

- Sec.  
 2813. Acquisition of existing facilities in lieu of authorized construction.  
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### Editorial Notes

#### AMENDMENTS

- 2022—Pub. L. 117–263, div. B, title XXVIII, § 2805(b), Dec. 23, 2022, 136 Stat. 2995, added item 2810.  
 2021—Pub. L. 117–81, div. B, § 2003(b), title XXVIII, § 2803, Dec. 27, 2021, 135 Stat. 2162, 2186, added item 2815a.  
 Pub. L. 116–283, div. A, title X, § 1081(c)(9), div. B, title XXVIII, § 2804(b), Jan. 1, 2021, 134 Stat. 3873, 4321, added item 2816 and amended directory language of Pub. L. 116–92, § 2801(b)(2). See 2019 Amendment note below.  
 2019—Pub. L. 116–92, div. B, title XXVIII, § 2801(b)(2), Dec. 20, 2019, 133 Stat. 1881, as amended by Pub. L. 116–283, div. A, title X, § 1081(c)(9), Jan. 1, 2021, 134 Stat. 3873, added item 2815.  
 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,<sup>1</sup> 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.)

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

## REFERENCES IN TEXT

Section 2830 of this chapter, referred to in subsec. (d), was repealed by Pub. L. 116-283, div. B, title XXVIII, § 2812(a), Jan. 1, 2021, 134 Stat. 4326.

## Editorial Notes

## 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”.

## Statutory Notes and Related Subsidiaries

## 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.

## PILOT PROGRAM TO SUPPORT COMBATANT COMMAND MILITARY CONSTRUCTION PRIORITIES

Pub. L. 116-283, div. B, title XXVIII, § 2863, Jan. 1, 2021, 134 Stat. 4358, provided that:

“(a) PILOT PROGRAM.—The Secretary of Defense shall conduct a pilot program to evaluate the usefulness of reserving a portion of the military construction funds of the military departments to help the combatant commands satisfy their military construction priorities in a timely manner.

“(b) LOCATION.—The Secretary of Defense shall conduct the pilot program for the benefit of the United States Indo-Pacific Command in the area of responsibility of the United States Indo-Pacific Command.

“(c) REQUIRED INVESTMENT.—For each fiscal year during which the pilot program is conducted, the Secretary of Defense shall reserve to carry out military construction projects under the pilot program an amount equal to 10 percent of the total amount authorized to be appropriated for military construction projects by titles XXI, XXII, and XXIII of the Military Construction Authorization Act for that fiscal year.

“(d) COMMENCEMENT AND DURATION.—

“(1) COMMENCEMENT.—The Secretary of Defense shall commence the pilot program no later than October 1, 2023. The Secretary may commence the pilot program as early as October 1, 2022, if the Secretary determines that compliance with the reservation of funds requirement under subsection (c) is practicable beginning with fiscal year 2023.

“(2) DURATION.—The pilot program shall be in effect for the fiscal year in which the Secretary commences the pilot program, as described in paragraph (1), and the subsequent two fiscal years. Any construction commenced under the pilot program before the expiration date may continue to completion.

“(e) PROGRESS REPORT.—Not later than February 15 of the final fiscal year of the pilot program, 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 evaluating the success of the pilot program in improving the timeliness of the United States Indo-Pacific Command in achieving its military construction priorities. The Secretary shall include in the report—

“(1) an evaluation of the likely positive and negative impacts were the pilot program extended or made permanent and, if extended or made permanent, the likely positive and negative impacts of expansion to cover all or additional combatant commands; and

“(2) the recommendations of the Secretary regarding whether the pilot program should be extended or made permanent and expanded.”

## PERMITTING MACHINE ROOM-LESS ELEVATORS IN DEPARTMENT OF DEFENSE FACILITIES

Pub. L. 115-91, div. B, title XXVIII, § 2875, Dec. 12, 2017, 131 Stat. 1871, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall issue modifications to all relevant construction and facilities specifications to ensure that machine room-less elevators (MRLs) are not prohibited in buildings and

facilities throughout the Department of Defense, including modifications to the Unified Facilities Guide Specifications (UFGS), the Naval Facilities Engineering Command Interim Technical Guidance, and the Army Corps of Engineers Engineering and Construction Bulletin.

“(b) CONFORMING TO BEST PRACTICES.—In addition to the modifications required under subsection (a), the Secretary may issue further modifications to conform generally with commercial best practices as reflected in the safety code for elevators and escalators as issued by the American Society of Mechanical Engineers.

“(c) DEADLINES.—The Secretary shall promulgate interim MRL standards not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], and shall issue final and formal MRL specifications not later than 1 year after the date of the enactment of this Act.

“(d) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue a report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the integration and utilization of MRLs, including information on quantity, location, problems, and successes.”

### § 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) Repealed. Pub. L. 114-328, div. B, title XXVIII, §2811(b), Dec. 23, 2016, 130 Stat. 2716.]

(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 and submit to the congressional defense committees any materials required to be submitted to Congress or any other congressional committees pursuant to the congressional notification requirement; 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.

(f)(1) In addition to any other applicable consultation requirement pursuant to law or Department of Defense policy, if a proposed military construction project is likely to significantly impact tribal lands, known sacred sites, or tribal treaty rights, the Secretary concerned shall initiate consultation with the tribal government of each impacted Indian tribe—

(A) to determine the nature and extent of such impact;

(B) to determine whether such impact can be avoided or mitigated in the design and implementation of the project; and

(C) if such impact cannot be avoided, to develop feasible measures consistent with applicable law to mitigate the impact and estimate the cost of the mitigation measures.

(2) As part of the Department of Defense Form 1391 submitted to the appropriate committees of Congress for a military construction project covered by paragraph (1), the Secretary concerned, to the extent possible at the time of such submission, shall include a description of the current status of the consultation conducted under such paragraph and specifically address each of the items specified in subparagraphs (A), (B), and (C) of such paragraph.

(3) The requirement under paragraph (1) does not affect the obligation of the Secretary concerned to comply with any other applicable consultation requirement pursuant to law or Department of Defense policy.

(4) In this subsection:

(A) The term “Indian tribe” has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(B) The term “tribal government” means the recognized governing body of an Indian tribe.

(C) The term “sacred site” has the meaning given that term in Executive Order No. 13007, as in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020.