available financing approaches for financing renewable energy projects; and

''(B) direct the Secretaries of the military departments to update their military department-wide guidance accordingly.

''(2) ELEMENTS.—The guidance issued pursuant to paragraph (1) should describe the requirements and restrictions applicable to the underlying authorities and any Department of Defense-specific guidelines for using appropriated funds and alternative-financing approaches for renewable energy projects to maximize cost savings and energy efficiency for the Department of Defense.

''(b) GUIDANCE ON USE OF BUSINESS CASE ANALYSES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance that establishes and clearly describes the processes used by the military departments to select financing approaches for renewable energy projects to ensure that business case analyses are completed to maximize cost savings and energy efficiency and mitigate drawbacks and risks associated with different financing approaches.

''(c) INFORMATION SHARING.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall develop a formalized communications process, such as a shared Internet website, that will enable officials at military installations to have timely access on an ongoing basis to information related to financing renewable energy projects on other installations, including best practices and lessons that officials at other installations have learned from their experiences in financing renewable energy projects.

''(d) CONSULTATION.—The Secretary of Defense shall issue the guidance under subsections (a) and (b) and develop the communications process under subsection (c) in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Assistant Secretary of Defense for Energy, Installations, and Environment. The Secretary of Defense shall also issue the guidance under subsection (b) in consultation with the Secretaries of the military departments.''

ENERGY-EFFICIENT TECHNOLOGIES IN CONTRACTS FOR LOGISTICS SUPPORT OF CONTINGENCY OPERATIONS

Pub. L. 112–81, div. A, title III, §315, Dec. 31, 2011, 125 Stat. 1357, provided that:

''(a) ENERGY PERFORMANCE MASTER PLAN.—The energy performance master plan for the Department of Defense developed under section 2911 of title 10, United States Code, shall specifically address the application of energy-efficient or energy reduction technologies or processes meeting the requirements of subsection (b) in logistics support contracts for contingency operations. In accordance with the requirements of such section, the plan shall include goals, metrics, and incentives for achieving energy efficiency in such contracts.

''(b) REQUIREMENTS FOR ENERGY TECHNOLOGIES AND PROCESSES.—Energy-efficient and energy reduction technologies or processes described in subsection (a) are technologies or processes that meet the following criteria:

''(1) The technology or process achieves long-term savings for the Government by reducing overall demand for fuel and other sources of energy in contingency operations.

''(2) The technology or process does not disrupt the mission, the logistics, or the core requirements in the contingency operation concerned.

''(3) The technology or process is able to integrate seamlessly into the existing infrastructure in the contingency operation concerned.

''(d) [So in original. No subsec. (c) has been enacted.] REGULATIONS AND GUIDANCE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue such regulations and guidance as may be needed to implement the requirements of this section and ensure that goals established pursuant to subsection (a) are met. Such regulations or guidance shall consider the lifecycle cost savings associated with the energy technology or process being offered by a vendor for defense logistics support and oblige the offeror to demonstrate the savings achieved over traditional technologies.

''(e) REPORT.—The annual report required by section 2925(b) of title 10, United States Code, shall include information on the progress in the implementation of this section, including savings achieved by the Department resulting from such implementation.

''(f) DEFINITIONS.—In this section:

''(1) The term 'defense logistics support contract' means a contract for services, or a task order under such a contract, awarded by the Department of Defense to provide logistics support during times of military mobilizations, including contingency operations, in any amount greater than the simplified acquisition threshold.

''(2) The term 'contingency operation' has the meaning provided in section 101(a)(13) of title 10, United States Code.''

POLICY OF PURSUING ENERGY SECURITY

Pub. L. 112–81, div. B, title XXVIII, §2822(a), Dec. 31, 2011, 125 Stat. 1691, provided that:

''(1) POLICY REQUIRED.—Not later than 180 days after the date of enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall establish a policy for military installations that includes the following:

''(A) Favorable consideration for energy security in the design and development of energy projects on the military installation that will use renewable energy sources.

''(B) Guidance for commanders of military installations inside the United States on planning measures to minimize the effects of a disruption of services by a utility that sells natural gas, water, or electric energy to those installations in the event that a disruption occurs.

''(2) NOTIFICATION.—The Secretary of Defense shall provide notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] within 30 days after entering into any agreement for a facility energy project described in paragraph (1)(A) that excludes pursuit of energy security on the grounds that inclusion of energy security is cost prohibitive. The Secretary shall also provide a cost-benefit-analysis of the decision.

''(3) ENERGY SECURITY DEFINED.—In this subsection, the term 'energy security' has the meaning given that term in paragraph (3) of section 2924 of title 10, United States Code, as added by section 2821(a).''

DEADLINE FOR CONGRESSIONAL NOTIFICATION

Pub. L. 112–81, div. B, title XXVIII, §2823(b), Dec. 31, 2011, 125 Stat. 1692, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the interim renewable energy goal established pursuant to the amendment made by subsection (a) [amending this section].''

DEPARTMENT OF DEFENSE TO CAPTURE AND TRACK DATA GENERATED IN METERING DEPARTMENT FACILITIES

Pub. L. 112–81, div. B, title XXVIII, §2827, Dec. 31, 2011, 125 Stat. 1694, provided that: ''The Secretary of Defense shall require that the information generated by the installation energy meters be captured and tracked to determine baseline energy consumption and facilitate efforts to reduce energy consumption.''

TRAINING POLICY FOR DEPARTMENT OF DEFENSE ENERGY MANAGERS

Pub. L. 112–81, div. B, title XXVIII, §2829, Dec. 31, 2011, 125 Stat. 1694, provided that:

''(a) ESTABLISHMENT OF TRAINING POLICY.—The Secretary of Defense shall establish a training policy for Department of Defense energy managers designated for military installations in order to—

''(1) improve the knowledge, skills, and abilities of energy managers by ensuring understanding of existing energy laws, regulations, mandates, contracting

options, local renewable portfolio standards, current renewable energy technology options, energy auditing, and options to reduce energy consumption;

''(2) improve consistency among energy managers throughout the Department in the performance of their responsibilities;

''(3) create opportunities and forums for energy managers to exchange ideas and lessons learned within each military department, as well as across the Department of Defense; and

''(4) collaborate with the Department of Energy regarding energy manager training.

''(b) ISSUANCE OF POLICY.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue the training policy for Department of Defense energy managers. In creating the policy, the Secretary shall consider the best practices and certifications available in either the military services or in the private sector.

''(c) BRIEFING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, or designated representatives of the Secretary, shall brief the Committees on Armed Services of the Senate and House of Representatives regarding the details of the energy manager policy.''

PILOT PROGRAM ON COLLABORATIVE ENERGY SECURITY

Pub. L. 111–383, div. A, title II, §242, Jan. 7, 2011, 124 Stat. 4176, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense, in coordination with the Secretary of Energy, may carry out a collaborative energy security pilot program involving one or more partnerships between one military installation and one national laboratory, for the purpose of evaluating and validating secure, salable microgrid components and systems for deployment.

''(b) SELECTION OF MILITARY INSTALLATION AND NATIONAL LABORATORY.—If the Secretary of Defense carries out a pilot program under this section, the Secretary of Defense and the Secretary of Energy shall jointly select a military installation and a national laboratory for the purpose of carrying out the pilot program. In making such selections, the Secretaries shall consider each of the following:

''(1) A commitment to participate made by a military installation being considered for selection.

''(2) The findings and recommendations of relevant energy security assessments of military installations being considered for selection.

''(3) The availability of renewable energy sources at a military installation being considered for selection.

''(4) Potential synergies between the expertise and capabilities of a national laboratory being considered for selection and the infrastructure, interests, or other energy security needs of a military installation being considered for selection.

''(5) The effects of any utility tariffs, surcharges, or other considerations on the feasibility of enabling any excess electricity generated on a military installation being considered for selection to be sold or otherwise made available to the local community near the installation.

''(c) PROGRAM ELEMENTS.—A pilot program under this section shall be carried out as follows:

''(1) Under the pilot program, the Secretaries shall evaluate and validate the performance of new energy technologies that may be incorporated into operating environments.

''(2) The pilot program shall involve collaboration with the Office of Electricity Delivery and Energy Reliability of the Department of Energy and other offices and agencies within the Department of Energy, as appropriate, and the Environmental Security Technical Certification Program of the Department of Defense.

''(3) Under the pilot program, the Secretary of Defense shall investigate opportunities for any excess electricity created for the military installation to be sold or otherwise made available to the local community near the installation.

''(4) The Secretary of Defense shall use the results of the pilot program as the basis for informing key performance parameters and validating energy components and designs that could be implemented in various military installations across the country and at forward operating bases.

''(5) The pilot program shall support the effort of the Secretary of Defense to use the military as a test bed to demonstrate innovative energy technologies.

''(d) IMPLEMENTATION AND DURATION.—If the Secretary of Defense carries out a pilot program under this section, such pilot program shall begin by not later than July 1, 2011, and shall be not less than three years in duration.

''(e) REPORTS.—

''(1) INITIAL REPORT.—If the Secretary of Defense carries out a pilot program under this section, the Secretary shall submit to the appropriate congressional committees by not later than October 1, 2011, an initial report that provides an update on the implementation of the pilot program, including an identification of the selected military installation and national laboratory partner and a description of technologies under evaluation.

''(2) FINAL REPORT.—Not later than 90 days after completion of a pilot program under this section, the Secretary shall submit to the appropriate congressional committees a report on the pilot program, including any findings and recommendations of the Secretary.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Science and Technology [now Committee on Science, Space, and Technology] of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Energy and Natural Resources, and the Committee on Commerce, Science, and Transportation of the Senate.

''(2) The term 'microgrid' means an integrated energy system consisting of interconnected loads and distributed energy resources (including generators, energy storage devices, and smart controls) that can operate with the utility grid or in an intentional islanding mode.

''(3) The term 'national laboratory' means—

''(A) a national laboratory (as defined in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801)); or

''(B) a national security laboratory (as defined in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471)).''

ENERGY SECURITY ON DEPARTMENT OF DEFENSE INSTALLATIONS

Pub. L. 111–84, div. A, title III, §335, Oct. 28, 2009, 123 Stat. 2259, provided that:

''(a) PLAN FOR ENERGY SECURITY REQUIRED.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall develop a plan for identifying and addressing areas in which the electricity needed to carry out critical military missions on Department of Defense installations is vulnerable to disruption.

''(2) ELEMENTS.—The plan developed under paragraph (1) shall include, at a minimum, the following:

''(A) An identification of the areas of vulnerability as described in paragraph (1), and an identification of priorities in addressing such areas of vulnerability.

''(B) A schedule for the actions to be taken by the Department to address such areas of vulnerability.

''(C) A strategy for working with other public or private sector entities to address such areas of vulnerability that are beyond the control of the Department.

''(D) An estimate of and consideration for the costs to the Department associated with implementation of the strategy.

''(b) WORK WITH NON-DEPARTMENT OF DEFENSE ENTITIES.—The Secretary of Defense shall work with other Federal entities, and with State and local government entities, to develop any regulations or other mechanisms needed to require or encourage actions to address areas of vulnerability identified pursuant to the plan developed under subsection (a) that are beyond the control of the Department of Defense.''

CONSIDERATION OF FUEL LOGISTICS SUPPORT REQUIREMENTS IN PLANNING, REQUIREMENTS DEVELOPMENT, AND ACQUISITION PROCESSES

Pub. L. 110–417, [div. A], title III, § 332, Oct. 14, 2008, 122 Stat. 4420, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(5), Jan. 7, 2011, 124 Stat. 4374, provided that:

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

''(b) CAPABILITY REQUIREMENTS DEVELOPMENT PROCESS.—The Secretary of Defense shall develop and implement a methodology to enable the implementation of a fuel efficiency key performance parameter in the requirements development process for the modification of existing or development of new fuel consuming systems.

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

''(d) IMPLEMENTATION PLAN.—The Secretary of Defense shall prepare a plan for implementing the requirements of this section. The plan shall be completed not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008] and provide for the implementation of the requirements by not later than three years after the date of the enactment of this Act.

''(e) PROGRESS REPORT.—Not later than two years after the date of the enactment of this Act [Oct. 14, 2008], 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 describing progress made to implement the requirements of this section, including an assessment of whether the implementation plan required by subsection (d) is being carried out on schedule.

''(f) NOTIFICATION OF COMPLIANCE.—As soon as practicable during the three-year period beginning on the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall notify the congressional defense committees that the Secretary has complied with the requirements of this section. If the Secretary is unable to provide the notification, the Secretary shall submit to the congressional defense committees at the end of the three-year period a report containing—

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

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

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

MITIGATION OF POWER OUTAGE RISKS FOR DEPARTMENT OF DEFENSE FACILITIES AND ACTIVITIES

Pub. L. 110–417, [div. A], title III, § 335, Oct. 14, 2008, 122 Stat. 4422, as amended by Pub. L. 114–92, div. A, title X, § 1079(d)(1), Nov. 25, 2015, 129 Stat. 999, provided that:

''(a) RISK ASSESSMENT.—The Secretary of Defense shall conduct a comprehensive technical and operational risk assessment of the risks posed to mission critical installations, facilities, and activities of the Department of Defense by extended power outages resulting from failure of the commercial electricity supply or grid and related infrastructure.

''(b) RISK MITIGATION PLANS.—

''(1) IN GENERAL.—The Secretary of Defense shall develop integrated prioritized plans to eliminate, reduce, or mitigate significant risks identified in the risk assessment under subsection (a).

''(2) ADDITIONAL CONSIDERATIONS.—In developing the risk mitigation plans under paragraph (1), the Secretary of Defense shall—

''(A) prioritize the mission critical installations, facilities, and activities that are subject to the greatest and most urgent risks; and

''(B) consider the cost effectiveness of risk mitigation options.''

USE OF ENERGY EFFICIENT LIGHTING FIXTURES AND BULBS IN DEPARTMENT OF DEFENSE FACILITIES

Pub. L. 110–181, div. B, title XXVIII, § 2863, Jan. 28, 2008, 122 Stat. 560, provided that:

''(a) CONSTRUCTION AND ALTERATION OF BUILDINGS.—Each building constructed or significantly altered by the Secretary of Defense or the Secretary of a military department shall be equipped, to the maximum extent feasible as determined by the Secretary concerned, with lighting fixtures and bulbs that are energy efficient.

''(b) MAINTENANCE OF BUILDINGS.—Each lighting fixture or bulb that is replaced in the normal course of maintenance of buildings under the jurisdiction of the Secretary of Defense or the Secretary of a military department shall be replaced, to the maximum extent feasible as determined by the Secretary concerned, with a lighting fixture or bulb that is energy efficient.

''(c) CONSIDERATIONS.—In making a determination under this section concerning the feasibility of installing a lighting fixture or bulb that is energy efficient, the Secretary of Defense or the Secretary of a military department shall consider—

''(1) the life cycle cost effectiveness of the fixture or bulb;

''(2) the compatibility of the fixture or bulb with existing equipment;

''(3) whether use of the fixture or bulb could result in interference with productivity;

''(4) the aesthetics relating to use of the fixture or bulb; and

''(5) such other factors as the Secretary concerned determines appropriate.

''(d) ENERGY STAR.—A lighting fixture or bulb shall be treated as being energy efficient for purposes of this section if—

''(1) the fixture or bulb is certified under the Energy Star program established by section 324A of the Energy Policy and Conservation Act (42 U.S.C. 6294a); or

''(2) the Secretary of Defense or the Secretary of a military department has otherwise determined that the fixture or bulb is energy efficient.

''(e) SIGNIFICANT ALTERATIONS.—A building shall be treated as being significantly altered for purposes of subsection (a) if the alteration is subject to congressional authorization under section 2802 of title 10, United States Code.

''(f) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirements of this section if the Secretary determines that such a waiver is necessary to protect the national security interests of the United States.

''(g) EFFECTIVE DATE.—The requirements of subsections (a) and (b) shall take effect one year after the date of the enactment of this Act [Jan. 28, 2008].''

REPORTING REQUIREMENTS RELATING TO RENEWABLE ENERGY USE BY DEPARTMENT OF DEFENSE TO MEET DEPARTMENT ELECTRICITY NEEDS

Pub. L. 110–181, div. B, title XXVIII, §2864, Jan. 28, 2008, 122 Stat. 561, related to reporting requirements relating to renewable energy use by Department of Defense to meet Department electricity needs, prior to repeal by Pub. L. 113–66, div. A, title X, §1084(b)(2)(B), Dec. 26, 2013, 127 Stat. 872.

UTILIZATION OF FUEL CELLS AS BACK-UP POWER SYSTEMS IN DEPARTMENT OF DEFENSE OPERATIONS

Pub. L. 109–364, div. A, title III, §358, Oct. 17, 2006, 120 Stat. 2164, provided that: ''The Secretary of Defense shall consider the utilization of fuel cells as replacements for current back-up power systems in a variety of Department of Defense operations and activities, including in telecommunications networks, perimeter security, individual equipment items, and remote facilities, in order to increase the operational longevity of back-up power systems and stand-by power systems in such operations and activities.''

ENERGY EFFICIENCY IN WEAPONS PLATFORMS

Pub. L. 109–364, div. A, title III, §360(a), Oct. 17, 2006, 120 Stat. 2164, provided that: ''It shall be the policy of the Department of Defense to improve the fuel efficiency of weapons platforms, consistent with mission requirements, in order to—

''(1) enhance platform performance;

''(2) reduce the size of the fuel logistics systems;

''(3) reduce the burden high fuel consumption places on agility;

''(4) reduce operating costs; and

''(5) dampen the financial impact of volatile oil prices.''

DEPARTMENT OF DEFENSE ENERGY EFFICIENCY PROGRAM

Pub. L. 107–107, div. A, title III, §317, Dec. 28, 2001, 115 Stat. 1054, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should work to implement fuel efficiency reforms that allow for investment decisions based on the true cost of delivered fuel, strengthen the linkage between warfighting capability and fuel logistics requirements, provide high-level leadership encouraging fuel efficiency, target fuel efficiency improvements through science and technology investment, and include fuel efficiency in requirements and acquisition processes.

''(b) ENERGY EFFICIENCY PROGRAM.—The Secretary shall carry out a program to significantly improve the energy efficiency of facilities of the Department of Defense through 2010. The Secretary shall designate a senior official of the Department of Defense to be responsible for managing the program for the Department and a senior official of each military department to be responsible for managing the program for such department.

''(c) ENERGY EFFICIENCY GOALS.—The goal of the energy efficiency program shall be to achieve reductions in energy consumption by facilities of the Department of Defense as follows:

''(1) In the case of industrial and laboratory facilities, reductions in the average energy consumption per square foot of such facilities, per unit of production or other applicable unit, relative to energy consumption in 1990—

''(A) by 20 percent by 2005; and

''(B) by 25 percent by 2010.

''(2) In the case of other facilities, reductions in average energy consumption per gross square foot of such facilities, relative to energy consumption per gross square foot in 1985—

''(A) by 30 percent by 2005; and

''(B) by 35 percent by 2010.

''(d) STRATEGIES FOR IMPROVING ENERGY EFFICIENCY.—In order to achieve the goals set forth in subsection (c), the Secretary shall, to the maximum extent practicable—

''(1) purchase energy-efficient products, as so designated by the Environmental Protection Agency and the Department of Energy, and other products that are energy-efficient;

''(2) utilize energy savings performance contracts, utility energy-efficiency service contracts, and other contracts designed to achieve energy conservation;

''(3) use life-cycle cost analysis, including assessment of life-cycle energy costs, in making decisions about investments in products, services, construction, and other projects;

''(4) conduct energy efficiency audits for approximately 10 percent of all Department of Defense facilities each year;

''(5) explore opportunities for energy efficiency in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching; and

''(6) retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs.

''(e) REPORTING REQUIREMENTS.—Not later than January 1, 2002, and each January 1 thereafter through 2010, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the report required to be prepared by the Secretary pursuant to section 303 of Executive Order 13123 (64 Fed. Reg. 30851; [former] 42 U.S.C. 8251 note) regarding the progress made toward achieving the energy efficiency goals of the Department of Defense.''

§ 2912. Availability and use of energy cost savings

(a) AVAILABILITY.—An amount of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts entered into under section 2913 of this title, shall remain available for obligation under subsection (b) until expended, without additional authorization or appropriation.

(b) USE.—The Secretary of Defense shall provide that the amount that remains available for obligation under subsection (a) and the funds made available under section 2916(b)(2) of this title shall be used as follows:

(1) One-half of the amount shall be used for the implementation of additional energy conservation and energy security measures at buildings, facilities, or installations of the Department of Defense or related to vehicles and equipment of the Department, which are designated, in accordance with regulations prescribed by the Secretary of Defense, by the head of the department, agency, or instrumentality that realized the savings referred to in subsection (a).

(2) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

(A) improvements to existing military family housing units;

(B) any unspecified minor construction project that will enhance the quality of life of personnel; or

(C) any morale, welfare, or recreation facility or service.

(c) TREATMENT OF CERTAIN FINANCIAL INCENTIVES.—Financial incentives received from gas or electric utilities under section 2913 of this title shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(d) CONGRESSIONAL NOTIFICATION.—The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 a separate statement of the amounts available for obligation under this section in that fiscal year.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2851(a)(1), Oct. 17, 2006, 120 Stat. 2491; amended Pub. L. 112–239, div. B, title XXVIII, § 2822, Jan. 2, 2013, 126 Stat. 2152.)

AMENDMENTS

2013—Subsec. (b)(1). Pub. L. 112–239 inserted ''and energy security'' after ''additional energy conservation''.

TRANSFER OF FUNDS FOR ENERGY AND WATER EFFICIENCY IN FEDERAL BUILDINGS

Pub. L. 109–148, div. A, title VIII, § 8054, Dec. 30, 2005, 119 Stat. 2710, provided that: ''Appropriations available under the heading 'Operation and Maintenance, Defense-Wide' for the current fiscal year and hereafter for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.''

Similar provisions for specified fiscal years were contained in the following prior appropriation acts:

Pub. L. 108–287, title VIII, § 8058, Aug. 5, 2004, 118 Stat. 983.

Pub. L. 108–87, title VIII, § 8058, Sept. 30, 2003, 117 Stat. 1085.

Pub. L. 107–248, title VIII, § 8059, Oct. 23, 2002, 116 Stat. 1550.

Pub. L. 107–117, div. A, title VIII, § 8064, Jan. 10, 2002, 115 Stat. 2261.

Pub. L. 106–259, title VIII, § 8063, Aug. 9, 2000, 114 Stat. 688.

Pub. L. 106–79, title VIII, § 8066, Oct. 25, 1999, 113 Stat. 1245.

Pub. L. 105–262, title VIII, § 8066, Oct. 17, 1998, 112 Stat. 2312.

Pub. L. 105–56, title VIII, § 8072, Oct. 8, 1997, 111 Stat. 1235.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8081], Sept. 30, 1996, 110 Stat. 3009–71, 3009–104.

Pub. L. 104–61, title VIII, § 8097, Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103–139, title VIII, § 8149, Nov. 11, 1993, 107 Stat. 1475.

§ 2913. Energy savings contracts and activities

(a) SHARED ENERGY SAVINGS CONTRACTS.—(1) The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of the Department of Defense as well as the private sector.

(2) In carrying out paragraph (1), the Secretary of Defense may—

(A) request statements of qualifications (as prescribed by the Secretary of Defense), including financial and performance information, from firms engaged in providing shared energy savings contracting;

(B) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

(C) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(3) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(b) PARTICIPATION IN GAS OR ELECTRIC UTILITY PROGRAMS.—The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation.

(c) ACCEPTANCE OF FINANCIAL INCENTIVE, GOODS, OR SERVICES.—The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a gas or electric utility, to adopt technologies and practices that the Secretary determines are in the interests of the United States and consistent with the energy performance goals for the Department of Defense.

(d) AGREEMENTS WITH GAS OR ELECTRIC UTILITIES.—(1) The Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

(2) If an agreement under this subsection provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repaid by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.

(3) Subject to the availability of appropriations, repayment of costs advanced under para-

graph (2) shall be made from funds available to a military department for the purchase of utility services.

(4) An agreement under this subsection shall provide that title to any energy-saving device or technology installed at a military installation pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(Added and amended Pub. L. 109–364, div. B, title XXVIII, §§ 2851(a)(1), 2853, Oct. 17, 2006, 120 Stat. 2491, 2496; Pub. L. 110–140, title V, § 511(c), Dec. 19, 2007, 121 Stat. 1658; Pub. L. 110–181, div. B, title XXVIII, § 2861, Jan. 28, 2008, 122 Stat. 559.)

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–181, which directed the amendment of this section by striking out subsec. (e), could not be executed because subsec. (e) was previously repealed by Pub. L. 110–140, § 511(c). See 2007 Amendment note below.

2007—Subsec. (e). Pub. L. 110–140 struck out heading and text of subsec. (e). Text read as follows: ''When a decision is made to award an energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of $7,000,000, the Secretary of Defense shall submit to the appropriate committees of Congress written notification of the proposed contract and of the proposed cancellation ceiling for the contract. The notification shall include the justification for the proposed cancellation ceiling. The contract may then be awarded only after the end of the 30-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 15-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.''

2006—Subsec. (e). Pub. L. 109–364, § 2853, added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§ 2914. Energy conservation construction projects

(a) PROJECTS AUTHORIZED.—The Secretary of Defense may carry out a military construction project for energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose.

(b) CONGRESSIONAL NOTIFICATION.—When a decision is made to carry out a project under this section, the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2851(a)(1), Oct. 17, 2006, 120 Stat. 2493.)

§ 2915. Facilities: use of renewable forms of energy and energy efficient products

(a) USE OF RENEWABLE FORMS OF ENERGY ENCOURAGED.—The Secretary of Defense shall encourage the use of energy systems using solar energy or other renewable forms of energy as a source of energy for military construction projects (including military family housing projects) and facility repairs and renovations where use of such form of energy is consistent with the energy performance goals and energy performance master plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (c) of such section.

(b) CONSIDERATION DURING DESIGN PHASE OF PROJECTS.—(1) The Secretary concerned shall require that the design for the construction, repair, or renovation of facilities (including family housing and back-up power generation facilities) requires consideration of energy systems using solar energy or other renewable forms of energy when use of a renewable form of energy—

(A) is consistent with the energy performance goals and energy performance master plan for the Department of Defense developed under section 2911 of this title; and

(B) supported by the special considerations specified in subsection (c) of such section.

(2) The Secretary concerned shall require that contracts for construction resulting from such design include a requirement that energy systems using solar energy or other renewable forms of energy be installed if such systems can be shown to be cost effective.

(c) DETERMINATION OF COST EFFECTIVENESS.—(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy for a facility shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system for the facility with such a system, and (B) the original investment cost of the energy system for the facility without such a system can be recovered over the expected life of the facility.

(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a facility shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).

(d) EXCEPTION TO SQUARE FEET AND COST PER SQUARE FOOT LIMITATIONS.—In order to equip a military construction project (including a military family housing project) with heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy system using solar energy or other renewable forms of energy, the Secretary concerned may authorize an increase in any otherwise applicable limitation with respect to the number of square feet or the cost per square foot of the project by such amount as may be necessary for such purpose. Any such increase under this subsection shall be in addition to any other administrative increase in cost per square foot or variation in floor area authorized by law.

(e) USE OF ENERGY EFFICIENT PRODUCTS IN FACILITIES.—(1) The Secretary of Defense shall ensure, to the maximum extent practicable, that energy efficient products meeting the requirements of the Department of Defense are used in

construction, repair, or renovation of facilities by or for the Department carried out under chapter 169 of this title if such products are readily available and their use is consistent with the energy performance goals and energy performance master plan for the Department developed under section 2911 of this title and supported by the special considerations specified in subsection (c) of such section.

(2)(A) The Secretary of Defense shall prescribe a definition of the term ''energy-efficient product'' for purposes of this subsection and establish and maintain a list of products satisfying the definition. The definition and list shall be developed in consultation with the Secretary of Energy to ensure, to the maximum extent practicable, consistency with definitions of the term used by other Federal agencies.

(B) The Secretary shall modify the definition and list of energy-efficient products as necessary to account for emerging or changing technologies.

(C) The list of energy-efficient products shall be included as part of the energy performance master plan developed pursuant to section 2911(b)(2) of this title.

(3) In determining the energy efficiency of products, the Secretary shall consider products that—

(A) meet or exceed Energy Star specifications; or

(B) are listed on the Federal Energy Management Program Product Energy Efficiency Recommendations product list of the Department of Energy.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166, § 2857; amended Pub. L. 97–321, title VIII, § 801(b)(1), (2), Oct. 15, 1982, 96 Stat. 1571; Pub. L. 98–525, title XIV, § 1405(45)(A), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 101–218, § 8(b), Dec. 11, 1989, 103 Stat. 1868; Pub. L. 101–510, div. B, title XXVIII, § 2852(b), Nov. 5, 1990, 104 Stat. 1804; Pub. L. 102–25, title VII, § 701(g)(2), Apr. 6, 1991, 105 Stat. 115; renumbered § 2915 and amended Pub. L. 109–364, div. B, title XXVIII, §§ 2851(b)(1), (3)(A), 2854, Oct. 17, 2006, 120 Stat. 2494, 2497; Pub. L. 111–383, div. B, title XXVIII, § 2832(b), Jan. 7, 2011, 124 Stat. 4468; Pub. L. 112–81, div. B, title XXVIII, § 2825(a), Dec. 31, 2011, 125 Stat. 1693.)

AMENDMENTS

2011—Pub. L. 111–383, § 2832(b)(4), substituted ''Facilities: use of renewable forms of energy and energy efficient products'' for ''New construction: use of renewable forms of energy and energy efficient products'' in section catchline.

Subsec. (a). Pub. L. 111–383, § 2832(b)(1), inserted ''and facility repairs and renovations'' after ''military family housing projects)'' and substituted ''energy performance master plan'' for ''energy performance plan''.

Subsec. (b)(1). Pub. L. 111–383, § 2832(b)(2), substituted ''the design for the construction, repair, or renovation of facilities (including family housing and back-up power generation facilities) requires consideration of energy systems using solar energy or other renewable forms of energy when use of a renewable form of energy—'' for ''the design of all new facilities (including family housing) shall include consideration of energy systems using solar energy or other renewable forms of energy.'' and added subpars. (A) and (B).

Subsec. (e). Pub. L. 111–383, § 2832(b)(3)(A), substituted ''Use of Energy Efficient Products in Facilities'' for ''Use of Energy Efficiency Products in New Construction'' in heading.

Subsec. (e)(1). Pub. L. 111–383, § 2832(b)(3)(B), substituted ''construction, repair, or renovation of facilities'' for ''new facility construction'' and ''energy performance master plan'' for ''energy performance plan''.

Subsec. (e)(2). Pub. L. 112–81 added par. (2) and struck out former par. (2), which related to energy efficient products and provided examples of technologies, consistent with the products specified in paragraph (3).

Pub. L. 111–383, § 2832(b)(3)(D), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 111–383, § 2832(b)(3)(C), redesignated par. (2) as (3).

2006—Pub. L. 109–364, § 2854(b)(1), substituted ''New construction: use of renewable forms of energy and energy efficient products'' for ''Use of renewable forms of energy in new facilities'' in section catchline.

Pub. L. 109–364, § 2851(b)(1), renumbered section 2857 of this title as this section.

Subsec. (a). Pub. L. 109–364, § 2854(b)(2),(3)(A)(i), inserted heading and substituted ''is consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (c) of such section'' for ''would be practical and economically feasible''.

Subsec. (b). Pub. L. 109–364, § 2854(b)(3), inserted heading.

Subsec. (b)(1). Pub. L. 109–364, § 2851(b)(3)(A)(ii), struck out ''in those cases in which use of such forms of energy has the potential for reduced energy costs'' before period at end.

Subsecs. (c), (d). Pub. L. 109–364, § 2854(b)(4), (5) inserted headings.

Subsec. (e). Pub. L. 109–364, § 2854(a), added subsec. (e).

1991—Subsec. (c)(2). Pub. L. 102–25 inserted ''(42 U.S.C. 8254(a))'' after ''Policy Act''.

1990—Subsec. (c)(2), (3). Pub. L. 101–510 added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a facility shall be made using accepted life-cycle costing procedures and shall include—

''(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system with and without an energy system using solar energy or other renewable forms of energy over the expected life of the facility or during a period of 25 years, whichever is shorter;

''(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

''(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

''(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.''

1989—Subsec. (b)(1). Pub. L. 101–218 substituted ''reduced energy costs'' for ''significant savings of fossil-fuel-derived energy''.

1984—Subsec. (b)(1). Pub. L. 98–525 substituted ''use of such forms of energy has the potential for'' for ''use of solar energy has the potential for''.

1982—Pub. L. 97–321, § 801(b)(2), substituted ''renewable forms of energy in new facilities'' for ''solar energy systems'' in section catchline.

Subsec. (a). Pub. L. 97–321, § 801(b)(1)(A), substituted ''energy systems using solar energy or other renewable forms of energy'' and ''such form of energy would'' for ''solar energy systems'' and ''solar energy would'', respectively.

Subsec. (b)(1). Pub. L. 97–321, § 801(b)(1)(B), substituted ''energy systems using solar energy or other renewable forms of energy'' for ''solar energy systems'' and directed that ''such form of energy has'' be substituted for ''a solar energy has'', but ''a solar energy has'' did not appear in par. (1). See 1984 Amendment note above.

Subsec. (b)(2). Pub. L. 97–321, § 801(b)(1)(B)(i), substituted ''energy systems using solar energy or other renewable forms of energy'' for ''solar energy systems''.

Subsec. (c). Pub. L. 97–321, § 801(b)(1)(C)–(E), substituted: in par. (1) ''an energy system using solar energy or other renewable forms of energy'' for ''a solar energy system'' before ''for a facility'' and in items (A) and (B) ''such a system'' for ''a solar energy system''; in par. (2)(A) ''an energy system using solar energy or other renewable forms of energy'' for ''a solar energy system''; and in par. (3) ''energy system using solar energy or other renewable forms of energy'' for ''solar energy system'', respectively.

Subsec. (d). Pub. L. 97–321, § 801(b)(1)(F), substituted ''heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy energy system using solar energy or other renewable forms of energy'' for ''solar heating equipment, solar cooling equipment, or both solar heating and solar cooling equipment, or with a passive solar energy system''.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title XIV, § 1405(45)(B), Oct. 19, 1984, 98 Stat. 2625, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if it had been included in the amendments made by section 801 of Public Law 97–321.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2916. Sale of electricity from alternate energy and cogeneration production facilities

(a) The Secretary of a military department may sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary concerned. The sale of such energy shall be made under such regulations, for such periods, and at such prices as the Secretary concerned prescribes consistent with the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(b)(1) Proceeds from sales under subsection (a) shall be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy.

(2) Subject to the availability of appropriations for this purpose, proceeds credited under paragraph (1) may be used to carry out military construction projects under the energy performance plan developed by the Secretary of Defense under section 2911(b) of this title, including minor military construction projects authorized under section 2805 of this title that are designed to increase energy conservation.

(c) Before carrying out a military construction project described in subsection (b) using proceeds from sales under subsection (a), the Secretary concerned shall notify Congress in writing of the project, the justification for the project, and the estimated cost of the project. The project may be carried out only after the end of the 21-day period beginning on the date the notification is received by Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 98–407, title VIII, § 810(a), Aug. 28, 1984, 98 Stat. 1523, § 2483; amended Pub. L. 103–160, div. B, title XXVIII, § 2802, Nov. 30, 1993, 107 Stat. 1884; renumbered § 2867, Pub. L. 105–85, div. A, title III, § 371(b)(2), Nov. 18, 1997, 111 Stat. 1705; Pub. L. 108–136, div. A, title X, § 1031(a)(49), Nov. 24, 2003, 117 Stat. 1602; renumbered § 2916 and amended Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(1), (3)(B), Oct. 17, 2006, 120 Stat. 2494.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

AMENDMENTS

2006—Pub. L. 109–364, § 2851(b)(1), renumbered section 2867 of this title as this section.

Subsec. (b)(2). Pub. L. 109–364, § 2851(b)(3)(B), substituted ''2911(b)'' for ''2865(a)''.

2003—Subsec. (c). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

1997—Pub. L. 105–85 renumbered section 2483 of this title as this section.

1993—Subsec. (b). Pub. L. 103–160, § 2802(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 103–160, § 2802(b), added subsec. (c).

§ 2917. Development of geothermal energy on military lands

(a) DEVELOPMENT AUTHORIZED.—The Secretary of a military department may develop, or authorize the development of, any geothermal energy resource within lands under the Secretary's jurisdiction, including public lands, for the use or benefit of the Department of Defense if that development is in the public interest, as determined by the Secretary concerned, and will not deter commercial development and use of other portions of such resource if offered for leasing.

(b) CONSIDERATION OF ENERGY SECURITY.—The development of a geothermal energy project under subsection (a) should include consideration of energy security in the design and development of the project.

(Added Pub. L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 172, § 2689; renumbered § 2917, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(1), Oct. 17, 2006, 120 Stat. 2494; amended Pub. L. 112–81, div. B, title XXVIII, § 2822(c), Dec. 31, 2011, 125 Stat. 1692.)

AMENDMENTS

2011—Pub. L. 112–81 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2006—Pub. L. 109–364 renumbered section 2689 of this title as this section.

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2918. Fuel sources for heating systems; prohibition on converting certain heating facilities

(a)(1) The Secretary of the military department concerned shall provide that the primary

fuel source to be used in any new heating system constructed on lands under the jurisdiction of the military department is the most cost effective fuel for that heating system over the life cycle of the system.

(2) The Secretary of Defense shall prescribe regulations for the determination of the life-cycle cost effectiveness of a fuel for the purposes of paragraph (1).

(b) The Secretary of a military department may not convert a heating facility at a United States military installation in Europe from a coal-fired facility to an oil-fired facility, or to any other energy source facility, unless the Secretary determines that the conversion—

(1) is required by the government of the country in which the facility is located; or

(2) is cost-effective over the life cycle of the facility.

(Added Pub. L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 173, § 2690; amended Pub. L. 99–661, div. A, title XII, § 1205(a)(1), Nov. 14, 1986, 100 Stat. 3971; Pub. L. 105–85, div. A, title X, § 1041(a), Nov. 18, 1997, 111 Stat. 1885; renumbered § 2918, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(1), Oct. 17, 2006, 120 Stat. 2494.)

AMENDMENTS

2006—Pub. L. 109–364 renumbered section 2690 of this title as this section.

1997—Subsec. (b). Pub. L. 105–85 substituted ''unless the Secretary determines that the conversion—'' for ''unless the Secretary—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

''(1) determines that the conversion (A) is required by the government of the country in which the facility is located, or (B) is cost effective over the life cycle of the facility; and

''(2) submits to Congress notification of the proposed conversion and a period of 30 days has elapsed following the date on which Congress receives the notice.''

1986—Pub. L. 99–661 substituted ''Fuel sources for heating systems; prohibition on converting certain heating facilities'' for ''Restriction on fuel sources for new heating systems'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) Except as provided in subsection (b), a new heating system that requires a heat input rate of fifty million British thermal units per hour or more and that uses oil or gas (or a derivative of oil or gas) as fuel may not be constructed on lands under the jurisdiction of a military department.

''(b) The Secretary of the military department concerned may waive the provisions of subsection (a) in rare and unusual cases, but such a waiver may not become effective until after the Secretary has notified the appropriate committees of Congress in writing of the waiver.

''(c) The Secretary of the military department concerned may not provide service for a new heating system in increments in order to avoid the prohibition contained in subsection (a).''

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2919. Department of Defense participation in programs for management of energy demand or reduction of energy usage during peak periods

(a) PARTICIPATION IN DEMAND RESPONSE OR LOAD MANAGEMENT PROGRAMS.—The Secretary of Defense, the Secretaries of the military departments, the heads of the Defense Agencies, and the heads of other instrumentalities of the Department of Defense are authorized to participate in demand response programs for the management of energy demand or the reduction of energy usage during peak periods conducted by any of the following parties:

(1) An electric utility.

(2) An independent system operator.

(3) A State agency.

(4) A third party entity (such as a demand response aggregator or curtailment service provider) implementing demand response programs on behalf of an electric utility, independent system operator, or State agency.

(b) TREATMENT OF CERTAIN FINANCIAL INCENTIVES.—Financial incentives received from an entity specified in subsection (a) shall be—

(1) received as a cost reduction in the utility bill for a facility; or

(2) deposited into the fund established under subsection (c) for use, to the extent provided for in an appropriations Act, by the military department, Defense Agency, or instrumentality receiving such financial incentive for energy management initiatives.

(c) ENERGY SAVINGS FINANCIAL INCENTIVES FUND.—There is established in the Treasury a fund to be known as the ''Energy Savings Financial Incentives Fund''. The Fund shall consist of any amount deposited in the Fund pursuant to subsection (b)(2) and amounts appropriated or otherwise made available to the Fund by law.

(Added Pub. L. 111–84, div. B, title XXVIII, § 2843(a), Oct. 28, 2009, 123 Stat. 2681.)

SUBCHAPTER II—ENERGY-RELATED PROCUREMENT

Sec.

2922. Liquid fuels and natural gas: contracts for storage, handling, or distribution.
2922a. Contracts for energy or fuel for military installations.
2922b. Procurement of energy systems using renewable forms of energy.
2922c. Procurement of gasohol as motor vehicle fuel.
2922d. Procurement of fuel derived from coal, oil shale, and tar sands.
2922e. Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority.
2922f. Preference for energy efficient electric equipment.
2922g. Preference for motor vehicles using electric or hybrid propulsion systems.
2922h. Limitation on procurement of drop-in fuels.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title III, § 311(b), Nov. 25, 2015, 129 Stat. 787, added item 2922h.

2009—Pub. L. 111–84, div. B, title XXVIII, § 2844(b), Oct. 28, 2009, 123 Stat. 2682, added item 2922g.

§ 2922. Liquid fuels and natural gas: contracts for storage, handling, or distribution

(a) AUTHORITY TO CONTRACT.—The Secretary of Defense and the Secretary of a military department may each contract for storage facilities for, or the storage, handling, or distribution of, liquid fuels or natural gas.

(b) PERIOD OF CONTRACT.—The period of a contract entered into under subsection (a) may not exceed 5 years. However, the contract may provide options for the Secretary to renew the contract for additional periods of not more than 5 years each, but not for more than a total of 20 years.

(c) OPTION TO PURCHASE FACILITY.—A contract under this section may contain an option for the purchase by the United States of the facility covered by the contract at the expiration or termination of the contract, without regard to subsections (a) and (b) of section 3324 of title 31, and before approval of title to the underlying land by the Attorney General.

(Added Pub. L. 85–861, §1(46), Sept. 2, 1958, 72 Stat. 1457, §2388; amended Pub. L. 97–214, §10(a)(3), July 12, 1982, 96 Stat. 175; Pub. L. 97–258, §3(b)(6), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 97–295, §1(27), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 98–525, title XIV, §1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 101–510, div. A, title XIII, §1322(a)(6), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103–160, div. A, title VIII, §825, Nov. 30, 1993, 107 Stat. 1711; Pub. L. 103–355, title III, §3064, Oct. 13, 1994, 108 Stat. 3337; renumbered §2922, Pub. L. 109–364, div. B, title XXVIII, §2851(b)(2), Oct. 17, 2006, 120 Stat. 2494.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2388(a)	50:98i (1st sentence).	Aug. 3, 1956, ch. 939, §416, 70 Stat. 1018.
2388(b)	50:98i (2d sentence).	
2388(c)	50:98i (less 1st and 2d sentences and proviso of last sentence).	
2388(d)	50:98i (proviso of last sentence).	

In subsection (b), the words ''section applies only'' are substituted for the words ''authority is limited''. The word ''standards'' is substituted for the word ''criteria''.

In subsection (c), the words ''A contract under this section'' are substituted for the words ''Such contracts''. The last 33 words are substituted for 50:98i (28 words before proviso of last sentence).

1982 ACT

In 10:2388(c), the title 31 citation is substituted on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

2006—Pub. L. 109–364 renumbered section 2388 of this title as this section.

1994—Subsec. (a). Pub. L. 103–355 substituted ''liquid fuels or natural gas'' for ''liquid fuels and natural gas''.

1993—Pub. L. 103–160, §825(b), substituted ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'' for ''Liquid fuels: contracts for storage, handling, and distribution'' as section catchline.

Subsecs. (a), (b). Pub. L. 103–160, §825(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) The Secretary of a military department may contract for the storage, handling, and distribution of liquid fuels for periods of not more than five years, with options to renew for additional periods of not more than five years each, but not for more than a total of 20 years.

''(b) This section applies only to facilities that conform to standards prescribed by the Secretary of Defense for protection, including dispersal, and that are in a program approved by the Secretary of Defense for the protection of petroleum facilities.''

Subsec. (c). Pub. L. 103–160, §825(a)(2), inserted heading.

1990—Subsec. (d). Pub. L. 101–510 struck out subsec. (d) which read as follows: ''The Secretary concerned shall report to the Committees on Armed Services of the Senate and the House of Representatives the terms of the contracts made under this section and the names of the contractors. The reports shall be made at such times and in such form as may be agreed upon by the Secretary and those Committees.''

1984—Subsec. (c). Pub. L. 98–525 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (c). Pub. L. 97–295, §1(27), substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'', clarifying the ambiguity created by previous amendments by Pub. L. 97–214 and Pub. L. 97–258.

Pub. L. 97–258, §3(b)(6), directed the substitution of ''section 3324(a) and (b) of title 31'' for ''section 529 of title 31'', which could not be executed in view of prior substitution of language by Pub. L. 97–214.

Pub. L. 97–214, §10(a)(3), substituted ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' for ''section 4774(d) or 9774(d) of this title, section 529 of title 31, or section 259 or 267 of title 40,''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

NOTICE OF PURCHASE OF DROP-IN FUEL

Pub. L. 113–291, div. A, title III, §316(c), (d), Dec. 19, 2014, 128 Stat. 3339, 3340, provided that:

''(c) NOTICE OF PURCHASE REQUIRED.—If the Secretary of Defense intends to purchase a drop-in fuel intended for operational use with a fully burdened cost in excess of 10 percent more than the fully burdened cost of a traditional fuel available for the same purpose, the Secretary shall provide notice of such intended purchase to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] by not later than 30 days before the date on which such purchase is intended to be made.

''(d) DEFINITIONS.—In this section [this note]:

''(1) The term 'drop-in fuel' means a neat or blended liquid hydrocarbon fuel designed as a direct replacement for a traditional fuel with comparable performance characteristics and compatible with existing infrastructure and equipment.

''(2) The term 'traditional fuel' means a liquid hydrocarbon fuel derived or refined from petroleum.

''(3) The term 'operational purposes' means for the purposes of conducting military operations, including training, exercises, large scale demonstrations, and moving and sustaining military forces and military platforms. The term does not include research, development, testing, evaluation, fuel certification, or other demonstrations.

''(4) The term 'fully burdened cost' means the commodity price of the fuel plus the total cost of all personnel and assets required to move and, when necessary, protect the fuel from the point at which the

fuel is received from the commercial supplier to the point of use.''

PURCHASES OF GASOHOL AS FUEL FOR MOTOR VEHICLES

Pub. L. 96–107, title VIII, § 815, Nov. 9, 1979, 93 Stat. 817, which had authorized the Secretary of Defense to buy domestically produced alcohol and gasohol for use as fuel in Department of Defense motor vehicles, was repealed and reenacted as section 2398 (now 2922c) of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

§ 2922a. Contracts for energy or fuel for military installations

(a) Subject to subsection (b), the Secretary of a military department may enter into contracts for periods of up to 30 years—

(1) under section 2917 of this title; and

(2) for the provision and operation of energy production facilities on real property under the Secretary's jurisdiction or on private property and the purchase of energy produced from such facilities.

(b) A contract may be made under subsection (a) only after the approval of the proposed contract by the Secretary of Defense.

(c) The costs of contracts under this section for any year may be paid from annual appropriations for that year.

(Added Pub. L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171, § 2394; amended Pub. L. 97–321, title VIII, § 805(b)(3), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1301(12), Nov. 5, 1990, 104 Stat. 1668; renumbered § 2922a and amended Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), (3)(C), Oct. 17, 2006, 120 Stat. 2494.)

AMENDMENTS

2006—Pub. L. 109–364, § 2851(b)(2), renumbered section 2394 of this title as this section.

Subsec. (a)(1). Pub. L. 109–364, § 2851(b)(3)(C), substituted ''section 2917'' for ''section 2689''.

1990—Subsec. (b). Pub. L. 101–510 substituted ''only after the approval of the proposed contract by the Secretary of Defense'' for ''only—

''(1) after the approval of the proposed contract by the Secretary of Defense; and

''(2) after the Committees on Armed Services and on Appropriations of the Senate and House of Representatives have been notified of the terms of the proposed contract, including the dollar amount of the contract and the amount of energy or fuel to be delivered to the Government under the contract''.

1987—Subsec. (c). Pub. L. 100–26, which directed that ''The term'' be inserted in each paragraph after the paragraph designation and the first word after the first quotation marks in each paragraph be revised so that the initial letter of such word is lowercase, could not be executed because subsec. (c) contained no paragraphs and no quoted words. The probable intent of Congress was to amend section 2393(c) of this title.

1982—Subsec. (a). Pub. L. 97–321, § 805(b)(3)(A), substituted ''subsection (b)'' for ''subsection (c)''.

Subsecs. (c), (d). Pub. L. 97–321, § 805(b)(3)(B), redesignated subsec. (d) as (c).

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2922b. Procurement of energy systems using renewable forms of energy

(a) In procuring energy systems the Secretary of a military department shall procure systems that use solar energy or other renewable forms of energy whenever the Secretary determines that such procurement is possible, suited to supplying the energy needs of the military department under the jurisdiction of the Secretary, consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title, and supported by the special considerations specified in subsection (c) of such section.

(b) The Secretary of Defense shall from time to time study uses for solar energy and other renewable forms of energy to determine what uses of such forms of energy may be reliable in supplying the energy needs of the Department of Defense. The Secretary of Defense, based upon the results of such studies, shall from time to time issue policy guidelines to be followed by the Secretaries of the military departments in carrying out subsection (a) and section 2915 of this title.

(Added Pub. L. 97–321, title VIII, § 801(a)(1), Oct. 15, 1982, 96 Stat. 1569, § 2394a; amended Pub. L. 98–525, title XIV, § 1405(36), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, § 1322(a)(7), div. B, title XXVIII, § 2852(a), Nov. 5, 1990, 104 Stat. 1671, 1804; Pub. L. 102–25, title VII, § 701(g)(2), Apr. 6, 1991, 105 Stat. 115; renumbered § 2922b and amended Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), (3)(D), Oct. 17, 2006, 120 Stat. 2494, 2495.)

AMENDMENTS

2006—Pub. L. 109–364, § 2851(b)(2), renumbered section 2394a of this title as this section.

Subsec. (a). Pub. L. 109–364, § 2851(b)(3)(D)(i), substituted ''possible, suited'' for ''possible and will be cost effective, reliable, and otherwise suited'' and ''the jurisdiction of the Secretary, consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title, and supported by the special considerations specified in subsection (c) of such section'' for ''his jurisdiction''.

Subsec. (b). Pub. L. 109–364, § 2851(b)(3)(D)(ii), struck out ''cost effective and'' before ''reliable'' and substituted ''2915'' for ''2857''.

Subsec. (c). Pub. L. 109–364, § 2851(b)(3)(D)(iii), struck out subsec. (c) which read as follows:

''(c)(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system using such a form of energy, and (B) the original investment cost of the energy system not using such a form of energy can be recovered over the expected life of the system.

''(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a system shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).''

1991—Subsec. (c)(2). Pub. L. 102–25 inserted ''(42 U.S.C. 8254(a))'' after ''Policy Act''.

1990—Subsec. (b). Pub. L. 101–510, § 1322(a)(7), struck out ''(1)'' after ''(b)'' and struck out par. (2) which read as follows: ''The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives not less often than every two

years a report on the studies conducted pursuant to paragraph (1). Each such report shall include any findings of the Secretary with respect to the use of solar energy and other renewable forms of energy in supplying the energy needs of the Department of Defense and any recommendations of the Secretary for changes in law that may be appropriate in light of such studies.''

Subsec. (c)(2), (3). Pub. L. 101–510, § 2852(a), added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a system shall be made using accepted life-cycle costing procedures and shall include—

''(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system using solar energy or other renewable forms of energy, and not using such a form of energy, over the expected life of the system or during a period of 25 years, whichever is shorter;

''(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

''(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

''(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.''

1984—Pub. L. 98–525 substituted ''using'' for ''powered by'' in section catchline.

SUBMISSION DATE FOR FIRST REPORT

Pub. L. 97–321, title VIII, § 801(a)(3), Oct. 15, 1982, 96 Stat. 1571, required the first report under subsec. (b)(2) of this section to be submitted not later than two years after Oct. 15, 1982.

§ 2922c. Procurement of gasohol as motor vehicle fuel

(a) OTHER FEDERAL FUEL PROCUREMENTS.—Consistent with the vehicle management practices prescribed by the heads of affected departments and agencies of the Federal Government and consistent with Executive Order Number 12261, whenever the Secretary of Defense enters into a contract for the procurement of unleaded gasoline that is subject to tax under section 4081 of the Internal Revenue Code of 1986 for motor vehicles of a department or agency of the Federal Government other than the Department of Defense, the Secretary shall buy alcohol-gasoline blends containing at least 10 percent domestically produced alcohol in any case in which the price of such fuel is the same as, or lower than, the price of unleaded gasoline.

(b) SOLICITATIONS.—Whenever the Secretary issues a solicitation for bids to procure unleaded gasoline under subsection (a), the Secretary shall expressly include in such solicitation a request for bids on alcohol-gasoline blends containing at least 10 percent domestically produced alcohol.

(Added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293, § 2398; amended Pub. L. 102–190, div. A, title VIII, § 841(a), Dec. 5, 1991, 105 Stat. 1448; Pub. L. 104–106, div. A, title X, § 1061(h), Feb. 10, 1996, 110 Stat. 443; renumbered § 2922c, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), Oct. 17, 2006, 120 Stat. 2494.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2398	10:2388 (note).	Nov. 9, 1979, Pub. L. 96–107, § 815, 93 Stat. 817.

The word ''prescribed'' is substituted for ''determined'' because it is more appropriate. The word ''Secretary'' is substituted for ''Department of Defense'' because the responsibility is in the head of the agency. The word ''shall'' is substituted for ''is authorized and directed'' for clarity.

REFERENCES IN TEXT

Executive Order Number 12661, referred to in subsec. (a), is set out under section 8871 of Title 42, The Public Health and Welfare.

Section 4081 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 4081 of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Pub. L. 109–364 renumbered section 2398 of this title as this section.

1996—Subsec. (a). Pub. L. 104–106, § 1061(h)(1), (2)(A), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: ''DOD MOTOR VEHICLES.—To the maximum extent feasible and consistent with overall defense needs and vehicle management practices prescribed by the Secretary of Defense, the Secretary shall make contracts, by competitive bid and subject to appropriations, to purchase domestically produced alcohol or alcohol-gasoline blends containing at least 10 percent domestically produced alcohol for use in motor vehicles owned or operated by the Department of Defense.''

Subsec. (b). Pub. L. 104–106, § 1061(h)(2), redesignated subsec. (c) as (b) and substituted ''subsection (a)'' for ''subsection (b)''. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 104–106, § 1061(h)(2)(A), redesignated subsec. (c) as (b).

1991—Pub. L. 102–190 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title VIII, § 841(b), Dec. 5, 1991, 105 Stat. 1448, provided that: ''Section 2398(b) [now 2922c(a)] of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded pursuant to solicitations issued after the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

§ 2922d. Procurement of fuel derived from coal, oil shale, and tar sands

(a) USE OF FUEL TO MEET DEPARTMENT OF DEFENSE NEEDS.—The Secretary of Defense shall develop a strategy to use fuel produced, in whole or in part, from coal, oil shale, and tar sands (referred to in this section as a ''covered fuel'') that are extracted by either mining or in-situ methods and refined or otherwise processed in the United States in order to assist in meeting the fuel requirements of the Department of Defense when the Secretary determines that it is in the national interest.

(b) AUTHORITY TO PROCURE.—The Secretary of Defense may enter into one or more contracts or other agreements (that meet the requirements of this section) to procure a covered fuel to meet one or more fuel requirements of the Department of Defense.

(c) CLEAN FUEL REQUIREMENTS.—A covered fuel may be procured under subsection (b) only

if the covered fuel meets such standards for clean fuel produced from domestic sources as the Secretary of Defense shall establish for purposes of this section in consultation with the Department of Energy.

(d) MULTIYEAR CONTRACT AUTHORITY.—Subject to applicable provisions of law, any contract or other agreement for the procurement of covered fuel under subsection (b) may be for one or more years at the election of the Secretary of Defense.

(e) FUEL SOURCE ANALYSIS.—In order to facilitate the procurement by the Department of Defense of covered fuel under subsection (b), the Secretary of Defense may carry out a comprehensive assessment of current and potential locations in the United States for the supply of covered fuel to the Department.

(Added Pub. L. 109–58, title III, § 369(q)(1), Aug. 8, 2005, 119 Stat. 733, § 2398a; renumbered § 2922d, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 111–383, div. A, title X, § 1075(b)(48), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Subsecs. (b), (d). Pub. L. 111–383 substituted ''one or more'' for ''1 or more'' wherever appearing.

2006—Pub. L. 109–364 renumbered section 2398a of this title as this section.

§ 2922e. Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority

(a) WAIVER AUTHORITY.—The Secretary of Defense may, for any purchase of a defined fuel source, waive the application of any provision of law prescribing procedures to be followed in the formation of contracts, prescribing terms and conditions to be included in contracts, or regulating the performance of contracts if the Secretary determines—

(1) that market conditions for the defined fuel source have adversely affected (or will in the near future adversely affect) the acquisition of that defined fuel source by the Department of Defense; and

(2) the waiver will expedite or facilitate the acquisition of that defined fuel source for Government needs.

(b) SCOPE OF WAIVER.—A waiver under subsection (a) may be made with respect to a particular contract or with respect to classes of contracts. Such a waiver that is applicable to a contract for the purchase of a defined fuel source may also be made applicable to a subcontract under that contract.

(c) EXCHANGE AUTHORITY.—The Secretary of Defense may acquire a defined fuel source or services related to a defined fuel source by exchange of a defined fuel source or services related to a defined fuel source.

(d) AUTHORITY TO SELL.—The Secretary of Defense may sell a defined fuel source of the Department of Defense if the Secretary determines that the sale would be in the public interest. The proceeds of such a sale shall be credited to appropriations of the Department of Defense for the acquisition of a defined fuel source or services related to a defined fuel source. Amounts so credited shall be available for obligation for the same period as the appropriations to which the amounts are credited.

(Added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604, § 2404; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1322(a)(8), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103–160, div. A, title VIII, § 826, Nov. 30, 1993, 107 Stat. 1711; Pub. L. 106–65, div. A, title VIII, § 803(a), (b)(1), Oct. 5, 1999, 113 Stat. 703; renumbered § 2922e, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 112–81, div. B, title XXVIII, § 2821(b)(2), Dec. 31, 2011, 125 Stat. 1691.)

AMENDMENTS

2011—Subsecs. (e), (f). Pub. L. 112–81 struck out subsecs. (e) and (f), which, respectively, defined ''petroleum'' and ''defined fuel source''.

2006—Pub. L. 109–364 renumbered section 2404 of this title as this section.

1999—Pub. L. 106–65, § 803(b)(1), substituted ''Acquisition of certain fuel sources'' for ''Acquisition of petroleum and natural gas'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 803(a)(1), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in introductory provisions, ''market conditions for the defined fuel source'' for ''petroleum market conditions or natural gas market conditions, as the case may be,'' and ''acquisition of that defined fuel source'' for ''acquisition of petroleum or acquisition of natural gas, respectively,'' in par. (1), and ''that defined fuel source'' for ''petroleum or natural gas, as the case may be,'' in par. (2).

Subsec. (b). Pub. L. 106–65, § 803(a)(2), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in second sentence.

Subsec. (c). Pub. L. 106–65, § 803(a)(3), which directed the substitution of ''a defined fuel source or services related to a defined fuel source by exchange of a defined fuel source or services related to a defined fuel source.'' for '' 'petroleum' and all that follows through the period'', was executed by substituting the material for ''petroleum, petroleum-related services, natural gas, or natural gas-related services by exchange of petroleum, petroleum-related services, natural gas, or natural gas-related services.'' to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 106–65, § 803(a)(4), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in first sentence and ''a defined fuel source or services related to a defined fuel source.'' for ''petroleum, petroleum-related services, natural gas, or natural gas-related services.'' in second sentence.

Subsec. (f). Pub. L. 106–65, § 803(a)(5), added subsec. (f).

1993—Pub. L. 103–160, § 826(d)(2), substituted ''petroleum and natural gas: authority to waive contract procedures; acquisition by exchange; sales authority'' for ''petroleum: authority to waive contract procedures'' as section catchline.

Subsec. (a). Pub. L. 103–160, § 826(a)(1), (d)(1)(A), inserted heading, inserted ''or natural gas'' after ''petroleum'' in introductory provisions, inserted ''or natural gas market conditions, as the case may be,'' after ''petroleum market conditions'' and ''or acquisition of natural gas, respectively,'' after ''acquisition of petroleum'' in par. (1), and inserted ''or natural gas, as the case may be,'' after ''petroleum'' in par. (2).

Subsec. (b). Pub. L. 103–160, § 826(a)(2), (d)(1)(B), inserted heading and inserted ''or natural gas'' after ''petroleum'' in second sentence.

Subsec. (c). Pub. L. 103–160, § 826(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Defense may acquire petroleum by exchange of petroleum or petroleum derivatives.''

Subsec. (d). Pub. L. 103–160, § 826(c)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–160, § 826(c)(1), (d)(1)(C), redesignated subsec. (d) as (e) and inserted heading.

1990—Subsecs. (d), (e). Pub. L. 101–510 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''The Secretary of Defense shall notify the Congress within 10 days of the date on which any waiver is made under this section and of the reasons for the necessity of exercising such waiver.''

1987—Subsec. (e). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2922f. Preference for energy efficient electric equipment

(a) In establishing a new requirement for electric equipment referred to in subsection (b) and in procuring electric equipment referred to in that subsection, the Secretary of a military department or the head of a Defense Agency, as the case may be, shall provide a preference for the procurement of the most energy efficient electric equipment available that meets the requirement or the need for the procurement, if providing such a preference is consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (c) of such section.

(b) Subsection (a) applies to the following electric equipment:

(1) Electric lamps.

(2) Electric ballasts.

(3) Electric motors.

(4) Electric refrigeration equipment.

(Added Pub. L. 102–484, div. A, title III, § 384(a)(1)(A), Oct. 23, 1992, 106 Stat. 2392, § 2410c; renumbered § 2922f and amended Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), (3)(E), Oct. 17, 2006, 120 Stat. 2494, 2495.)

AMENDMENTS

2006—Pub. L. 109–364, § 2851(b)(2), renumbered section 2410c of this title as this section.

Subsec. (a). Pub. L. 109–364, § 2851(b)(3)(E), substituted ''In'' for ''When cost effective, in'' and ''if providing such a preference is consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (c) of such section'' for ''as the case may be''.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title III, § 384(a)(2), Oct. 23, 1992, 106 Stat. 2393, provided that: ''The amendments made by paragraph (1) [enacting this section] shall apply to procurements for which solicitations are issued on or after the date that is 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

ELECTRIC LIGHTING AND REFRIGERATION EQUIPMENT DEMONSTRATION PROGRAMS

Pub. L. 102–484, div. A, title III, § 384(b)–(d), Oct. 23, 1992, 106 Stat. 2393, provided that:

''(b) ELECTRIC LIGHTING DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program for using energy efficient electric lighting equipment.

''(2) The Secretary shall designate 50 facilities owned or leased by the Department of Defense for participation in the demonstration program under this subsection.

''(3) The head of each facility designated pursuant to paragraph (2) and the Director of the Defense Logistics Agency shall jointly audit the electric lighting equipment at the facility in order—

''(A) to identify any potential improvements that would increase the energy efficiency of electric lighting at that facility; and

''(B) to determine the costs of, and the savings that would result from, such improvements.

''(4) Except as provided in subsection (d)(4), on the basis of the results of the audit the head of the facility shall promptly convert to the use of electric lighting equipment at the facility that is more energy efficient than the existing electric lighting equipment to the extent that the conversion is cost effective.

''(5) Energy efficient electric lighting equipment used under the demonstration program may include compact fluorescent lamps, energy efficient electric ballasts and fixtures, and other energy efficient electric lighting equipment.

''(c) REFRIGERATION EQUIPMENT DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program for using energy efficient refrigeration equipment.

''(2) The Secretary shall designate 50 facilities owned or operated by the Department of Defense for participation in the demonstration program under this subsection.

''(3) The head of each facility designated pursuant to paragraph (2) and the Director of the Defense Logistics Agency shall jointly audit the refrigeration equipment at the facility in order—

''(A) to identify any potential improvements that would increase the energy efficiency of the refrigeration equipment at that facility; and

''(B) to determine the costs of, and the savings that would result from, such improvements.

''(4) Except as provided in subsection (d)(4), on the basis of the results of the audit the head of the facility shall promptly convert to the use of refrigeration equipment at the facility that is more energy efficient than the existing refrigeration equipment to the extent that the conversion is cost effective.

''(d) GENERAL PROVISIONS FOR DEMONSTRATION PROGRAMS.—(1) The Secretary of Defense shall make the designations under subsections (b)(2) and (c)(2) not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].

''(2) The Secretary of Defense may designate a facility described in subsections (b)(2) and (c)(2) for participation in the demonstration program under subsection (b) and the demonstration program under subsection (c).

''(3) The audits required by subsections (b)(3) and (c)(3) shall be completed not later than January 1, 1994.

''(4) The head of a facility may not carry out a conversion described in subsection (b)(4) or (c)(4) if the conversion prevents the head of the facility from carrying out other improvements relating to energy efficiency that are more cost effective than that conversion.''

§ 2922g. Preference for motor vehicles using electric or hybrid propulsion systems

(a) PREFERENCE.—In leasing or procuring motor vehicles for use by a military department or Defense Agency, the Secretary of the military department or the head of the Defense Agency shall provide a preference for the lease or procurement of motor vehicles using electric or hybrid propulsion systems, including plug-in hybrid systems, if the electric or hybrid vehicles—

(1) will meet the requirements or needs of the Department of Defense; and

(2) are commercially available at a cost, including operating cost, reasonably comparable to motor vehicles containing only an internal combustion or heat engine using combustible fuel.

(b) EXCEPTION.—Subsection (a) does not apply with respect to tactical vehicles designed for use in combat.

(c) RELATION TO OTHER VEHICLE TECHNOLOGIES THAT REDUCE CONSUMPTION OF FOSSIL FUELS.—The preference required by subsection (a) does not preclude the Secretary of Defense from authorizing the Secretary of a military department or head of a Defense Agency to provide a preference for another vehicle technology that reduces the consumption of fossil fuels if the Secretary of Defense determines that the technology is consistent with the energy performance goals and plan of the Department required by section 2911 of this title.

(Added Pub. L. 111–84, div. B, title XXVIII, § 2844(a), Oct. 28, 2009, 123 Stat. 2682; amended Pub. L. 112–81, div. B, title XXVIII, § 2821(b)(3), Dec. 31, 2011, 125 Stat. 1691.)

AMENDMENTS

2011—Subsec. (d). Pub. L. 112–81 struck out subsec. (d), which defined ''hybrid''.

REGULATIONS

Pub. L. 111–84, div. B, title XXVIII, § 2844(c), Oct. 28, 2009, 123 Stat. 2682, provided that: ''The Secretary of Defense shall prescribe regulations to implement section 2922g of title 10, United States Code, as added by subsection (a), within one year after the date of the enactment of this Act [Oct. 28, 2009].''

§ 2922h. Limitation on procurement of drop-in fuels

(a) LIMITATION.—Except as provided in subsection (b), the Secretary of Defense may not make a bulk purchase of a drop-in fuel for operational purposes unless the fully burdened cost of that drop-in fuel is cost-competitive with the fully burdened cost of a traditional fuel available for the same purpose.

(b) WAIVER.—(1) Subject to the requirements of paragraph (2), the Secretary of Defense may waive the limitation under subsection (a) with respect to a purchase.

(2) Not later than 30 days after issuing a waiver under this subsection, the Secretary shall submit to the congressional defense committees notice of the waiver. Any such notice shall include each of the following:

(A) The rationale of the Secretary for issuing the waiver.

(B) A certification that the waiver is in the national security interest of the United States.

(C) The expected fully burdened cost of the purchase for which the waiver is issued.

(c) DEFINITIONS.—In this section:

(1) The term ''drop-in fuel'' means a neat or blended liquid hydrocarbon fuel designed as a direct replacement for a traditional fuel with comparable performance characteristics and compatible with existing infrastructure and equipment.

(2) The term ''traditional fuel'' means a liquid hydrocarbon fuel derived or refined from petroleum.

(3) The term ''operational purposes''—

(A) means for the purposes of conducting military operations, including training, exercises, large scale demonstrations, and moving and sustaining military forces and military platforms; and

(B) does not include research, development, testing, evaluation, fuel certification, or other demonstrations.

(4) The term ''fully burdened cost'' means the commodity price of the fuel plus the total cost of all personnel and assets required to move and, when necessary, protect the fuel from the point at which the fuel is received from the commercial supplier to the point of use.

(Added Pub. L. 114–92, div. A, title III, § 311(a), Nov. 25, 2015, 129 Stat. 787.)

SUBCHAPTER III—GENERAL PROVISIONS

Sec.
2924. Definitions.
2925. Annual Department of Defense energy management reports.
2926. Operational energy activities.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title IX, § 901(*l*)(3), Dec. 19, 2014, 128 Stat. 3468, added item 2926.

2011—Pub. L. 112–81, div. B, title XXVIII, § 2821(a)(2)(B), Dec. 31, 2011, 125 Stat. 1691, added item 2924.

2008—Pub. L. 110–417, [div. A], title III, § 331(b)(2), Oct. 14, 2008, 122 Stat. 4420, added item 2925 and struck out former item 2925 ''Annual report''.

§ 2924. Definitions

In this chapter:

(1) The term ''defined fuel source'' means any of the following:

(A) Petroleum.

(B) Natural gas.

(C) Coal.

(D) Coke.

(2) The term ''energy-efficient maintenance'' includes—

(A) the repair of military vehicles, equipment, or facility and infrastructure systems, such as lighting, heating, or cooling equipment or systems, or industrial processes, by replacement with technology that—

(i) will achieve energy savings over the life-cycle of the equipment or system being repaired; and

(ii) will meet the same end needs as the equipment or system being repaired; and

(B) improvements in an operation or maintenance process, such as improved training or improved controls, that result in energy savings.

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

(B) In selecting facility energy projects that will use renewable energy sources, pursuit of energy security means the installation will give favorable consideration to projects that provide power directly to a military facility or into the installation electrical distribution network. In such cases, projects should be prioritized to provide power for assets critical to mission essential requirements on the installation in the event of a disruption in the commercial grid.

(4) The term ''hybrid'', with respect to a motor vehicle, means a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

(A) an internal combustion or heat engine using combustible fuel; and

(B) a rechargeable energy storage system.

(5) The term ''operational energy'' means the energy required for training, moving, and sustaining military forces and weapons platforms for military operations. The term includes energy used by tactical power systems and generators and weapons platforms.

(6) The term ''petroleum'' means natural or synthetic crude, blends of natural or synthetic crude, and products refined or derived from natural or synthetic crude or from such blends.

(7) The term ''renewable energy source'' means energy generated from renewable sources, including the following:

(A) Solar, including electricity.

(B) Wind.

(C) Biomass.

(D) Landfill gas.

(E) Ocean, including tidal, wave, current, and thermal.

(F) Geothermal, including electricity and heat pumps.

(G) Municipal solid waste.

(H) New hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project. For purposes of this subparagraph, hydroelectric generation capacity is ''new'' if it was placed in service on or after January 1, 1999.

(I) Thermal energy generated by any of the preceding sources.

(Added Pub. L. 112–81, div. B, title XXVIII, § 2821(a)(1), Dec. 31, 2011, 125 Stat. 1689.)

§ 2925. Annual Department of Defense energy management reports

(a) ANNUAL REPORT RELATED TO INSTALLATIONS ENERGY MANAGEMENT.—Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees an installation energy report detailing the fulfillment during that fiscal year of the energy performance goals for the Department of Defense under section 2911 of this title. Each report shall contain the following:

(1) A description of the progress made to achieve the goals of the Energy Policy Act of 2005 (Public Law 109–58), section 2911(e) of this title, section 553 of the National Energy Conservation Policy Act (42 U.S.C. 8259b), the Energy Independence and Security Act of 2007 (Public Law 110–140), and the energy performance goals for the Department of Defense during the preceding fiscal year.

(2) A table detailing funding, by account, for all energy projects funded through appropriations.

(3) A table listing all energy projects financed through third party financing mechanisms (including energy savings performance contracts, enhanced use leases, utility energy service contracts, utility privatization agreements, and other contractual mechanisms), the duration of each such mechanism, an estimate of the financial obligation incurred through the duration of each such mechanism, whether the project incorporates energy security into its design, and the estimated payback period for each such mechanism.

(4) A description of the actions taken to implement the energy performance master plan in effect under section 2911 of this title and carry out this chapter during the preceding fiscal year.

(5) A description of the energy savings realized from such actions.

(6) A description of the types and amount of financial incentives received under section 2913 of this title during the preceding fiscal year and the appropriation account or accounts to which the incentives were credited.

(7) A description and estimate of the progress made by the military departments in meeting current high performance and sustainable building standards under the Unified Facilities Criteria.

(8) A description of steps taken to determine best practices for measuring energy consumption in Department of Defense facilities and installations, in order to use the data for better energy management.

(9) Details of all commercial utility outages caused by threats and those caused by hazards at military installations that last eight hours or longer, whether or not the outage was mitigated by backup power, including non-commercial utility outages and Department of Defense-owned infrastructure, including the total number and location of outages, the financial impact of the outages, and measure taken to mitigate outages in the future at the affected locations and across the Department of Defense.

(10) A description of any other issues and strategies the Secretary determines relevant to a comprehensive and renewable energy policy.

(11) At the discretion of the Secretary of Defense, a classified annex, as appropriate.

(b) ANNUAL REPORT RELATED TO OPERATIONAL ENERGY.—(1) Simultaneous with the annual report required by subsection (a), the Secretary of Defense, acting through the Assistant Secretary of Defense for Energy, Installations, and Environment, shall submit to the congressional defense committees a report on operational energy management and the implementation of the operational energy strategy established pursuant to section 138c[1] of this title.

(2) The annual report under this subsection shall address and include the following:

(A) Statistical information on operational energy demands, in terms of expenditures and consumption, for the preceding five fiscal years, including funding made available in regular defense appropriations Acts and any supplemental appropriation Acts.

(B) An estimate of operational energy demands for the current fiscal year and next fiscal year, including funding requested to meet operational energy demands in the budget submitted to Congress under section 1105 of title 31 and in any supplemental requests.

(C) A description of each initiative related to the operational energy strategy and a sum-

[1] See References in Text note below.

mary of funds appropriated for each initiative in the previous fiscal year and current fiscal year and requested for each initiative for the next five fiscal years.

(D) An evaluation of progress made by the Department of Defense—

(i) in implementing the operational energy strategy, including the progress of key initiatives and technology investments related to operational energy demand and management; and

(ii) in meeting the operational energy goals set forth in the strategy.

(E) A description of the alternative fuel initiatives of the Department of Defense, including funding and expenditures by account and activity for the preceding fiscal year, including funding made available in regular defense appropriations Acts and any supplemental appropriation Acts.

(F) An evaluation of practices used in contingency operations during the previous fiscal year and potential improvements to such practices to reduce vulnerabilities associated with fuel convoys, including improvements in tent and structure efficiency, improvements in generator efficiency, and displacement of liquid fuels with on-site renewable energy generation. Such evaluation should identify challenges associated with the deployment of more efficient structures and equipment and renewable energy generation, and recommendations for overcoming such challenges.

(G) Such recommendations as the Assistant Secretary considers appropriate for additional changes in organization or authority within the Department of Defense to enable further implementation of the energy strategy and such other comments and recommendations as the Assistant Secretary considers appropriate.

(3) If a report under this subsection is submitted in a classified form, the Secretary shall concurrently submit to the congressional defense committees an unclassified version of the information required by this subsection.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2851(a)(1), Oct. 17, 2006, 120 Stat. 2493; amended Pub. L. 110–417, [div. A], title III, § 331(a), (b)(1), div. B, title XXVIII, § 2832, Oct. 14, 2008, 122 Stat. 4419, 4420, 4732; Pub. L. 111–84, div. A, title III, § 332(a), Oct. 28, 2009, 123 Stat. 2257; Pub. L. 111–383, div. B, title XXVIII, § 2832(c)(1), Jan. 7, 2011, 124 Stat. 4469; Pub. L. 112–81, div. A, title III, §§ 314(b), 342, div. B, title XXVIII, §§ 2821(b)(4), 2822(d), 2824(b), 2826, Dec. 31, 2011, 125 Stat. 1357, 1370, 1691–1694; Pub. L. 112–239, div. A, title X, § 1076(c)(3), (d)(6), Jan. 2, 2013, 126 Stat. 1950, 1951; Pub. L. 113–291, div. A, title IX, § 901(k)(4), Dec. 19, 2014, 128 Stat. 3468; Pub. L. 114–92, div. A, title III, § 313, Nov. 25, 2015, 129 Stat. 789.)

REFERENCES IN TEXT

The Energy Policy Act of 2005, referred to in subsec. (a)(1), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, which enacted chapter 149 of Title 42, The Public Health and Welfare, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of Title 42 and Tables.

The Energy Independence and Security Act of 2007, referred to in subsec. (a)(1), is Pub. L. 110–140, Dec. 19, 2007, 121 Stat. 1492, which enacted chapter 152 of Title 42, The Public Health and Welfare, and enacted and amended numerous other sections and notes in the Code. Section 433 of the Act amended sections 6832 and 6834 of Title 42 and enacted provisions set out as a note under section 6834 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 17001 of Title 42 and Tables.

Section 138c of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 113–291, div. A, title IX, § 901(g)(2), Dec. 19, 2014, 128 Stat. 3466. See now section 2926 of this title, enacted by Pub. L. 113–291, which relates to operational energy activities and is largely comprised of provisions transferred from former section 138c.

AMENDMENTS

2015—Subsec. (a)(4). Pub. L. 114–92, § 313(1), (2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In addition to the information contained in the table listing energy projects financed through third party financing mechanisms, as required by paragraph (3), the table also shall list any renewable energy certificates associated with each project, including information regarding whether the renewable energy certificates were bundled or unbundled, the purchasing authority for the renewable energy certificates, and the price of the associated renewable energy certificates.''

Subsec. (a)(5), (6). Pub. L. 114–92, § 313(2), redesignated pars. (6) and (8) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (a)(7). Pub. L. 114–92, § 313(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''A description and estimate of the progress made by the military departments to meet the certification requirements for sustainable green-building standards in construction and major renovations as required by section 433 of the Energy Independence and Security Act of 2007 (Public Law 110–140; 121 Stat. 1612).''

Pub. L. 114–92, § 313(1), (2), redesignated par. (9) as (7) and struck out former par. (7) which read as follows: ''An estimate of the types and quantities of energy consumed by the Department of Defense and members of the armed forces and civilian personnel residing or working on military installations during the preceding fiscal year, including a breakdown of energy consumption by user groups and types of energy, energy costs, and the quantities of renewable energy produced or procured by the Department.''

Subsec. (a)(8). Pub. L. 114–92, § 313(2), redesignated par. (10) as (8). Former par. (8) redesignated (6).

Subsec. (a)(9). Pub. L. 114–92, § 313(4), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''Details of utility outages at military installations including the total number and locations of outages, the financial impact of the outage, and measures taken to mitigate outages in the future at the affected location and across the Department of Defense.''

Pub. L. 114–92, § 313(2) redesignated par. (11) as (9). Former par. (9) redesignated (7).

Subsec. (a)(10). Pub. L. 114–92, § 313(2), redesignated par. (12) as (10). Former par. (10) redesignated (8).

Subsec. (a)(11). Pub. L. 114–92, § 313(5) added par. (11). Former par. (11) redesignated (9).

Subsec. (a)(12). Pub. L. 114–92, § 313(2), redesignated par. (12) as (10).

2014—Subsec. (b)(1). Pub. L. 113–291 substituted ''Energy, Installations, and Environment'' for ''Operational Energy Plans and Programs''.

2013—Subsec. (a)(1). Pub. L. 112–239, § 1076(d)(6)(A), substituted ''section 553'' for ''section 533''.

Subsec. (b)(1). Pub. L. 112–239, § 1076(c)(3)(A), (d)(6)(B), substituted ''Assistant Secretary of Defense for'' for ''Director of'' and ''section 138c'' for ''section 139b''.

Subsec. (b)(2)(G). Pub. L. 112–239, § 1076(c)(3)(B), substituted ''Assistant Secretary'' for ''Director'' in two places.

2011—Subsec. (a). Pub. L. 112–81, § 2826, in introductory provisions, substituted ''Not later than 120 days

after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees an installation energy report detailing the fulfillment during that fiscal year of the energy performance goals for the Department of Defense under section 2911 of this title. Each report shall contain the following:'' for ''As part of the annual submission of the energy performance goals for the Department of Defense under section 2911 of this title, the Secretary of Defense shall submit a report containing the following:''.

Subsec. (a)(3). Pub. L. 112–81, §2822(d)(1), inserted ''whether the project incorporates energy security into its design,'' after ''through the duration of each such mechanism,''.

Subsec. (a)(4). Pub. L. 112–81, §2824(b)(2), added par. (4). Former par. (4) redesignated (5).

Pub. L. 111–383, §2832(c)(1), substituted ''energy performance master plan'' for ''energy performance plan''.

Subsec. (a)(5) to (9). Pub. L. 112–81, §2824(b)(1), redesignated pars. (4) to (8) as (5) to (9), respectively.

Subsec. (a)(10). Pub. L. 112–81, §2824(b)(1), redesignated par. (9) as (10). Former par. (10) redesignated (11).

Pub. L. 112–81, §2822(d)(3), added par. (10). Former par. (10) redesignated (11).

Subsec. (a)(11). Pub. L. 112–81, §2824(b)(1), redesignated par. (10) as (11). Former par. (11) redesignated (12).

Pub. L. 112–81, §2822(d)(2), redesignated par. (10) as (11).

Subsec. (a)(12). Pub. L. 112–81, §2824(b)(1), redesignated par. (11) as (12).

Subsec. (b)(2)(E). Pub. L. 112–81, §314(b)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 112–81, §342(2), added subpar. (F). Former subpar. (F) redesignated (G).

Pub. L. 112–81, §314(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(2)(G). Pub. L. 112–81, §342(1), redesignated subpar. (F) as (G).

Subsec. (b)(4). Pub. L. 112–81, §2821(b)(4), struck out par. (4) which read as follows: ''In this subsection, the term 'operational energy' means the energy required for training, moving, and sustaining military forces and weapons platforms for military operations. The term includes energy used by tactical power systems and generators and weapons platforms.''

2009—Subsec. (a). Pub. L. 111–84, in par. (1), inserted ''section 2911(e) of this title, section 533 of the National Energy Conservation Policy Act (42 U.S.C. 8259b),'' after ''(Public Law 109–58),'', added pars. (2), (3), (9), and (10), and redesignated former pars. (2) to (6) as (4) to (8), respectively.

2008—Pub. L. 110–417, §331(b)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Annual report''.

Subsec. (a). Pub. L. 110–417, §2832, in heading substituted ''Annual Report Related to Installations Energy Management'' for ''Report Required'', in par. (1) inserted '', the Energy Independence and Security Act of 2007 (Public Law 110–140),'' after ''(Public Law 109–58)'', and added par. (6).

Subsec. (b). Pub. L. 110–417, §331(a), added subsec. (b) and struck out former subsec. (b) which related to requirements for the initial report to be submitted by the Secretary of Defense.

§ 2926. Operational energy activities

(a) ALTERNATIVE FUEL ACTIVITIES.—The Assistant Secretary of Defense for Energy, Installations, and Environment, in consultation with the heads of the military departments and the Assistant Secretary of Defense for Research and Engineering, shall—

(1) lead the alternative fuel activities of the Department of Defense and oversee the investments of the Department in such activities;

(2) make recommendations to the Secretary regarding the development of alternative fuels by the military departments and the Office of the Secretary of Defense;

(3) establish guidelines and prescribe policy to streamline the investments in alternative fuel activities across the Department of Defense;

(4) encourage collaboration with and leveraging of investments made by the Department of Energy, the Department of Agriculture, and other relevant Federal agencies to advance alternative fuel development to the benefit of the Department of Defense; and

(5) certify the budget associated with the investment of the Department of Defense in alternative fuel activities in accordance with subsection (c)(4).

(b) OPERATIONAL ENERGY STRATEGY.—(1) The Assistant Secretary of Defense for Energy, Installations, and Environment shall be responsible for the establishment and maintenance of a department-wide transformational strategy for operational energy. The strategy shall establish near-term, mid-term, and long-term goals, performance metrics to measure progress in meeting the goals, and a plan for implementation of the strategy within the military departments, the Office of the Secretary of Defense, and Defense Agencies.

(2) The Secretary of each military department shall designate a senior official within each armed force under the jurisdiction of the Secretary who shall be responsible for operational energy plans and programs for that armed force. The officials so designated shall be responsible for coordinating with the Assistant Secretary and implementing initiatives pursuant to the strategy with regard to that official's armed force.

(3) The Chairman of the Joint Chiefs of Staff shall designate a senior official under the jurisdiction of the Chairman who shall be responsible for operational energy plans and programs for the Joint Chiefs of Staff and the Joint Staff. The official so designated shall be responsible for coordinating with the Assistant Secretary and implementing initiatives pursuant to the strategy with regard to the Joint Chiefs of Staff and the Joint Staff.

(4) By authority of the Secretary of Defense, the Assistant Secretary shall prescribe policies and procedures for the implementation of the strategy. The Assistant Secretary shall make recommendations to the Secretary of Defense and Deputy Secretary of Defense and provide guidance to the Secretaries of the military departments and the officials designated under paragraph (2) with respect to specific operational energy plans and programs to be carried out pursuant to the strategy.

(5) Updates to the strategy required by paragraph (1) shall be submitted to the congressional defense committees as soon as practicable after the modifications to the strategy are made.

(c) BUDGETARY AND FINANCIAL MATTERS.—(1) The Assistant Secretary of Defense for Energy, Installations, and Environment shall review and make recommendations to the Secretary of Defense regarding all budgetary and financial matters relating to the operational energy strategy.

(2) The Secretary of Defense shall require that the Secretary of each military department and

the head of each Defense Agency with responsibility for executing activities associated with the strategy transmit their proposed budget for those activities for a fiscal year to the Assistant Secretary for review before submission of the proposed budget to the Under Secretary of Defense (Comptroller).

(3) The Assistant Secretary shall review a proposed budget transmitted under paragraph (2) for a fiscal year and, not later than January 31 of the preceding fiscal year, shall submit to the Secretary of Defense a report containing the comments of the Assistant Secretary with respect to the proposed budget, together with the certification of the Assistant Secretary regarding whether the proposed budget is adequate for implementation of the strategy.

(4) Not later than 30 days after the date on which the budget for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Secretary of Defense shall submit to Congress a report on the proposed budgets for that fiscal year that were reviewed by the Assistant Secretary under paragraph (3).

(5) For each proposed budget covered by a report under paragraph (4) for which the certification of the Assistant Secretary under paragraph (3) is that the budget is not adequate for implementation of the strategy, the report shall include the following:

(A) A copy of the report set forth in paragraph (3).

(B) A discussion of the actions that the Secretary proposes to take, together with any recommended legislation that the Secretary considers appropriate, to address the inadequacy of the proposed budget.

(C) An appendix prepared by the Chairman of the Joint Chiefs of Staff describing—

(i) the progress made by the Joint Requirements Oversight Council in implementing the energy Key Performance Parameter; and

(ii) details regarding how operational energy is being addressed in defense planning, scenarios, support to strategic analysis, and resulting policy to improve combat capability.

(D) An appendix prepared by the Under Secretary of Defense for Acquisition, Technology, and Logistics certifying that and describing how the acquisition system is addressing operational energy in the procurement process, including long-term sustainment considerations, and how programs are extending combat capability as a result of these considerations.

(E) A separate statement of estimated expenditures and requested appropriations for that fiscal year for the activities of the Assistant Secretary in carrying out the duties of the Assistant Secretary.

(F) Any additional comments that the Secretary considers appropriate regarding the inadequacy of the proposed budgets.

(6) For each proposed budget covered by a report under paragraph (4) for which the certification of the Assistant Secretary under paragraph (3) is that the budget is adequate for implementation of the strategy, the report shall include the items set forth in subparagraphs (C), (D), and (E) of paragraph (5).

(d) ACCESS TO INITIATIVE RESULTS AND RECORDS.—(1) The Secretary of a military department shall submit to the Assistant Secretary of Defense for Energy, Installations, and Environment the results of all studies and initiatives conducted by the military department in connection with the operational energy strategy.

(2) The Assistant Secretary shall have access to all records and data in the Department of Defense (including the records and data of each military department) necessary in order to permit the Assistant Secretary to carry out the duties of the Assistant Secretary.

(Added and amended Pub. L. 113–291, div. A, title IX, § 901(g)(1), Dec. 19, 2014, 128 Stat. 3464; Pub. L. 114–92, div. A, title X, § 1081(a)(12), (b)(2), Nov. 25, 2015, 129 Stat. 1001.)

CODIFICATION

Subsec. (c)(3) of section 138c of this title, which was transferred to subsec. (a) of this section by Pub. L. 113–291, § 901(g)(1)(B), was based on Pub. L. 112–81, div. A, title III, § 314(a), Dec. 31, 2011, 125 Stat. 1357. Subsecs. (d) to (f) of section 138c of this title, which were transferred to subsecs. (b) to (d), respectively, of this section by Pub. L. 113–291, § 901(g)(1)(D), were based on Pub. L. 110–417, [div. A], title IX, § 902(a), Oct. 14, 2008, 122 Stat. 4564; amended Pub. L. 111–383, div. A, title IX, § 901(b)(7)(B)–(D), Jan. 7, 2011, 124 Stat. 4320; Pub. L. 112–81, div. A, title III, § 311, Dec. 31, 2011, 125 Stat. 1351; Pub. L. 113–66, div. A, title III, § 311, Dec. 26, 2013, 127 Stat. 728.

AMENDMENTS

2015—Pub. L. 114–92, § 1081(a)(12), substituted ''for Energy, Installations, and Environment'' for ''for Installations, Energy, and Environment'' in subsecs. (a) to (d).

Subsec. (b)(4). Pub. L. 114–92, § 1081(b)(2), amended directory language of Pub. L. 113–291, § 901(g)(1)(F). See 2014 Amendment note below.

2014—Subsec. (a). Pub. L. 113–291, § 901(g)(1)(E), inserted ''of Defense for Installations, Energy, and Environment'' after ''The Assistant Secretary'' in introductory provisions.

Pub. L. 113–291, § 901(g)(1)(B)–(C)(ii), transferred subsec. (c)(3) of section 138c of this title to subsec. (a) of this section, inserted heading, and redesignated subpars. (A) to (E) as pars. (1) to (5), respectively. See Codification note above.

Subsec. (a)(5). Pub. L. 113–291, § 901(g)(1)(C)(iii), substituted ''subsection (c)(4)'' for ''subsection (e)(4)''.

Subsec. (b). Pub. L. 113–291, § 901(g)(1)(D), transferred subsec. (d) of section 138c of this title to subsec. (b) of this section. See Codification note above.

Subsec. (b)(1). Pub. L. 113–291, § 901(g)(1)(E), inserted ''of Defense for Installations, Energy, and Environment'' after ''The Assistant Secretary''.

Subsec. (b)(4). Pub. L. 113–291, § 901(g)(1)(F), as amended by Pub. L. 114–92, § 1081(b)(2), substituted ''make recommendations to the Secretary of Defense and Deputy Secretary of Defense and provide guidance to the Secretaries of the military departments'' for ''provide guidance to, and consult with, the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments,''.

Subsec. (c). Pub. L. 113–291, § 901(g)(1)(D), transferred subsec. (e) of section 138c of this title to subsec. (c) of this section. See Codification note above.

Subsec. (c)(1). Pub. L. 113–291, § 901(g)(1)(E), inserted ''of Defense for Installations, Energy, and Environment'' after ''The Assistant Secretary''.

Subsec. (c)(4) to (6). Pub. L. 113–291, § 901(g)(1)(G), amended pars. (4) to (6) generally. Prior to amendment, pars. (4) to (6) required the Secretary of Defense to report to Congress, by a certain date, on proposed budgets not certified by the Assistant Secretary under par.

(3), including a separate statement of certain estimated expenditures and requested appropriations.

Subsec. (d). Pub. L. 113–291, §901(g)(1)(D), transferred subsec. (f) of section 138c of this title to subsec. (d) of this section. See Codification note above.

Subsec. (d)(1). Pub. L. 113–291, §901(g)(1)(E), inserted ''of Defense for Installations, Energy, and Environment'' after ''the Assistant Secretary''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title X, §1081(b), Nov. 25, 2015, 129 Stat. 1001, provided in part that the amendment made by section 1081(b) is effective as of Dec. 19, 2014, and as if included in Pub. L. 113–291 as enacted.

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AMENDMENTS

2011—Pub. L. 112–81, div. A, title V, §591(a)(2), Dec. 31, 2011, 125 Stat. 1441, added item for chapter 446.

2003—Pub. L. 108–136, div. A, title V, §576(a)(2), Nov. 24, 2003, 117 Stat. 1487, added item for chapter 375.

2000—Pub. L. 106–398, §1 [[div. A], title III, §344(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, added item for chapter 434.

1999—Pub. L. 106–65, div. A, title VII, §721(c)(7), Oct. 5, 1999, 113 Stat. 695, substituted ''Disposition'' for ''Inquests; Disposition'' and ''4712'' for ''4711'' in item for chapter 445.

1994—Pub. L. 103–337, div. A, title XVI, §1672(a), Oct. 5, 1994, 108 Stat. 3015, struck out items for chapters 337 ''Appointments as Reserve Officers'', 361 ''Separation for Various Reasons'', and 363 ''Separation or Transfer to Retired Reserve''.

1993—Pub. L. 103–160, div. A, title VIII, §828(b)(2), Nov. 30, 1993, 107 Stat. 1714, struck out item for chapter 431 ''Industrial Mobilization, Research, and Development''.

1987—Pub. L. 100–26, §7(j)(10)(A), Apr. 21, 1987, 101 Stat. 283, substituted ''3011'' for ''3010'' as section number in item for chapter 303.

1980—Pub. L. 96–513, title V, §§502(1), 512(1), Dec. 12, 1980, 94 Stat. 2909, 2929, substituted ''3010'' for ''3011'' as section number in item for chapter 303, and struck out item for chapter 359 ''Separation from Regular Army for Substandard Performance of Duty'', item for chapter 360 ''Separation from Regular Army for Moral or Professional Dereliction or in Interests of National Security'', and item for chapter 365 ''Retirement for Age''.

1968—Pub. L. 90–377, §3, July 5, 1968, 82 Stat. 288, struck out item for chapter 351 ''United States Disciplinary Barracks''.

Pub. L. 90–235, §8(5), Jan. 2, 1968, 81 Stat. 764, struck out item for chapter 347 ''The Uniform''.

1964—Pub. L. 88–647, title III, §301(11), Oct. 13, 1964, 78 Stat. 1072, struck out item for chapter 405 ''Reserve Officers' Training Corps''.

1960—Pub. L. 86–616, §§2(b), 3(b), July 12, 1960, 74 Stat. 388, 390, substituted ''Substandard Performance of Duty'' for ''Failure to Meet Standards'' in item for of chapter 359 and added item for chapter 360.

1958—Pub. L. 85–861, §1(95), Sept. 2, 1958, 72 Stat. 1487, substituted ''3841'' for ''[No present sections]'' in item for chapter 363.

PART I—ORGANIZATION

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AMENDMENTS

1987—Pub. L. 100–26, §7(j)(10)(A), Apr. 21, 1987, 101 Stat. 283, substituted ''3011'' for ''3010'' as section number in item for chapter 303.

1980—Pub. L. 96–513, title V, §512(1), Dec. 12, 1980, 94 Stat. 2929, substituted ''3010'' for ''3011'' as section number in item for chapter 303.

CHAPTER 301—DEFINITIONS

Sec.
3001. Definitions.

§ 3001. Definitions

In this title, the term ''Army'' means the Army or Armies referred to in the Constitution