

11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

#### DELEGATION OF AUTHORITY

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

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

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

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

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

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

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

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(1), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 107–107, div. A, title IV, §421(b), Dec. 28, 2001, 115 Stat. 1076; Pub. L. 110–417, [div. A], title IV, §416(a)–(c)(1), Oct. 14, 2008, 122 Stat. 4430; Pub. L. 118–31, div. A, title XVII, §1722(a)(2), Dec. 22, 2023, 137 Stat. 667.)

#### Editorial Notes

##### PRIOR PROVISIONS

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

#### AMENDMENTS

2023—Subsec. (a)(2). Pub. L. 118–31 inserted “or the Space Force” after “a reserve component”.

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

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

#### Executive Documents

##### DELEGATION OF AUTHORITY

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

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

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

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

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

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

#### Editorial Notes

##### PRIOR PROVISIONS

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 103–337, div. A, title XIII, §1312(b), Oct. 5, 1994, 108 Stat. 2894, provided that: “Section 123b of title 10,

United States Code, as added by subsection (a), does not apply with respect to a fiscal year before fiscal year 1996.”

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

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

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

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

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

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

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

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

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

**Editorial Notes**

**PRIOR PROVISIONS**

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

**AMENDMENTS**

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

**Statutory Notes and Related Subsidiaries**

**SUPPORT FOR COUNTERDRUG ACTIVITIES AFFECTING FLOW OF DRUGS INTO THE UNITED STATES**

Pub. L. 118–159, div. A, title X, §1011, Dec. 23, 2024, 138 Stat. 2050, provided that: “Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2024], the Secretary shall prescribe Department-wide guidance that establishes support for counterdrug activities and programs affecting the flow of drugs into the United States as the principal foreign counterdrug program priority of the Department.”

**AUTHORITY FOR DETECTION AND MONITORING OF ILLEGAL DRUGS REGARDLESS OF DESTINATION**

Pub. L. 118–159, div. A, title X, §1012, Dec. 23, 2024, 138 Stat. 2050, provided that: “In conducting detection and monitoring of illegal drugs under section 124 of title 10, United States Code, the Joint Interagency Task Force South may conduct detection and monitoring of vessels or aircraft transiting illegal drugs in the air and maritime domains within the established joint operating area of such task force regardless of the destination of the illegal drugs.”

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

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

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

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

**COUNTER-DRUG DETECTION AND MONITORING SYSTEMS PLAN**

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

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

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

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

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

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

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

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

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

“(c) **SYSTEMS PLAN.**—Based on the results of the evaluation under subsection (b), the Secretary of Defense shall prepare a plan for the development, acquisition, and use of improved counter-drug detection and monitoring systems by the Armed Forces. In developing the plan, the Secretary shall also make every effort to de-