

reau may designate the adjutants general referred to in section 314 of title 32 to appoint, employ, and administer the National Guard employees authorized by this subsection.

(3) ADMINISTRATIVE ACTIONS.—Notwithstanding the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701 et seq.) and under regulations prescribed by the Chief of the National Guard Bureau, all personnel actions or conditions of employment, including adverse actions under title 5, pertaining to a person appointed, employed, or administered by an adjutant general under this subsection shall be accomplished by the adjutant general of the jurisdiction concerned. For purposes of any administrative complaint, grievance, claim, or action arising from, or relating to, such a personnel action or condition of employment:

(A) The adjutant general of the jurisdiction concerned shall be considered the head of the agency and the National Guard of the jurisdiction concerned shall be considered the employing agency of the individual and the sole defendant or respondent in any administrative action.

(B) The National Guard of the jurisdiction concerned shall defend any administrative complaint, grievance, claim, or action, and shall promptly implement all aspects of any final administrative order, judgment, or decision.

(C) In any civil action or proceeding brought in any court arising from an action under this section, the United States shall be the sole defendant or respondent.

(D) The Attorney General of the United States shall defend the United States in actions arising under this section described in subparagraph (C).

(E) Any settlement, judgment, or costs arising from an action described in subparagraph (A) or (C) shall be paid from appropriated funds allocated to the National Guard of the jurisdiction concerned.

(Added Pub. L. 110-181, div. A, title XVIII, §1812(b)(1), Jan. 28, 2008, 122 Stat. 497; amended Pub. L. 114-328, div. A, title IX, §932, Dec. 23, 2016, 130 Stat. 2363; Pub. L. 115-232, div. A, title V, §517, Aug. 13, 2018, 132 Stat. 1754.)

Editorial Notes

REFERENCES IN TEXT

The Intergovernmental Personnel Act of 1970, referred to in subsec. (b)(3), is Pub. L. 91-648, Jan. 5, 1971, 84 Stat. 1909, which is classified principally to chapter 62 (§4701 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 4701 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 10508, added Pub. L. 103-337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2827, defined “State” for purposes of this chapter, prior to repeal by Pub. L. 104-106, div. A, title XV, §1501(b)(7)(A), Feb. 10, 1996, 110 Stat. 496.

AMENDMENTS

2018—Subsec. (b)(1). Pub. L. 115-232 substituted “sections 2102, 2103, 2105, and 3101 of title 5, subchapter IV of chapter 53 of title 5, or section 328 of title 32,” for

“sections 2103, 2105, and 3101 of title 5, or section 328 of title 32.”

2016—Pub. L. 114-328 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Statutory Notes and Related Subsidiaries

NUMBER OF MEMBERS OF THE NATIONAL GUARD ON FULL-TIME DUTY IN SUPPORT OF THE RESERVES WITHIN THE NATIONAL GUARD BUREAU

Pub. L. 115-91, div. A, title IV, §416, Dec. 12, 2017, 131 Stat. 1370, provided that:

“(a) ARMY NATIONAL GUARD OF THE UNITED STATES.—As of the end of fiscal year 2019, and as of the end of each fiscal year thereafter, the number of members of the Army National Guard of the United States serving with the National Guard Bureau on full-time duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components may not exceed the number equal to six percent of the total number of members of the Army National Guard of the United States authorized for service on full-time duty for that purpose in that fiscal year.

“(b) AIR NATIONAL GUARD OF THE UNITED STATES.—As of the end of fiscal year 2019, and as of the end of each fiscal year thereafter, the number of members of the Air National Guard of the United States serving with the National Guard Bureau on full-time duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components may not exceed the number equal to six percent of the total number of members of the Air National Guard of the United States authorized for service on full-time duty for that purpose in that fiscal year.”

CHAPTER 1013—BUDGET INFORMATION AND ANNUAL REPORTS TO CONGRESS

Sec.

10541. National Guard and reserve component equipment: annual report to Congress.
- [10542. Repealed.]
10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program.

Editorial Notes

AMENDMENTS

2015—Pub. L. 114-92, div. A, title X, §1073(c)(2), Nov. 25, 2015, 129 Stat. 996, struck out item 10542 “Army National Guard combat readiness: annual report”.

1996—Pub. L. 104-201, title XII, §1257(a)(2), Sept. 23, 1996, 110 Stat. 2699, added item 10543.

§ 10541. National Guard and reserve component equipment: annual report to Congress

(a) The Secretary of Defense shall submit to the Congress each year, not later than March 15, a written report concerning the equipment of the National Guard and the reserve components of the armed forces for each of the three succeeding fiscal years.

(b) Each report under this section shall include the following:

(1) Recommendations as to the type and quantity of each major item of equipment which should be in the inventory of the Selected Reserve of the Ready Reserve of each reserve component of the armed forces.

(2) A statement of the quantity and average age of each type of major item of equipment which is expected to be physically available in the inventory of the Selected Reserve of the Ready Reserve of each reserve component as

of the beginning of each fiscal year covered by the report.

(3) A statement of the quantity and cost of each type of major item of equipment which is expected to be procured for the Selective Reserve of the Ready Reserve of each reserve component from commercial sources or to be transferred to each such Selected Reserve from the active-duty components of the armed forces.

(4) A statement of the quantity of each type of major item of equipment which is expected to be retired, decommissioned, transferred, or otherwise removed from the physical inventory of the Selected Reserve of the Ready Reserve of each reserve component and the plans for replacement of that equipment.

(5) A listing of each major item of equipment required by the Selected Reserve of the Ready Reserve of each reserve component indicating—

(A) the full war-time requirement of that component for that item, shown in accordance with deployment schedules and requirements over successive 30-day periods following mobilization;

(B) the number of each such item in the inventory of the component;

(C) a separate listing of each such item in the inventory that is a deployable item and is not the most desired item;

(D) the number of each such item projected to be in the inventory at the end of the third succeeding fiscal year; and

(E) the number of nondeployable items in the inventory as a substitute for a required major item of equipment.

(6) A narrative explanation of the plan of the Secretary concerned to provide equipment needed to fill the war-time requirement for each major item of equipment to all units of the Selected Reserve, including an explanation of the plan to equip units of the Selected Reserve that are short of major items of equipment at the outset of war.

(7) For each item of major equipment reported under paragraph (3) in a report for one of the three previous years under this section as an item expected to be procured for the Selected Reserve or to be transferred to the Selected Reserve, the quantity of such equipment actually procured for or transferred to the Selected Reserve.

(8) A statement of the current status of the compatibility of equipment between the Army reserve components and active forces of the Army, the effect of that level of incompatibility on combat effectiveness, and a plan to achieve full equipment compatibility.

(9) An assessment of the extent to which the National Guard possesses the equipment required to perform the responsibilities of the National Guard pursuant to sections 251, 252, 253, 12304(b), and 12406 of this title in response to an emergency or major disaster (as such terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)). Such assessment shall—

(A) identify any shortfall in equipment provided to the National Guard by the De-

partment of Defense throughout the United States and the territories and possessions of the United States that is likely to affect the ability of the National Guard to perform such responsibilities;

(B) evaluate the effect of any such shortfall on the capacity of the National Guard to perform such responsibilities in response to an emergency or major disaster that occurs in the United States or a territory or possession of the United States; and

(C) identify the requirements and investment strategies for equipment provided to the National Guard by the Department of Defense that are necessary to plan for a reduction or elimination of any such shortfall.

(10) A joint assessment by the Chief of Staff of the Army and the Chief of the National Guard Bureau on the efforts of the Army to achieve parity among the active component, the Army Reserve, and the Army National Guard with respect to equipment and capabilities. Each assessment shall include a comparison of the inventory of high priority items of equipment available to each component of the Army described in preceding sentence, including—

(A) AH-64 Attack Helicopters;

(B) UH-60 Black Hawk Utility Helicopters;

(C) Abrams Main Battle Tanks;

(D) Bradley Infantry Fighting Vehicles;

(E) Stryker Combat Vehicles; and

(F) any other items of equipment identified as high priority by the Chief of Staff of the Army or the Chief of the National Guard Bureau.

(c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the annual Five Year Defense Program Procurement Annex prepared by the Department of Defense.

(d) Each report under this section concerning equipment of the National Guard shall also include the following:

(1) A statement of the accuracy of the projections required by subsection (b)(5)(D) contained in earlier reports under this section, and an explanation, if the projection was not met, of why the projection was not met.

(2) A certification from the Chief of the National Guard Bureau setting forth an inventory for the preceding fiscal year of each item of equipment—

(A) for which funds were appropriated;

(B) which was due to be procured for the National Guard during that fiscal year; and

(C) which has not been received by a National Guard unit as of the close of that fiscal year.

(Added Pub. L. 101-510, div. A, title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1714, §115b; amended Pub. L. 102-484, div. A, title XI, §1134, Oct. 23, 1992, 106 Stat. 2541; renumbered §10541 and amended Pub. L. 103-337, div. A, title XVI, §1661(d)(2), Oct. 5, 1994, 108 Stat. 2982; Pub. L. 110-181, div. A, title III, §351(a), title XVIII, §1826, Jan. 28, 2008, 122 Stat. 70, 503; Pub. L. 112-81, div. A, title X, §1070, Dec. 31, 2011, 125 Stat. 1592; Pub. L. 115-232, div. A, title I, §111(a),

title XII, §1204(b)(1)(B), Aug. 13, 2018, 132 Stat. 1660, 2017.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(a)(2), (3) of this title, prior to repeal by Pub. L. 101-510, §1483(a).

AMENDMENTS

2018—Subsec. (b)(9). Pub. L. 115-232, §1204(b)(1)(B), substituted “sections 251, 252, 253,” for “sections 331, 332, 333,” in introductory provisions.

Subsec. (b)(10). Pub. L. 115-232, §111(a), added par. (10).

2011—Subsec. (a). Pub. L. 112-81 substituted “March 15” for “February 15”.

2008—Subsec. (b)(9). Pub. L. 110-181, §351(a), added par. (9).

Subsec. (d). Pub. L. 110-181, §1826, added subsec. (d).

1994—Pub. L. 103-337 renumbered section 115b of this title as this section and substituted “National Guard and reserve component equipment: annual report to Congress” for “Annual report on National Guard and reserve component equipment” as section catchline.

1992—Subsec. (b)(8). Pub. L. 102-484 added par. (8).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-232, div. A, title I, §111(b), Aug. 13, 2018, 132 Stat. 1660, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to reports required to be submitted under section 10541 of title 10, United States Code, after the date of the enactment of this Act [Aug. 13, 2018].”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title III, §351(c)(1), Jan. 28, 2008, 122 Stat. 70, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to reports submitted after the date of the enactment of this Act [Jan. 28, 2008].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

[§ 10542. Repealed. Pub. L. 114-92, div. A, title X, § 1073(c)(1), Nov. 25, 2015, 129 Stat. 996]

Section, added Pub. L. 103-160, div. A, title V, §521(a), Nov. 30, 1993, 107 Stat. 1652, §3082; renumbered §10542 and amended Pub. L. 103-337, div. A, title XVI, §1661(d)(3), Oct. 5, 1994, 108 Stat. 2982; Pub. L. 104-106, div. A, title XV, §1501(b)(8), Feb. 10, 1996, 110 Stat. 496; Pub. L. 104-201, div. A, title X, §1074(a)(21), Sept. 23, 1996, 110 Stat. 2660, related to annual report on Army National Guard combat readiness.

§ 10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program

(a) IN GENERAL.—The Secretary of Defense shall specify in each future-years defense program submitted to Congress under section 221 of this title the estimated expenditures and the proposed appropriations, for each fiscal year of the period covered by that program, for the procurement of equipment and for military construction for each of the reserve components of the armed forces.

(b) ASSOCIATED ANNEXES.—The associated annexes of the future-years defense program shall

specify, at the same level of detail as is set forth in the annexes for the active components, the amount requested for—

(1) procurement of each item of equipment to be procured for each reserve component; and

(2) each military construction project to be carried out for each reserve component, together with the location of the project.

(c) REPORT.—(1) If the aggregate of the amounts specified in paragraphs (1) and (2) of subsection (b) for a fiscal year is less than the amount equal to 90 percent of the average authorized amount applicable for that fiscal year under paragraph (2), the Secretary of Defense shall submit to Congress a report specifying for each reserve component the additional items of equipment that would be procured, and the additional military construction projects that would be carried out, if that aggregate amount were an amount equal to such average authorized amount. The report shall be at the same level of detail as is required by subsection (b).

(2) In this subsection, the term “average authorized amount”, with respect to a fiscal year, means the average of—

(A) the aggregate of the amounts authorized to be appropriated for the preceding fiscal year for the procurement of items of equipment, and for military construction, for the reserve components; and

(B) the aggregate of the amounts authorized to be appropriated for the fiscal year preceding the fiscal year referred to in subparagraph (A) for the procurement of items of equipment, and for military construction, for the reserve components.

(3) A report required under paragraph (1) for a fiscal year shall be submitted not later than 90 days after the date on which the President submits to Congress the budget for such fiscal year under section 1105(a) of title 31.

(Added Pub. L. 104-201, div. A, title XII, §1257(a)(1), Sept. 23, 1996, 110 Stat. 2699; amended Pub. L. 105-85, div. A, title X, §1009(a), Nov. 18, 1997, 111 Stat. 1872; Pub. L. 106-398, §1 [[div. A], title IX, §931], Oct. 30, 2000, 114 Stat. 1654, 1654A-237; Pub. L. 112-81, div. A, title X, §1064(11), Dec. 31, 2011, 125 Stat. 1587.)

Editorial Notes

AMENDMENTS

2011—Subsec. (c)(3). Pub. L. 112-81 substituted “90 days” for “15 days”.

2000—Subsec. (c)(3). Pub. L. 106-398 added par. (3).

1997—Pub. L. 105-85 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 104-201, div. A, title XII, §1257(b), Sept. 23, 1996, 110 Stat. 2699, provided that: “Section 10543 of title 10, United States Code, as added by subsection (a), shall apply with respect to each future-years defense program submitted to Congress after the date of the enactment of this Act [Sept. 23, 1996].”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of report to Con-